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**The practice of *enjo kōsai* in Japan through the perspective of
children's rights**

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the final examination of the
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Executive Summary and main findings

This Master's thesis deals with the practice of *enjo kōsai* in Japan, and how it impacts the rights of the children engaged in it. In her March 2016 report, the Special Rapporteur on the sale of children, child prostitution and child pornography expressed deep concerns regarding this practice and the treatment of children as “sexual commodities in the entertainment industry” in Japan. This report shed light on this issue affecting numerous children, not only in Japan, but also throughout the world. As a result of this report, it became evident that a closer look at the practice and its impact on children's rights was needed, in order to determine its root causes, the extent to which it is harmful for young people and the awareness of the international community to the problem.

Chapter 2 presents the origins of the practice, as well as the main actors involved in it, which provide a broad overview of the factors that led to the creation of the practice and the reasons that pushed young and older people to become involved. This chapter highlights the particular relationship between the social and commercial aspects of *enjo kōsai* and emphasizes the fact that all Japanese teenagers could be affected by the practice, regardless the social environment in which they live.

Chapter 3 is dedicated to the analysis of the practice of *enjo kōsai* through the prism of ‘harmful practice’, which criteria are provided by the Joint Recommendation n°31 of the CEDAW/General Comment n°18 of the Committee on the Rights of the Child. At this occasion, this thesis argues that the practice partially fulfils these criteria, based on a thorough examination of (i) the impact of the practice on children, (ii) the cultural background fostering *enjo kōsai*, and (iii) the voluntary consent of teenage girls to become involved.

The last chapter briefly presents the legal frameworks and reactions to the practice at the national and international levels. The existence of gaps in the national legal instruments aimed at protecting children and the ambivalent behaviour of the Japanese Government towards *enjo kōsai* are noted. This chapter also highlights a lack of awareness by the international community to the practice, in part due to the scarcity of documents addressing the topic in an extensive and accessible language - such as English.

By way of conclusion, this thesis argues that the practice of *enjo kōsai* partially fulfils the criteria of ‘harmful practice’, which would justify closer attention from the international community to this issue. However, this thesis also argues that the sole qualification of a practice as ‘harmful’ under an international instrument is not sufficient to effectively tackle this issue. As such, cooperation from national authorities is also required, in order to identify the root causes and intervene effectively at the source to prevent the practice from occurring.

Keywords: Japan, enjo kōsai, children's rights, harmful practice, schoolgirls, (sexual) exploitation

List of Abbreviations

CEDAW:	Convention on the Elimination of all Forms of Discrimination Against Women
CRC:	Convention on the Rights of the Child
ECHR:	European Convention on Human Rights
ECPAT:	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
ICPD:	International Conference on Population and Development
ILO:	International Labour Office
INGO:	International Non-Governmental Organisation
NGO:	Non-Governmental Organisation
OPSC:	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
UNESCO:	United Nations Educational, Scientific and Cultural Organization

1. General Introduction

1.1. Background

In Japanese culture, the entertainment and sex industries, encompassed in what is called *mizu shobai*, present a particular importance and influence greatly the lifestyle of Japanese people. Various branches are included in the *mizu shobai*, such as the sex industry, arcades, bars and *izakaya*, to cite some. However, the rapid expansion of this now 'tentacular' industry has also brought unwanted by-products, especially related to the sex business. Indeed, the latter began to exploit the fantasies and fetishes of people to develop various practices and institutions, such as soaplands¹ or Sado-Masochist clubs². In this context, the fantasy surrounding young girls, in their teenage years especially, led to the development of an important market, which placed the schoolgirl image at the centre of many merchandising practices.

Examples of these practices include idols³, maids⁴ or cuddle⁵ cafés, sexual dolls representing underage girls⁶, *burusera* shop⁷ or high school girls viewing clubs⁸, to cite some of them. Firstly, idols, girls or boys usually in their teenage years or early twenties, appear in countless advertisements and have their daily life minutely regulated by their manager. For instance, they are prohibited to have a partner in order to preserve their image as 'pure' and 'innocent' young people, as well as to maintain their fans' admiration. Secondly, in maid cafés, various services are offered to the clients such as being called 'master/mistress' by girls dressed as maids who execute choreographies and little charms to entertain the clients. Thirdly, in cuddle cafés, clients' requests may range from wanting to have their ears cleaned, get a massage, or nap on the knees of a young girl dressed depending on the request – in pyjamas or as maid, for instance. Fourthly, the sexual dolls consciously represent underage girls allegedly, with the explicit purpose of fighting paedophilia by allowing men who have preferences for young girls to "express their desire" on rubber dolls⁹. Fifthly, *burusera* shops actively see selling used or pre-owned uniforms, panties, or other fetish items having belonged to teenage girls. Lastly, high

¹ M. McNeill, *A Visit to Soapland* (2011), <https://maggiemcneill.wordpress.com/2011/10/21/a-visit-to-soapland/>

² U. Marshall, *Tokyo's Naughty Nightspots Not Just For Men*, *Japan Today* (2008), <http://www.japantoday.com/category/lifestyle/view/tokyos-naughty-nightspots-not-just-for-men> (visited 2d July 2016)

³ An example of Japanese Idols is the famous group « AKB48 », <http://www.akb48.co.jp/about/members/> (visited on 5th April 2016)

⁴ An example of such café is available at <http://maidreamin.com/en> (visited on 5th April 2016)

⁵ An example of such café is available at <http://www.japantoday.com/category/lifestyle/view/japans-first-cuddle-cafe-lets-you-sleep-with-a-stranger-for-y6000-an-hour> (visited on 5th April 2016)

⁶ An example of such dolls may be found at <http://trotlla.net> or <http://www.orientlovedoll.com/lala-doll> (visited on 5th April 2016)

⁷ *Japan's Panty Fetish*, *Attack of the Show* (2011) <https://www.youtube.com/watch?v=jzXJkXwKHY> (visited 11th May 2016)

See also *Distributeur de culottes usagées* (2012), <http://www.ici-japon.com/11518-distributeurs-culottes-japon> (visited 11th May 2016)

⁸ *Japanese « High School Girls Viewing Clubs » Let Customers Pay for Panty Shots, Unfazed by 2011 Crackdown*, *Rocket news 24* (2012), <http://en.rocketnews24.com/2012/11/19/japanese-high-school-girl-viewing-clubs-let-customers-pay-for-panty-shots-unfazed-by-2011-crackdown/> (visited 11th May 2016)

⁹ R. Morin, *Can Child Dolls Keep Pedophiles from Offending?*, *The Atlantic* (2016), <http://www.theatlantic.com/health/archive/2016/01/can-child-dolls-keep-pedophiles-from-offending/423324/> (visited 8th May 2016)

See also *Des Poupées Gonflables d'Enfants Pour des Pédophiles*, *hitek.fr* (2015) http://hitek.fr/actualite/poupees-pour-pedophiles-japon_7374 (visited 8th May 2016)

school girls viewing clubs are clubs where customers pay “to sit behind a one-way mirror and look into a room full of high school-aged girls. For an extra fee, customers can select a girl to sit directly in front of his booth with her legs spread open so as to reveal her underwear”¹⁰.

These various practices are mainly unregulated in Japan¹¹. Indeed, although different laws are indirectly applicable, such as the Labour Standards Law¹², the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children¹³ and other instruments protecting children, the aforementioned practices are not specifically addressed. This leads to important gaps in the protection of children, as these instruments may be interpreted differently depending on the outcome desired.

