

Japan's Comments on the Draft Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

In response to the Note Verbale of the Office of the High Commissioner for Human Rights CRC/AF dated 19 February 2019, Japan would like to submit the comments below on the Draft Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereinafter referred to as “the Guidelines”), after careful consideration from a legal perspective.

I. Overview

1. First of all, Japan welcomes the Committee's invitation for the States parties to present their written submissions on the Guidelines. However, taking into account that the Guidelines are to be adopted to guide the better implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (hereinafter referred to as the “OPSC”), the consultations with the States parties should have been carried out in a more substantial manner. Japan would like to express its concern that the Committee did not have any consultative meetings with the States parties during the process of its elaboration, although it did have such meetings with other stakeholders, and that the States parties were only provided the opportunity to submit their comments in the same manner as the general public, including in regard to the stipulated discretionary deadline as well as the limitation on the amount of comments. On the basis of such understanding, Japan presents its comments and requests the Committee to consider them extensively.
2. Japan understands that the Guidelines represent the Committee's view on interpretation of the OPSC, and that they do not change or revise the provisions of the OPSC and that they are not legally binding to the States parties. Japan also believes that careful consideration is required when the Guidelines refer to fields and matters stipulated by other treaties. It is important for the Committee to produce additional value when making the Guidelines, within the legal scope of the Convention of the Rights of the Child (hereinafter referred to as the “CRC”) and its OPSC, taking into consideration the above-mentioned aspects.
3. Based on such understanding, Japan thus proposes changing the original “provide a dynamic interpretation of the OPSC provisions” to “, while not including any content that would override the OPSC provisions, provide a referential interpretation of the provisions” after “These Guidelines therefore” in the second sentence of paragraph 13.
4. Furthermore, Japan would like to invite the Committee to clarify the process of the development of the Guidelines. According to paragraph 10, the Guidelines are “the result of a process of extensive consultations with relevant stakeholders.” The details of such consultative phase of the elaboration of the Guidelines, however, are not clear. Transparency is of critical importance for all stakeholders and Japan requests the Committee to make the inputs received during such process available to the public.
5. The points raised in the present comments are not exhaustive. Just because Japan has not commented on the other areas does not necessarily imply acquiescence with the Committee's views on the obligations of the States parties.

II. Other Specific Comments

6. Based on the language in Arts. 3(2) and 3(4), Japan proposes adding “subject to the provisions of a State party's

- national law” at the end of the second sentence and after “legal persons” in the fourth sentence of paragraph 16.
7. Considering that a child could be arrested for a crime that is not relevant to her/his victimization, Japan proposes deleting “, in any way,” from the first sentence of paragraph 18.
 8. Given that the information obtained in the course of a proceeding involving a child victim contains highly sensitive information in terms of her/his privacy, Japan proposes adding “to the extent appropriate and possible” after “that States parties” in the third sentence of paragraph 21.
 9. The police, lawyers, public prosecutors and judiciary professionals have different trainings depending on their duty. Japan therefore proposes adding “in an appropriate and possible manner” at the end of paragraph 41.
 10. While child pornography on the Internet significantly infringes the rights of the child and should be subject to blocking, due consideration for secrecy of communications and freedom of expression on the use of the Internet is indispensable. Japan thus proposes adding “with due consideration for secrecy of communications and freedom of expression” at the end of paragraph 43.
 11. According to Art. 3(2) of the OPSC, Japan proposes adding “subject to the provisions of a State party’s national law” at the end of paragraph 46.
 12. To avoid any misunderstanding, Japan proposes adding “other than the adoption of a child that is authorized by competent authorities” at the end of paragraph 47.
 13. In light of the non-legally binding nature of the present Guidelines, Japan proposes replacing “shall” with “should” in paragraphs 54, 80 and 83. The use of “shall” is inconsistent with the CRC/OPSC text.
 14. Japan believes that restriction on freedom of expression should be kept to a minimum and that highly careful consideration needs to be given to the scope of child pornography. In light of this, considering that ‘pornography’ is traditionally referred to as visually recognizable objects, whether it includes audio representations or written materials needs to be carefully considered. Japan thus proposes deleting “audio representations;” and “written materials in print or online;” from the third sentence of paragraph 61.
 15. In addition, for the reasons explained above, whether penal sanctions should be imposed even if the case involves pornography of a non-existing child needs to be carefully considered. Japan proposes adding “as far as it represents an existing child” at the end of paragraph 61.
 16. For the reasons explained above, Japan proposes deleting “and including when such material represents realistic representations of non-existing children” from the second sentence of paragraph 62.
 17. For the reasons explained above, Japan proposes adding “as far as it represents an existing child” at the end of the first sentence of paragraph 63.
 18. For the reasons explained above, Japan proposes adding “as far as it represents those of an existing child” after “the sexual organs of a child” in the first sentence of paragraph 64.
 19. Japan’s understanding is that the Committee’s recommendations in paragraph 66 are not intended to replace the language of the existing legislation.
 20. Since restriction on advertisement constitutes limitations on freedom of expression, highly careful consideration needs to be given to the scope of any such restrictions. Moreover, the OPSC itself remains silent on the criminalization of certain advertisements proposed in paragraph 69. Japan therefore proposes the deletion of paragraph 69.
 21. Regarding paragraph 70, Japan is of the view that it is beyond reasonable assumption that any self-generated sexual