Moreover, the aforementioned examples clearly illustrate the widespread use of the schoolgirl image in various marketing areas as a myth of innocence and purity that young people represent. Deriving from this context, other practices appeared, using the schoolgirls themselves and not only their image. This commercial use of teenage girls is referred to as ‘JK Business’¹⁴ and can take various forms. This thesis will focus on the most common form of JK business, namely *enjo kōsai*, which can be translated into ‘compensated dating’¹⁵ and involves teenage girls selling their time and potentially bodies to older men against payment. It is important to specify, however, that *enjo kōsai* activities may also be conducted by adult women, usually in their early twenties, although it is not uncommon to see more mature women involved in these types of practices¹⁶. Nevertheless, this thesis is centred on children’s rights: the analysis will therefore be exclusively focused on the situation of underage children engaged in *enjo kōsai*.

1.2. *Enjo kōsai* and children’s rights

In her March 2016 report, the Special Rapporteur on the sale of children, child prostitution and child pornography expressed deep concerns regarding *enjo kōsai* and the treatment of children as “sexual commodities in the entertainment industry” in Japan¹⁷. The consequences of *enjo kōsai* for the teenagers involved in this practice has also been addressed by various NGOs, some whom drew attention to this problem as early as in 2006¹⁸.

The practice of *enjo kōsai* is not specific to Japan. Indeed, studies on similar practices have been carried out notably in Hong Kong¹⁹, Taiwan²⁰, South Korea²¹, Poland²², and the United States²³.

¹⁰ See note 8

¹¹ Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Japan, UN.Doc. A/HRC/31/58/Add.1, 8 §27-28 (2016)

¹² Labour Standards Law (1947)

¹³ Act n°52 on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (1999)

¹⁴ *joshi kosei*, which means schoolgirl in Japanese

¹⁵ S. Thollar, *The Emergence of Enjo Kōsai in Japanese Society, and Whether or not it should be Labelled as Child Prostitution*, Hokkaido Information University 北海道大学, 15, at 17 (2003)

¹⁶ K. Loui, *Tokyo Phantasmagoria: An Analysis of Politics and Commodity Capitalism in Modern Japan Through the Eyes of Walter Benjamin*, 48 (2008)

¹⁷ See note 11, at 6 §19

¹⁸ ECPAT, *Global Monitoring Report on the Status of Action Against Commercial Sexual Exploitation of Children (2006)*

¹⁹ J.C.M. Li, *Adolescent Compensated Dating in Hong Kong: Choice, Script, and Dynamics*, 59 *International Journal of Offender Therapy and Comparative Criminology*, 588 (2015)

See also T.Y. Lee, D.T.L. Shek, *Compensated Dating in Hong Kong: Prevalence, Psychosocial Correlates, and Relationships with Other Risky Behaviors*, 26 *Journal of Pediatric and Adolescent Gynecology*, S42 (2013)

However, this thesis will focus on the Japanese situation, due to the particular cultural context of the country, and the recent report of the Special Rapporteur, which highlighted the increasing trend amongst Japanese schoolgirls to become involved in such practice.

At first glance, *enjo kōsai* does not imply necessarily any violation of children's rights. Girls engage voluntarily in the activity, which only suggests a 'date' with a client, without any harmful behaviour such as sexual intercourse²⁴ or even child labour. However, when the client expects more from the adolescent, rape or violence might occur. Moreover, the phenomenon does not only concern abuses on minors, but also impacts various aspects of children's life and rights, notably regarding their development, the violence they might be subjected to, and their involvement in the juvenile justice system. In light of these concerns, this thesis will not only address the potential violations of children's rights due to the involvement in JK Business under the angle of prostitution and sexual abuses, but will also examine the cultural context of the practice, as well as its juvenile justice dimension. This thesis will therefore argue that children's rights are negatively affected at various levels, which subsequently hampers the optimal development of children.

Gender role and discrimination in the Japanese society, as well as a widespread sexual merchandising of children's image, and a social tolerance²⁵ towards the phenomenon of the JK Business, contribute to the increasing involvement of teenagers - mainly girls - into these practices. This social context also has consequences on the state's understanding and behaviour regarding this issue. Furthermore, a lack of legal action and legislative interest in curbing this practice by the Japanese authorities has been observed, notably by the Special Rapporteur on the sale of children, child prostitution and child pornography²⁶ and by national as well as international NGOs²⁷. Particular concerns have been raised regarding the minimal efforts in addressing the client's side, notably by improving the investigation and prosecution of offenders, or awareness raising²⁸. On the contrary, the focus has been directed at the girls themselves, who are prosecuted²⁹, most often on the basis of prostitution, and are therefore reluctant and fearful to report to the police any abuse they might suffer. Moreover, this lack of intervention of the authorities might also be explained by the important involvement of the Japanese mafia in the « underground » world, and the political arrangements the State often has with them. Lastly, the lack of effective and complete national regulations³⁰, coupled with the aforementioned problems, leaves the teenagers involved in *enjo kōsai* unprotected against potential abuses.

²⁰ O-W. Lam, *Why Did Enjo Kōsai Anchor in Taiwan But Not in Hong Kong? Or The Convergence of "Enjo" and "Kōsai" in Teenage Sex Work*, 4 *Inter-Asia Cultural Studies*, 353 (2003)

See also J. Ho, *From Spice Girls to Enjo Kōsai: Formations of Teenage Girls' Sexualities in Taiwan 1*, 4 *Inter-Asia Cultural Studies*, 325 (2003)

²¹ J. Song, M. Morash, *Materialistic Desires or Childhood Adversities as Explanations for Girls' Trading Sex for Benefits*, 60 *International Journal of Offender Therapy and Comparative Criminology*, 62 (2016)

²² K. Broma-Smenda, *Enjo-Kōsai (compensated dating) in Contemporary Japanese Society as Seen Through the Lens of the Play Call Me Komachi*, 27 *Acta Asiatica Varsoviensia*, 1, at 17 (2014)

²³ G.M. Leech, *Nationwide Increase in Teen Prostitution* (2003), http://flatrock.org.nz/topics/men/name_brand_beauties_on_sale.htm (visited 8th May 2016)

²⁴ Y. Udagawa, *Compensated Dating in Japan: An Exploration of Anomie and Social Change*, University of Central Missouri, 4 (2007)

²⁵ See note 11, at 6 §18

²⁶ *Id.*, 8 §27

²⁷ See Sections 4.2. and 4.3.

²⁸ See note 18

²⁹ *13 Girls Held for Akihabara 'JK Osanpo' Escort Services*, The Japan Times (2013) <http://www.japantimes.co.jp/news/2013/12/17/national/crime-legal/13-girls-held-for-akihabara-jk-osanpo-escort-services/#.Vwa69WPC-F2> (visited on 5th April 2016)

³⁰ See note 11, 8 §27- 28

The inaction and/or ineffective action of the State and the resulting consequences for the unprotected girls raise important questions regarding the options available to the international community³¹ to intervene and develop effective responses to this potentially harmful behaviour without trespassing its competences. Indeed, the lack of efficiency of the State should not result in the harm of children, especially regarding the obligations of the State under article 2(1) of the Convention on the Rights of the Child (hereafter '*The CRC*').

1.3. Research question and chapter overview

The research question addressed in this thesis asks and examines whether the phenomenon of *enjo kōsai* could be qualified as a 'harmful practice' such as defined in the recent Joint Recommendation n°31 of the CEDAW/General Comment n°18 of the Committee on the Rights of the Child³². The compliance of the practice with the criteria would render it prohibited at the international level and would therefore allow international institutions to intervene in order to decrease the practice and protect the potentially endangered children. Firstly, this thesis will examine the characteristics of *enjo kōsai* and the people involved - adolescents and clients - in order to provide the reader with a preliminary understanding of the practice (2). Secondly, this thesis will evaluate whether *enjo kōsai* can be considered a 'harmful practice' as understood via the Joint Recommendation n°31 of the CEDAW/General Comment n°18 of the Committee on the Rights of the Child and the criteria provided by this instrument will be examined successively (3). The impact of the practice on children (3.2), the cultural aspects (3.3) and the forced character of *enjo kōsai* (3.4) will therefore be assessed. Thirdly, this thesis will examine the awareness of - and reaction to - the phenomenon of *enjo kōsai* at the national and international level (4). Lastly, the findings and developments will be gathered and summarised, and suggestions will be proposed regarding the prevention of the practice (5).

³¹ 'international community' targets essentially the United Nations and the action taken after a discussion from the Member States.

³² Joint General Recommendation n° 31 of the Committee on the Elimination of Discrimination against Women / General Comment n° 18 of the Committee on the Rights of the Child on harmful practices, UN.Doc. CEDAW/C/GC/31 - CRC/C/GC/18, 5 §16 (2014)

2. Presentation of the practice of *enjo kōsai*

2.1. Introduction

In order for the reader to fully understand the phenomenon of *enjo kōsai* and its impact on the rights of the children involved, this thesis suggests it is important to offer some precisions at the outset. Indeed, before engaging in a deeper discussion on the fulfilment by the practice of the criteria of the Joint Recommendation n°31 of the CEDAW/General Comment n°18 of the Committee on the Rights of the Child, information about the origin of *enjo kōsai* and the main actors involved will provide the reader with a valuable overview of the practice, and subsequently, a better understanding of its various aspects and characteristics. Therefore, this thesis argues that the understanding of the practice in perspective with its surrounding environment is a necessary step towards a deeper perception of the phenomenon.

Firstly, the meaning of the expression '*enjo kōsai*' and the particular relationship between its components '*enjo*' and '*kōsai*' will be developed (2.2.1.). Other practices that played the role of precursor to *enjo kōsai* will also be presented briefly (2.2.2.), as well as the amalgam that is made between the practice and prostitution (2.2.3.). Secondly, the main actors involved in the practice – the schoolgirl and their clients - and the reasons behind their decision to get involved will be examined (2.3.). Other stakeholders, who play a role in the practice and its management, such as the parents, the school, the media, the State authorities and the community at large, will also be discussed but will not be presented in detail in this chapter. Their role and influence on the practice will be further developed later on in this thesis.

2.2. Definition and origin

2.2.1. Definition

Enjo kōsai (えんじょこうさい) is a Japanese term composed of the words *enjo* meaning to “assist, support” and *kōsai*, connoting to “socialise, entertain”. It is traditionally translated in English as ‘compensated dating’. This expression began to appear in Japanese media between the 1970s and the 1990s and can be defined as the “phenomenon of schoolgirls selling their time and/or bodies to men”³³.

Enjo kōsai may be literally translated as “relationship with support”³⁴, and the relationship between the girl and her clients is very peculiar in that they bring support to each other by satisfying their mutual needs, which are varied - entertainment, company, money, goods, sex, for instance - and are not necessarily sexual in nature. While the term *enjo* was originally used in the economic and business sphere to refer to deals of mutual support and assistance between businesses, the term *kōsai* comes from the social and cultural sphere and refers to socialising behaviours. The practice of compensated dating merged these two different spheres and incorporated a business relationship in social encounters³⁵, which led to the commercialisation of companionship. As will be developed later on, this concept already existed during the *Edo* period³⁶, when *geisha* entertained their clients through various

³³ See note 15, at 16

³⁴ T.Y. Lee, D.T.L. Shek, *Compensated Dating in Hong Kong: Prevalence, Psychosocial Correlates, and Relationships with Other Risky Behaviors*, 26 *Journal of Pediatric and Adolescent Gynecology*, S42 (2013)

³⁵ O-W. Lam, *Why Did Enjo Kōsai Anchor in Taiwan But Not in Hong Kong? Or The Convergence of “Enjo” and “Kōsai” in Teenage Sex Work*, 4 *Inter-Asia Cultural Studies*, 353 (2003)

³⁶ The *Edo* period extends from the 17th to the 19th Century

performances, therefore trading their presence and skills against money³⁷. However, in the context of *enjo kōsai*, this particular association between business and social encounters is exacerbated. Indeed, in the latter context, schoolgirls do not trade any particular skill; the merchandise sold is only the time that the girl spends with her clients. As a result, the companionship of the schoolgirl becomes commercialised. This interaction is important to understanding the motives behind engaging in *enjo kōsai*, especially regarding the conception that clients are buying services offered by young girls, which could amount, depending on the point of view, to child labour, or child exploitation³⁸.

2.2.2. Origin

Enjo kōsai, as we know it today, originated from the practice of ‘telephone clubs’ in Japan³⁹. Before the Internet era, these clubs allowed men and women to leave their phone number, along with an introductory message for the purpose of meeting. Men could afterwards be put in touch with women through the phone and have conversations, which could potentially lead to a date. Although these clubs were intended to target adults, teenage girls also used these clubs as a means of communication to reach to their potential clients⁴⁰. Before the advent of the Internet and mobile phones, young girls therefore used these clubs as intermediary to schedule their compensated meetings with older men⁴¹. Moreover, at that time, no penal regulation existed regarding these clubs and their use by teenagers. However, this changed in the 1990s, when Gifu Prefecture decided to adopt a Prefectural Law regulating the activities of telephone clubs, thus launching a movement of regulation of these clubs in other prefectures⁴². This, coupled with the development of Internet and mobile phones led schoolgirls to progressively reduce their use of telephone clubs. Instead, they resorted to *deai kei* websites⁴³. *Deai Kei* websites (出会い系サイト - matchmaking website) are online dating websites where people have the possibility to leave their contact information in order to meet. The increasing use of mobile phones by teenagers indeed facilitated the contact between the girls and their clients without needing the intermediary of telephone clubs. It also increased the ease with which men could reach younger girls, notably via social media or *deai kei* websites. Indeed, technologies, especially social media, play a major role in the lives of adolescents, who spend a large part of their spare time on the Internet, via their computer, mobile phones or other devices⁴⁴. Through this use of these technologies, it has become easier for them to interact with strangers and for strangers to reach them⁴⁵.

Another precursor to *enjo kōsai* was the *burusera shōjo* shops, through which teenagers would sell their used underwear, uniforms or other products “priced according to soiling and smell”⁴⁶. They would sometimes be present to sell their fetishized items, so that clients could meet them and potentially organise another meeting in the form of a date.

³⁷ See Section 3.3.2.

³⁸ This thesis examines these concepts later on, see Section 3.2.

³⁹ C. Ueno, *Self-Determination on Sexuality? Commercialization of Sex Among Teenage Girls in Japan* 1, 4 *Inter-Asia Cultural Studies*, 317, at 319 (2003)

⁴⁰ A.D. Morrison, *Teen Prostitution in Japan: Regulation of Telephone Clubs*, 31 *Vanderbilt Journal of Transnational Law*, 457, at 478 (1998)

⁴¹ T. Wakabayashi, *Enjokōsai in Japan: Rethinking the Dual Image of Prostitutes in Japanese and American Law*, 13 *UCLA Women’s Law Journal*, 143, at 155 (2003)

⁴² See note 40, at 489

⁴³ See note 18, at 11

⁴⁴ D. Boyd, *It’s Complicated, the Social Lives of Networked Teens*, 6 (2014)

⁴⁵ 援助交際で稼ぐ貧困女性達への 10 の質問と 11 の悲惨な答え (2015), <http://shunsuke-web.info/job/enjyo-kousai.html>

⁴⁶ See note 15, at 19

Some Japanese prefectures subjected both telephone clubs and *burusera* shops to strict regulations in 1995⁴⁷ and 2004⁴⁸, respectively, in order to prevent minors to be involved in such practices. Moreover, since 2003, the Act on Regulation of Deai Kei sites⁴⁹ prohibits the use of such websites to minors⁵⁰. However, due to the advent of the Internet, and the relative anonymity provided by this service, alternative means of publicity were developed by schoolgirls and their clients to circumvent the restrictions and advertise for the services offered or desired, such as fake profiles or the use of intermediaries.