material depicting very young children is the result of an abusive or coercive relationship.

22. Since it is not reasonable that only children who have disseminated sexualized materials of other children be treated favorably compared with other children who have committed other criminal offences, Japan proposes the deletion of paragraph 73.
23. Given that Art. 7 of the OPSC obliges the States parties to implement the measures introduced in paragraph 78 “subject to the provisions of [a State party’s] national law,” Japan proposes repeating this phrase in the first and second sentences of paragraph 78.
24. Given that Art. 4(2) provides for a margin of appreciation of a State party in establishing extraterritorial jurisdiction, “should” in the first sentence of paragraph 86 should be replaced by “may.” Japan proposes also adding “, where appropriate in the domestic legal system of the State,” after “While” at the beginning of the fourth sentence of paragraph 86.
25. Since the OPSC is silent on establishing extraterritorial jurisdiction in the case that a child victim is not a national but has her/his habitual residence in the territory of the State, Japan proposes replacing “the Committee encourages the States parties to” with “the States parties may” in the first sentence of paragraph 87.
26. Regarding paragraph 88, double criminality is usually recognized as one of the conditions of mutual legal cooperation between States and it is not appropriate that the Committee requests the States parties to abolish double criminality that is not provided for in the OPSC. Japan therefore proposes the deletion of paragraph 88.
27. Given that Art. 4(2) provides for a margin of appreciation of a State party in establishing extraterritorial jurisdiction, the second sentence of paragraph 89, should be deleted.
28. With respect to the first sentence of paragraph 92, Japan proposes replacing “the Committee encourages States parties to” with “the States parties may” and to add “as appropriate in their legal system” after “for all offences covered by the OPSC”, since whether a State party may introduce universal jurisdiction depends considerably on its legal system.
29. Considering that the opinions of a child victim should not constrain the decisions of public prosecutors, Japan proposes adding “while respecting public prosecutors’ authority” after “be consulted on key decisions” in the third sentence of paragraph 97.
30. Since Japan understands that evidentiary rules should be codified in accordance with the individual circumstances of each State’s legal systems including those of criminal proceedings, it proposes replacing “The Committee strongly encourages States parties to make” with “States parties may consider making” in the second sentence of paragraph 99.
31. Given the fact that the system and length of statutes of limitations are of essential concern in respect to each State’s legal systems, Japan proposes replacing “The Committee recommends States parties to avoid” with “States parties may consider avoiding” in the first sentence of paragraph 101.
32. Moreover, for the reasons explained above, Japan proposes replacing “the Committee urges States to adjust” with “States may consider adjusting” in the second sentence of paragraph 101.
33. Since Art. 8(1)(d) of the OPSC only provides for the obligation of provision of appropriate support services, “and legal counselling” in the first sentence of paragraph 103 should be deleted. Furthermore, Japan believes that what is included in such appropriate support should be determined in accordance with each State’s circumstances. It therefore proposes replacing “This includes” with “This may include” in the second sentence of paragraph 103.

34. Regarding the cases concerning child sexual exploitation or abuse, priority should be determined based on the nature of an individual case as well as other competing cases. Japan thus proposes adding “to the extent possible” after “should be expedited” in the third sentence of paragraph 104.
35. Since the OPSC has no specific provisions on amending money laundering laws to allow the use of forfeited property, “and amend money laundering laws to allow victims to be paid from forfeited property” in the first sentence of paragraph 112 should be deleted.