The development of various activities in which schoolgirls sell their time and/or bodies or fetishes to older men has led to the belief that teen prostitution is increasing in Japan and a subsequent focus on juvenile prostitution, rather than on the whole phenomenon. However, as will be briefly explained hereafter, and developed in more details later on, this thesis suggests that the amalgam between *enjo kōsai* and prostitution constitutes a narrow view of the practice, and implies negative consequences for the children involved, whose protection is subsequently reduced.

2.2.3. Relationship between *enjo kōsai* and prostitution

Although many may consider *enjo kōsai* as another, more 'acceptable', term for teen prostitution, this conception is subjected to controversies on which this thesis will not expand⁵¹. Briefly, it can be said that many view the practice as teen prostitution due to the commercial transaction that is operated between the girl and her clients in exchange of various services, despite the fact that in some cases, the services is not sexual⁵², which is the main requirement for the qualification of prostitution⁵³. Moreover, other features characterise *enjo kōsai*, that are absent from prostitution, such as the fact that the girl can choose her clients, or the variety of reasons for the involvement in the practice - other than money⁵⁴.

It is important to mention that *enjo kōsai* is an expression that encompasses multiple behaviours that do not necessarily present any sexual aspect. Indeed, the 'date' may only consist of a dinner, a drink, a movie, or a trip to an amusement park, to cite some examples⁵⁵. Nevertheless, it would be unreasonable to assume that sexual services are not offered in numerous cases. This thesis considers it important to distinguish between the reasons to engage in prostitution and in *enjo kōsai*. Whereas the former speaks to poverty and survival, the latter instead implies in many cases a

⁴⁷ This regulation, however, was adopted in the Gifu prefecture's jurisdiction. Although this led other prefectures to adopt similar laws, there is no national regulation targeting telephone clubs.

See note 40, at 489

⁴⁸ K. Nakano, *Hitting the Skids: the Demise of Japan's Used Underwear Trade*, The Tokyo Reporter (2014), <http://www.tokyoreporter.com/2014/12/03/hitting-the-skids-the-demise-of-japans-used-underwear-trade/> (visited 13th May 2016)

⁴⁹ S. Hemelryk Donald, T. Dirndorfer Anderson, D. Spry, *Youth, Society and Mobile Media in Asia*, 39 (2010)

⁵⁰ See note 18, at 12

⁵¹ See note 15

⁵² For more information about these controversies and discussions on *enjo kōsai*, see note 15

For more information about the controversies surrounding the definition of prostitution, see A.D. Jordan, *Commercial Sex Workers in Asia: A Blind Spot in Human Rights Law*, 2 *Women and International Human Rights Law*, 525 (2000)

⁵³ See note 13

See also Anti-Prostitution law, article 2 (1956)

⁵⁴ See note 41, at 159

⁵⁵ Id., at 15

See also the interviews of girls involved in *enjo kōsai* in Hong Kong, J.C.M. Li, *Adolescent Compensated Dating in Hong Kong: Choice, Script, and Dynamics*, 59 *International Journal of Offender Therapy and Comparative Criminology*, 588, at 597 (2015)

dimension of fun. This relationship between teen prostitution and *enjo kōsai*, and its impact on children's rights will be elaborated below. However, the aforementioned nuance is essential in the understanding of the practice of *enjo kōsai* and its characteristics, which justifies a deeper analysis of the main actors involved in the practice – the schoolgirls and their clients – and the factors leading them to engage in *enjo kōsai*.

2.3. Main actors involved

Various actors intervene in the practice of *enjo kōsai* at different levels. Parents, state authorities, community, potential intermediaries, clients and teenagers are the main actors of the practice, and their reaction to it may lead to different outcomes regarding regulations, impact on children or public opinion. This section will focus on the primary actors of *enjo kōsai*, namely the teenagers and their clients, and the reasons of their involvement. As mentioned above, the participation of other stakeholders and their impact on the practice will be examined later on in this thesis⁵⁶.

2.3.1. Adolescents

It is interesting to mention at the outset of this section that the teenagers involved in *enjo kōsai* are not only girls, although they constitute the majority. Indeed, a minority of boys have admitted to *enjo kōsai* experiences, usually with older men⁵⁷. As will be presented later, the practice of *enjo kōsai* is, amongst other reasons⁵⁸, a way for young people to explore their sexuality and to claim their independence. However, it also constitutes a practice breaking gender stereotypes, as it may be conducted both by male and female adolescents. Therefore, both genders appear to divert from the path they are supposed to take while growing up. Young men place themselves in a position of submission towards the older men they are expected to become and thus take, to some extent, the place allocated to women. Young girls, on the contrary, view the practice as a profitable way to take advantages of older men's fantasies and claim their independence as grown up women. This thesis will focus mainly on the situation of teenage girls, but keeping in mind, however, that the outcome may be relevant for all adolescent involved in the practice.

Adolescent girls involved in *enjo kōsai* are usually from junior or senior high schools - thirteen to eighteen years old - although in some countries, involvement of even younger children has been noted⁵⁹. Teenagers involved in this practice present multiples and different characteristics. Indeed, studies have shown that adolescents have very different reasons to be involved in this type of activity, such as financial or materialistic desires, loneliness, sexual needs⁶⁰, peer pressure or survival needs, amongst others⁶¹.

Moreover, the reasons for becoming involved in compensated dating may also vary depending on the lifestyle of the individual girl. Two main groups may be distinguished here. The first includes teenagers with low economic status, who experienced family, social or academic problems, suffered violence or abuses, dropped from school and/or ran away from home. These girls usually do not have anybody to communicate with in order to seek help, are lonely and generally suffer from low self-esteem. They

⁵⁶ Mainly in the parts regarding juvenile justice (3.2.3), cultural aspects (3.3) and the actions taken by the State (4.2)

⁵⁷ See note 15, at 22

⁵⁸ These reasons are presented in this Section. However, the thesis will mainly focus on the girls engaging in the practice following their own decision, and not due to necessity - because of poverty for instance.

⁵⁹ ECPAT, A. McCoy, Blaming Children for their Own Exploitation: The Situation in East Asia, 5 (2004)

⁶⁰ J.C.M. Li, *Adolescent Compensated Dating in Hong Kong: Choice, Script, and Dynamics*, 59 International Journal of Offender Therapy and Comparative Criminology, 588, at 597 (2015)

⁶¹ See note 21, at 69

have often been humiliated by a society and a system which only value academic excellence and honourable behaviour and within which they did not fit⁶². For these girls, engaging in the practice for what can be labelled “traumatic reasons”⁶³, *enjo kōsai* is more a matter of survival, a way to gain money and attention easily⁶⁴.

The second and more predominant group encompasses girls from middle to upper-middle-class families, usually ‘good’ students with no perceptible social problems, who present a developed social life and the usual teenage concerns - boyfriend, fashion, university placement, to cite some⁶⁵. These girls do not enter *enjo kōsai* out of despair, but for “pleasure and utilitarian purposes”⁶⁶. They are not forced into the practice, nor work in brothels and do not need intermediaries to carry out their business. On the contrary, their decision is the result of a personal choice and agency⁶⁷. They work for themselves and consider their young body as a brand name – a commercial - product from which they can make profits⁶⁸. Their reasons to experience *enjo kōsai* are therefore mainly financial. However, other reasons⁶⁹ relate to, on the one hand, a desire to react against an overprotective society where sex is a taboo and girls and boys are kept far from each other⁷⁰, and which considers young girls’ bodies as ‘off-limit’⁷¹, and on the other hand, to the curiosity they have towards sex, due to the amount of information and stimulus they receive on the matter from the media⁷². Therefore, these girls decide to take advantage of their youth to experience activities they consider to be entertaining, harmless and which they think they can leave at any time⁷³.

Regardless of the group to which the girls belong, the consequences of *enjo kōsai* and these girls’ possibility of enjoying their rights remain the same. They are indeed stigmatised, considered as ‘delinquents’ and arrested when found by the authorities, as will be developed below⁷⁴. However, presenting such distinction is important to understand the practice of *enjo kōsai* and the large number of children that may become involved. Moreover, the information provided here to the reader constitutes a valuable overview in order to appreciate the analysis of the practice that will be developed below. In this context, the distinction becomes especially relevant regarding the suggestions that will be made in the conclusion of this thesis in order to prevent the practice. Indeed, for girls who engage in *enjo kōsai* out of recreational desires, human rights and sexual education would probably be the most efficient way to prevent their involvement in the practice. For girls who engage in this practice out of despair and need for survival, the accent must be put on the support and help provided to them, in order to offer them the possibility to live a decent life, without having to resort to *enjo kōsai* to survive.

⁶² J. Ho, *From Spice Girls to Enjo Kōsai: Formations of Teenage Girls’ Sexualities in Taiwan* 1, 4 Inter-Asia Cultural Studies, 325, at 332 (2003)

⁶³ See note 39, at 320

⁶⁴ T. Osaki, *Notorious ‘JK’ Business Exploits Troubled High School Girls for Sex*, The Japan Times (2014), <http://www.colabo-official.net/english/>

⁶⁵ See note 59, at 2

⁶⁶ See note 39, at 320

⁶⁷ See Section 3.4., these notions are developed in perspective with the consent expressed by the girl when engaging in the practice.

⁶⁸ J. Liddy, *Name Brand Beauties for Sale* (2002), <https://www.freezerbox.com/archive/article.php?id=188> (visited 2nd May 2016)

⁶⁹ These reasons will be developed further in Sections 3.3.3. and 3.4.2.

⁷⁰ See note 39, at 320

⁷¹ See note 15, at 25

⁷² See note 39, at 320

⁷³ See note 15, at 25

⁷⁴ See Section 3.2.

The aforementioned schoolgirls, however, constitute only one actor of the relationship. Therefore, the personality of these adolescents' clients, and the latter's reasons to resort to the services offered by teenagers must be analysed, in order to have a complete overview of the relationship between girls and clients in the practice of *enjo kōsai*. This will be examined hereafter.

2.3.2. Clients

The quasi-totality of *enjo kōsai* clients are adult men, either single or married⁷⁵, characterised as exercising various 'respectable' professions⁷⁶. The Japanese cultural context⁷⁷, coupled with a lack of sexual education of the population, and the distorted conception of sexuality generated by the misinformation spread by the media, which convey the idea that "the younger the partner, the better"⁷⁸, generates a tolerance towards the phenomenon of *enjo kōsai*. Indeed, the sexual desire of the male has been naturalised in many societies, leading to the view, on the one hand, that men instinctively seek to express this desire, but on the other hand, that it is the duty of women to preserve their innocence and purity⁷⁹. This conception, in addition to the willingness of teenagers to engage in experiences with older men, leads the latter to consider the practice as 'acceptable' because chosen by the teenagers, without feeling morally compelled to consider their capacity to give an informed and thought consent to the practice⁸⁰.

The cultural context in Japan therefore appears to foster such type of activities. The country has always been very open about sex, which is not considered as an immoral act – although men have more freedom than women in their social and sexual life⁸¹. The conception that men have to alleviate their sexual needs became normalised with time in Japan; their use of professionals to do so was emphasised with an increased propensity to stay single⁸². However, several reasons are proposed by various authors to explain the choice of teenage girls as partners, rather than older women. Firstly, it is suggested that the lack of social skills of men, and their subsequent difficulties in interacting with women, have led them to turn to younger girls, assumed to be immature and inexperienced in the field of relationships. Men would therefore have a feeling of confidence they would not have with older women, and consider these young girls less likely to hurt their virility⁸³. Secondly, this thesis suggests that resorting to minor girls to engage in *enjo kōsai* activities also provides men with a sense of power. Indeed, it would be easier for them to persuade or coerce a teenager to engage in their fantasies, as perverted as they might be, than a fully-grown woman. Moreover, in case of coercion and abuses, young girls will usually not dare file a complaint with the police, due to their fear of shame, retaliation or prosecution⁸⁴. Lastly, the important influence of the entertainment and sex industries in the Japanese society plays an undeniable role. This influence will be developed further later on in this thesis⁸⁵. However, it is important to emphasise that these industries, helped by the media, have encourage both schoolgirls and adult men to engage in such activities as *enjo kōsai*, notably via the

⁷⁵ See note 18, at 11

⁷⁶ See note 59, at 2

⁷⁷ See Section 3.3..

⁷⁸ *Slanted Sex Culture Stoking Deviant Desire in Schoolgirls*, Mainichi Shimbun 29 August 2002, http://flatrock.org.nz/topics/men/name_brand_beauties_on_sale.htm (visited 2nd May 2016)

⁷⁹ See note 39, at 321

⁸⁰ See note 59, at 3

⁸¹ See note 41, at 151

⁸² See note 39, at 322

⁸³ For more information about clients of *enjo kōsai*, see S. B. Rubin, John Inc.: The Making of Japan's Salaried Men Into Clients of High School Prostitutes, University of Alberta (2002)

⁸⁴ See Section 3.2.3.

⁸⁵ See Section 3.3.3.2.

publication of magazines or novels picturing compensated meeting between students and mature men⁸⁶.

2.4. Conclusion

This chapter provided an overview of the origins of *enjo kōsai* and its evolution, as well as the main actors involved in the practice – the schoolgirls and their clients. These developments facilitated the understanding of the practice by placing it in perspective with the surrounding environment and the factors that led to its development. This socio-legal background also emphasised the difficulties for the Japanese government to adopt regulations to tackle the practice, and the important role played by digital technologies in its evolution and development. Moreover, this thesis demonstrated that the variety of reasons leading both the schoolgirls and the clients to engage in the practice participated in a better understanding of this practice. Through this perspective, this thesis highlighted the fact that large number of children may be affected, which increases the difficulty to tackle the practice.

This brief overview allows the reader to understand the complexity of the interaction between the various components and the central actors of *enjo kōsai*. These elements, coupled with the wider Japanese cultural context are essential to the assessment of the research question in this thesis. Indeed, the perception of – and reaction to – the practice by the authorities and the public are conditioned by the aforementioned elements and have a deep impact on the definition of *enjo kōsai*. Drawing on these elements, the following section of this thesis examines *enjo kōsai* in the context of a 'harmful cultural practice', as developed by the Joint Recommendation n°31 of the Committee on the Elimination of Discrimination against Women/General Comment n°18 of the Committee on the Rights of the Child on harmful practices.