III. Best Practices in the context of the OPSC

36. Regarding paragraph 29, Japan is of the view that cooperation with multi-stakeholders at various levels is crucial for dissemination and awareness-raising of the OPSC. In this respect, Japan is conducting the following efforts.
37. In order to raise awareness that child sexual exploitation is an extremely heinous act and constitutes a serious violation of the rights of the child, the National Police Agency (NPA), in cooperation with ECPAT Japan and UNICEF Japan, has created posters and distributed them to karaoke stores and hotels. Moreover, with the attendance of relevant stakeholders such as international NGOs, a member of the Committee, foreign law enforcement agencies, ICT companies, and high school students, the NPA holds an annual conference concerning the prevention of child sexual exploitation and exchanges information and knowledge on the situation of child sexual exploitation and measures against child sexual exploitation.
38. In regards to sexual health education, based on the National Curriculum Guidelines children receive such education programs at all levels in school curricula, including health and physical education classes and Special Activities, with the aim of enabling students to gain a correct understanding of sexual health so that they will engage in appropriate sexual behavior.
39. With regard to paragraph 31(a), Japan believes it is important that the provision of trainings for teachers tailored to each level and objective is essential for achieving “adequate trainings.” In this respect, Japan offers various trainings for teachers, including on health issues that today’s students commonly face. Also, Japan is making efforts for nationwide dissemination of best practices in schools’ efforts for early detection of and response to child abuse, including sexual abuse.
40. Regarding paragraph 31(c), Japan attaches importance to appropriate response towards cases of child sexual exploitation and abuse associated with new technologies. In Japan, the NPA provides trainings for those specialized in the investigation of child sexual exploitation. The trainings include not only lectures about hearing techniques with due attention to children’s psychological and other characteristics but also lectures about the perspectives from relevant experts including a member of the Committee, NGOs and ICT companies.
41. Regarding paragraph 41, extensive outreach activities from various perspectives are essential for awareness-raising on the new challenges in respect to the development of ICTs. In Japan, companies and associations in the information and communications field in cooperation with the Ministry of Internal Affairs and Communications and the Ministry of Education, Culture, Sports, Science and Technology hold seminars on demand at schools and other sites for schoolchildren, students, parents, and teachers throughout Japan for the purpose of promoting public awareness of children’s safe use of the Internet.
42. To disseminate information morals education across the nation, seminars for teachers on this issue are being held, providing guidance materials for teachers as well as educational materials for children.

43. Some local governments and the local police have invited students to attend lectures about child sexual exploitation, measures against child sexual exploitation, and relevant information ethics. Students have been encouraged to better understand how to prevent victimization of child sexual exploitation through discussion, including with their peers.
44. With regard to paragraphs 43, 108 and 109, in order to strengthen ISPs' countermeasures against illegal and harmful information on the Internet, the Ministry of Internal Affairs and Communications has been assisting with the establishment of a hotline concerning harmful Internet content, which accepts grievances from individuals and ISPs. Furthermore, the hotline provides information on some consultation cases (e.g., cases involving the obvious infringement of the rights of adolescents) to cooperating business operators.
45. Furthermore, the NPA supports an Internet association that conducts blocking of the contents of child pornography and an association consisting of social media companies, and encourages non-member companies of such associations to take voluntary preventive measures against child sexual exploitation. Also, the Internet Hotline Centre commissioned by the NPA sent 120 referrals of child sexual exploitation materials to the police, 76 to ISPs, and 1,156 to INHOPE (the International Association of Internet Hotlines) in the first 6 months of 2018.
46. With respect to paragraph 57, strengthening crackdown on crimes of child sexual exploitation through online or offline tools is of great importance in preventing and combating sexual exploitation of children. Based on this understanding, the NPA continues to make efforts for crackdown on such crimes, including on the Internet. For example, the local police arrested a person who sold approximately 170,000 DVDs of child pornography to approx. 7,000 people, and the local police all over Japan collaboratively arrested his customers. This case led to another arrest of those who sexually exploited other children, and also led to the protection of such children. Likewise, as a result of strengthening crackdowns, the police have succeeded in protecting potential child victims and even in identifying and arresting the perpetrator who sexually exploited a child of his relative for an extended period of time.
47. In the context of paragraphs 70-73, efforts for raising awareness of children in preventing potential child sexual exploitation are also essential. The NPA published a short film and a comic book that include lessons learned on cases involving self-producing materials of child sexual exploitation. The film is available on the NPA's website, and the comic book is distributed to children and their parents.
48. With respect to paragraph 102 and 103, in order to further decrease children's mental burdens and to ensure the credibility of stories heard from children, Japan has been strengthening collaboration between Child Consultation Centers, the NPA and National Prosecutor's Offices. This includes consultation and cooperation on interviews with children, which are performed by a single official on behalf of these three agencies, with due attention to the individual characteristics of each situation.
49. Regarding paragraph 119, international cooperation is meaningful in the context of combatting child sexual exploitation. The Chairperson of the National Public Safety Commission takes part in the WePROTECT Global Alliance as the minister in charge, and Japan has been strengthening collaboration with the international community, including through enhancement of information sharing. Also, representatives from the government attended the workshop hosted by the WePROTECT Global Alliance at the "Agenda 2030 for Children: End Violence Solutions Summit" in Stockholm, and the "Internet Governance Forum" in Paris.