⁸⁶ S. Kinsella, *Schoolgirls, Money and Rebellion in Japan*, Chapter 3, 42 (2013)

3. Harmful practice criteria

The Joint Recommendation n°31 of the Committee on the Elimination of Discrimination against Women/General Comment n°18 of the Committee on the Rights of the Child on harmful practices (hereafter '*The Joint Recommendation/General Comment*') was adopted in 2014. It is the result of the willingness of both Committees to join their efforts in the fight against harmful practices "wherever and in whichever form they occur"⁸⁷. The Committees noted that these practices which harm women and children result from social behaviours and stereotypes deeply rooted in the cultural context of populations, mainly in patriarchal communities, where women are imposed decisions for their own 'protection' and control. Cultural and religious customs are therefore invoked to impose upon women discriminatory and often harmful practices.

Harmful practices against women and children were already prohibited by both the CEDAW⁸⁸ and the CRC⁸⁹, which impose on States to take measures in order to prevent and eliminate them in their jurisdiction⁹⁰. However, the drafters of the Joint Recommendations/General Comment wished to join and broaden the scope of these provisions in order to include the practices harmful for children, male and female alike. The drafters' intention was therefore to divert the attention that focused essentially on the situation of adult women in order to attract the focus instead on more diverse practices, which are susceptible to be inflicted on children of both gender at a very young age⁹¹. Indeed, until the adoption of this instrument, the focus was essentially set on the consequences of the practices that women were subjected to in various identified places of the world - especially female genital mutilation in Africa.

This joint initiative was subjected to variety of criticisms. Indeed, the widening of the scope of action, due to the adoption of a Joint Recommendation/General Comment would, firstly, break the gender focus of the practice – which was, until then, solely targeting women and girls - by bringing in the possibility that boys could also suffer from harmful practices. Secondly, by encompassing various types of practices in the scope of both Conventions, the drafters opened the door to a wider interpretation of the concepts of 'culture' and 'tradition', essential in the qualification of a practice as 'harmful cultural or traditional practice'⁹².

This thesis will argue that the notions of 'culture' and 'tradition' are indeed perpetually evolving, and that their definition should be adapted to the needs of the concerned period. In the case of *enjo kōsai*, although the practice is relatively new and does not present striking similarities compared to old and more widely identified cultural practices such as female genital mutilation or child marriage, it is argued that its characteristics and impact on children qualify it for examination under the criteria of the Joint Recommendation/General Comment.

⁸⁷ See note 32, at 2 §1

⁸⁸ Articles 2(f) and 5(a)

⁸⁹ Article 24(3)

⁹⁰ See note 32, at 3

⁹¹ C. Longman, T. Bradley, *Interrogating Harmful Cultural Practices: Gender, Culture and Coercion*, 16 (2015)

⁹² *Id.*, at 17

3.1. Introduction

The Joint Recommendation/General Comment provides four criteria to determine if a practice may be qualified as 'harmful practice'⁹³, which include that:

(a) [*The practices*] constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions;

(b) They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups, including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential;

(c) They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors;

(d) They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.

Whereas the first two criteria relate to the impact of the practice on children and their rights, the third criterion is linked to the cultural context of the practice, while the fourth speaks to the forced character of the practice and the consent of the victim. This chapter will examine each of these elements separately, in order to determine to what extent *enjo kōsai* infringes children's rights and may be qualified as 'harmful practice'.

3.2. Impact on children's rights

3.2.1. Introduction

The practice of *enjo kōsai* itself - activities and behaviours of schoolgirls and clients during their meetings -, as well as the reaction of authorities and society towards it, have direct consequences on children's rights. Criteria (a) and (b) of the Joint Recommendation and General Comment consider a 'harmful practice' to infringe fundamental rights of children with the consequences of them being harmed or limited in their development and participation. *Enjo kōsai* has indeed consequences for the schoolgirls at various levels, and this part will strive to assess to what extent those consequences constitute a violation of fundamental children's rights.

Enjo kōsai has an impact on a wide variety of children's rights, encompassing notably the rights related to their protection, but also, more indirectly, their rights of provision and participation⁹⁴. Unfortunately, due to a lack of research and studies conducted on the real impact of the practice on children's rights, the consequences on the latter rights – provision and participation - are more difficult to assess. However, the breach of these rights, as a consequence of the involvement in the practice, must not be overlooked. Indeed, as will be presented hereafter, the protection measures surrounding the practice of *enjo kōsai* are usually based on the protection against and prevention of sexual abuses and violence that may occur during the meetings. However, other rights of children than their protection rights are indirectly affected by the practice, despite the absence of coercion. The rights to education and health may be taken as examples of these indirect consequences⁹⁵. In the former case,

⁹³ See note 32, at 5 §16

⁹⁴ S. Livingstone, B. O'Neill, *Children's Rights Online: Challenges, Dilemmas and Emerging Directions*, in S. van der Hof, B. van den Berg, B. Schermer, *Minding Minors Wandering the Web: Regulating Online Child Safety*, 19, at 24 (2014)

⁹⁵ M. Nakagawa, 福祉行政は風俗産業に敗北している (2015), <http://business.nikkeibp.co.jp/article/report/20150323/279042/?P=1>

some of the girls may decide to skip lessons or even drop out of school⁹⁶ in order to conduct their business⁹⁷. In the latter case, the girls' health may be impacted at various levels⁹⁸. Indeed, they may suffer from physical consequences due to a violent behaviour from their client, contract sexually transmissible diseases⁹⁹ or fall pregnant, in case of sexual activity - consented or not - or be affected psychologically. Ultimately, some of them might even commit suicide¹⁰⁰. The concerns regarding the health of children have been expressed in the Concluding Observations of the Committee on the Rights of the Child to Japan in 1998, 2004 and 2010, although no link was made with the practice of *enjo kōsai*¹⁰¹.

Many of the schoolgirls' rights may therefore be impacted by the practice. However, this thesis will focus mainly on the impact of *enjo kōsai* on the rights related to their protection, due to the direct impact of the practice on these rights, and the particular importance of these rights in the measures that should be taken to prevent the practice. Various issues will thus be examined in this section: sexual abuses and violence (3.2.2.), increasing resort by the authorities to the juvenile justice system (3.2.3.), and the involvement of schoolgirls in the worst forms of child labour (3.2.4.).

3.2.2. Protection against child prostitution, child abuses and violence

While conducting their *enjo kōsai* activities, children involved may suffer from various forms of sexual abuses - rape, forcible indecency - or violence, which will cause them physical or psychological damages. Unfortunately, the existing framework presents various legal gaps that impede the effective protection of the girls against such harm. Moreover, the practice of *enjo kōsai* is often considered as prostitution, as will be presented hereafter. However, this conception fails to take into account the large variety of non-sexual activities conducted during the practice, which may also lead to damages suffered by the schoolgirls. Therefore, this section will firstly argue that prostitution is only an aspect of *enjo kōsai*, and does not encompass all activities carried out (3.2.2.1.). Secondly, it will examine the protection gaps existing in the Japanese framework regarding the protection of children against sexual abuses (3.2.2.2.).

This article presents an interview of Y. Nito, from the organisation « Colabo », which works, notably, with young girls involved in *enjo kōsai*. Y. Nito speaks, especially, of the lifestyle of these girls and its consequences on them. See also M. Okubo, *Interview of Yumeno Nito: Havens Needed for Schoolgirls in Sleazy 'JK' Business*, The Asahi Shimbun (2014), <http://www.colabo-official.net/english/>

⁹⁶ 女子高生と援助交際しちやいけない本当の理由を語っていくよ (2015), <http://nocolor.xyz/2015/03/24/post-1543/>

⁹⁷ As was presented in Chapter 2, Section 2.3.1., a portion of the girls involved in *enjo kōsai* are already runaway girls, who dropped from school and left home for various reasons, and who, as a result, may become involved in various activities to survive, such as *enjo kōsai*. Some of these girls' rights have therefore already been infringed before their involvement in the practice. The purpose of this section being to assess the consequences of the practice itself on children's rights, the infringement of these rights prior to the involvement in the practice will therefore not be examined.

⁹⁸ T. Saotome, *The Reality of Sexuality or Teenage Girls in Japan*, 53(5) Journal of the Japan Medical Association, 279 (2010)

⁹⁹ F. Gale, S. Fahey, *Youth in Transition, The Challenges of Generational Changes in Asia*, 166 (2005)

¹⁰⁰ *Schoolgirls for sale in Japan*, Vice News (2015) <https://news.vice.com/video/schoolgirls-for-sale-in-japan>, at minute 12.20

¹⁰¹ Committee on the Rights of the Child, Concluding Observations: Japan, UN. Doc. CRC/C/JPN/CO/3, 7 §41, 12 §64 (2010)

See also Committee on the Rights of the Child, Concluding Observations: Japan, UN. Doc. CRC/C/15/Add.231, 9 §45, 10 §47 (2004)

See also Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Japan, UN. Doc. CRC/C/15/Add.90, 4 §21 (1998)

3.2.2.1. *Enjo kōsai and prostitution – controversies*

Enjo kōsai is usually viewed through the lens of prostitution, as elaborated earlier, and is therefore considered illegal in many of the countries where it is practiced. However, this thesis argues that considering *enjo kōsai* as such constitutes a very reductionist view, which focuses only on the sexual aspects of the practice and therefore excludes from the definition all non-sexual behaviours¹⁰², which might also have negative consequences for the girls on the long-term, especially psychologically.

As already underscored in this thesis, *enjo kōsai* meetings do not necessarily imply sexual activities. Schoolgirls determine the rules of the 'date', and some thus refuse any sexual interaction with their clients¹⁰³. Prostitution, on the contrary, necessarily requires a sexual aspect for legal prosecution¹⁰⁴. Moreover the Japanese anti-prostitution law defines 'prostitution' as only coitus¹⁰⁵: as such, the definition of prostitution is very narrow and does not include all behaviours constituting the practice of *enjo kōsai*. Moreover, other reasons are identified to refute the qualification of *enjo kōsai* as prostitution, relating mainly to the freedom of choice schoolgirls have in the selection of their clients, and the reasons of involvement in the practice - prostitution is usually a survival choice, while *enjo kōsai* is not necessarily, as was demonstrated above¹⁰⁶.

This thesis therefore understands *enjo kōsai* as encompassing a variety of behaviours, including, for example, a dinner, a stroll, or a trip to a museum or amusement park and therefore is not limited to prostitution. In contradiction with the common belief¹⁰⁷, this thesis argues that *enjo kōsai* cannot be qualified only as prostitution. This narrow conception of the phenomenon would unjustly exclude many behaviours from the legal framework, which may have consequences on the legal protection provided to children. Indeed, the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (hereafter '*The Act on Punishment*') notably, which specifically protects children against various sexual behaviours regarding them, focuses on the prohibition of child prostitution, defined as "*sexual intercourse (sexual intercourse or any conduct similar to sexual intercourse, or touching genital organs, of a child or having a child touch one's own genital organs for the purpose of satisfying one's sexual curiosity) with a child in return for giving or promising remuneration [...]*"¹⁰⁸. This specific protection is therefore not provided for all children involved in *enjo kōsai*, but is reduced solely to those who engage in sexual interactions with their client.

However, regardless of the qualification and nature of the activities carried out by the girls and their clients during their meetings, the adolescents are at risk to be subjected to abuses and violence, which could subsequently have adverse consequences for their development. This will be presented hereafter.

¹⁰² See note 15, at 24

¹⁰³ See note 60, at 598

¹⁰⁴ See note 13, article 2(2)

See also Anti-Prostitution law, article 2 (1956)

¹⁰⁵ Anti-Prostitution law, article 2 (1956)

¹⁰⁶ See note 15, at 24

¹⁰⁷ See note 39

See also note 15

¹⁰⁸ See note 13, article 2(2)

3.2.2.2. Sexual abuses and violence

The CRC¹⁰⁹, the OPSC¹¹⁰, the CEDAW¹¹¹, of which Japan is a State Party, as well as national instruments - the Act on Punishment notably¹¹² - prohibit sexual abuses and more generally, all forms of violence against minors.

Enjo kōsai may lead schoolgirls to suffer various forms of violence or abuses, which will impact their well-being and development. Indeed, when the client expects more from the schoolgirl than what was agreed upon before the meeting, she could find herself in a very precarious situation. Being at the mercy of her client, especially when they agreed to meet in an isolated place, such as a hotel room or the car of the client, for example, undoubtedly compounds her vulnerability. In such cases, there is a greater likelihood that the girl will suffer physical and/or mental harm, which will likely affect her both in the short and in the long term.

However, several problems impede the optimal protection of children against the aforementioned abuses. Firstly, although the Japanese Penal Code prohibits sexual abuses¹¹³, these crimes can only be prosecuted upon complaint¹¹⁴. And while child-friendly procedures have been implemented since 2000 in the Japanese Code of Criminal Procedure¹¹⁵, in order to facilitate the testimony of children¹¹⁶, they might still fear repercussions if they file a complaint. The need for a complaint to engage proceedings is therefore a hindrance, which considerably limits the possibility of intervention of the authorities. Indeed, victims rarely talk – and even the less when they are girls involved in *enjo kōsai*¹¹⁷ - due to the shame they may feel, and the fear of being publicly exposed or prosecuted. Secondly, the sexual majority and age of consent is defined at thirteen by the Japanese Penal Code¹¹⁸. This discretionary determination of the age of consent has consequences for the children involved in *enjo kōsai*. Indeed, this choice does not respect the concept of evolving capacities of the child emphasised by the CRC¹¹⁹ and the Committee on the Rights of the Child¹²⁰, as it determines a fixed age for the sexual consent of children, without taking into account the fact that adolescents evolve differently and that the decision they take may affect them differently depending on their capacities to fully understand this decision¹²¹. Moreover, although other instruments protect all children under eighteen years of age, and despite the fact that Prefectures are allowed to adopt specific regulation increasing the age of consent in their jurisdiction, this lower age limit may still be invoked both by the clients and by the police forces to justify the non-prosecution of clients, arguing that if the girl was consenting to the practice, no crime was therefore committed. Thirdly, the Act on Punishment provides that “*care shall be taken not to improperly infringe upon the rights of citizens*”¹²². This provision limits the freedom of intervention of authorities, which may fear to impede too much on the citizens’ fundamental

¹⁰⁹ Articles 19, 34, 35, 36 CRC

¹¹⁰ Articles 1, 2, 3 OPSC

¹¹¹ Article 6 CEDAW

¹¹² See note 13, article 1

¹¹³ Penal Code, Chapter XXII, articles 176-177 (1907)

¹¹⁴ Id., article 180

¹¹⁵ Code of Criminal Procedure, Chapter XI, articles 157-2, 157-3, 157-4 (1948)

¹¹⁶ UNICEF, Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 23 (2009)

¹¹⁷ See note 68 (visited 2nd May 2016)

¹¹⁸ See note 113, articles 176-177

¹¹⁹ Article 5

¹²⁰ Committee on the Rights of the Child, General Comment n°4 on adolescent health and development in the context of the Convention on the Rights of the Child, UN. Doc. CRC/GC/2003/4 (2003)

¹²¹ This point is further developed in Section 3.4.3.

¹²² See note 13, article 3

rights while implementing the law and carrying out their investigations. Indeed, there is a fine line between a legally justified trespassing of citizen's rights, for the greater goal of protecting children's rights, and a disproportionate infringement of one's rights. Determining when to act or not, and to what extent, may therefore be a difficult decision for the authorities to take. Lastly, the anti-prostitution law prohibits prostitution and provides only for the prosecution of prostitutes and their pimps, but not for the prosecution of clients¹²³. The only possibility for *enjo kōsai* girls who suffered abuses is therefore to file a complaint, which may in fact bring them more problems than relief, as will be presented hereafter.

In conclusion, although provisions exist in order to protect children against violence and sexual abuses, difficulties, due to the legal requirements for prosecution, the low age of sexual consent, and the limitations of the law, are encountered in the effective implementation of these provisions, especially in the context of *enjo kōsai*. Indeed, the need for a complaint for prosecution, coupled with the low age of sexual consent, effectively hampers the prosecution of offenders; furthermore, this framing also creates legal loopholes which clients, as well as girls, take advantage of¹²⁴. In addition, the Japanese laws present contradictions that leaves the possibility to interpret them differently depending on the purpose. To these difficulties, the cultural context of Japan¹²⁵ must be added, and gives to the reader a better understanding of the practice of *enjo kōsai*, in which clients are rarely prosecuted, but where the responsibility of the consequences falls solely on the girls' shoulders, considered as 'delinquents', which often leads them into the juvenile justice system, as will be presented hereafter.

3.2.3. Juvenile Justice

Girls involved in *enjo kōsai* are usually portrayed as 'delinquents', with doubtful morals, who choose to engage voluntarily in immoral and illegal activities. Moreover, the minimum age of criminal responsibility in Japan is set at fourteen: children of and above this age are therefore expected to assume the consequences of their acts¹²⁶. *Enjo kōsai* is often considered as prostitution, as explained above, and as such, is considered illegal in many of the countries where it is practiced¹²⁷. Legal instruments have been adopted in order to protect schoolgirls involved in *enjo kōsai* against the abuses they may suffer during this activity, notably the Act on Punishment. However, the reality is quite different, as illustrated by the discussion above, and clients are rarely prosecuted due, on the one hand to the requirement of a complaint from the girl against her abuser, and on the other hand, to the tendency of police forces, state authorities and the public opinion to consider *enjo kōsai* as prostitution rather than as paedophilia. Subsequently, the focus is set on purging the streets from these 'delinquents', who shamelessly sell themselves to male adults, and rehabilitating them in society, rather than prosecuting the clients for exploiting a child against compensation. Moreover, it is noteworthy to precise that, when they decide to act and take some girls into custody, the authorities usually claim that "they took the action because they consider the practice 'harmful for juvenile physical and mental health'"¹²⁸. The shame falls therefore solely on the schoolgirls' shoulders. Unfortunately, no official statistics exists on the number of arrests of girls or clients.

This stigmatisation of *enjo kōsai* girls by Japanese society consequently leads them to be considered much more often as offenders rather than victims. Indeed, the voluntary choice of some of them to engage in the practice influences the opinion the public has of both the practice and the girls

¹²³ See note 39, at 321

¹²⁴ See Section 3.4.3.1.

¹²⁵ See Section 3.3.

¹²⁶ See note 113, Chapter VII, article 41

¹²⁷ See note 60, at 590

¹²⁸ See note 29

involved¹²⁹. They are not considered as victims due to their consent to the practice, but on the contrary, are deemed to have engaged knowingly in the practice, and are subsequently expected to bear the consequences of their actions. As a result, the responsibility for the abuses they may suffer falls solely on their shoulders, as they are thought to have consciously made the choice to seduce men in order to extort their money¹³⁰. This anti-conformist behaviour is therefore deemed to deserve a strict punishment, but the predatory nature of the relationship between the schoolgirl and her clients is completely overlooked¹³¹. The aforementioned normalisation of the male desire and sexual needs, and the women's duty to stay pure operates as an unspoken rule. Women, especially young girls, who do not conform to this rule, are thus seen as committing 'demoralisation' acts¹³², and subsequently, seeking and deserving the trouble they might get into¹³³.

The tendency to consider *enjo kōsai* girls as 'delinquents' with sexual deviance rather than as victims of exploitation has disastrous consequences for these children¹³⁴. Indeed, they are deemed to have surrendered their right to protection as children for the benefit of their mischievous lifestyle and as a consequence, are often arrested and punished - or sent in rehabilitation centres -, rather than treated as victims of exploitation¹³⁵. Even when they are, few institutions exist to effectively take care of these girls, and little is done to prosecute the offenders. An example of such treatment lies in the *Deai Kei* Site Regulation Law, which "penalises minors who send soliciting messages through '*deai kei*' websites", but not the clients who seek to meet underage girls¹³⁶. This conception that the girls consented to their own exploitation and subsequently to the abuses or legal sanctions they may face fails to acknowledge that minors are not able to consent to their own exploitation¹³⁷, due to their young age and vulnerability, and as such, are entitled to special protection¹³⁸. Moreover, the definition of the minimum age of criminal responsibility at fourteen, although it is in line with the interpretation of article 40(3) of the CRC by the Committee on the Rights of the Child¹³⁹, does not take into consideration the individualities of children, and the reasons behind their behaviour¹⁴⁰. Indeed, when their activity is legally qualified as an infraction – prostitution, for example -, they may subsequently face prosecution. Subsequently, this thesis argues that the perception of *enjo kōsai* girls as a whole group of 'delinquents' therefore has negative consequences for these children, who should be considered individually, taking into account their evolving capacities and personal reasons to engage in the practice.

This section demonstrates a lack of understanding of the practice of *enjo kōsai* and its consequences on children. Indeed, as will be developed later on, many think that the choice of the schoolgirls to engage in the practice implies their acceptance of all potential consequences. On the contrary, the population and local authorities usually consider that these girls deserve what they were subjected to, and should even be applied a punishment for their shameful lifestyle. However, few have tried to

¹²⁹ This will be examined in Section 3.4.3.1.

¹³⁰ See note 21, at 63

¹³¹ See note 59, at 1

¹³² See note 22, at 19

¹³³ See note 68 (visited 2nd May 2016)

¹³⁴ M. Nakagawa, 福祉行政は風俗産業に敗北している (2015), <http://business.nikkeibp.co.jp/article/report/20150323/279042/?P=1>

¹³⁵ See note 59, at 1

¹³⁶ See note 18, at 12

¹³⁷ See Section 3.4.3.2.

¹³⁸ See note 59, at 3

¹³⁹ Committee on the Rights of the Child, General Comment n°10 on Children's Rights in Juvenile Justice, UN. Doc. CRC/C/GC/10, 10 §30-35 (2007)

¹⁴⁰ C. McDiarmid, *An Age of Complexity: Children and Criminal Responsibility in Law*, 13 Youth Justice, 145, at 146 (2013)

understand fully the particular relationship between the girls and their clients, the motivations of both these actors, and the surrounding cultural context fostering such a practice. In this context, while a portion of the society considers the practice as an illustration of society gone astray, another part - the girls and their clients mainly - view it as a type of work, where the girls are paid for the services they offer to their clients. This will be examined in the next section.

3.2.4. Child labour

As presented in Chapter 2, the interaction between the main actors of *enjo kōsai*, and their understanding of the practice, vary depending of the point of view. Authorities and parents tend to consider it as a shameful activity, carried out by ‘delinquent’ and ‘devious’ children, who deserve to be punished and need to get back on the right track. Adolescents and their clients, on the contrary, do not consider the practice as immoral. They see it as a form of work, involving the sale of various services determined by the seller, in this case, the schoolgirl. The latter considers *enjo kōsai* as an ‘easy’ part-time job (*arubaito* - アルバイト - in Japanese). It is indeed common for Japanese students to engage in student jobs after school in order to gain money to pay for their recreational and leisure activities. Moreover, children’s employment is legally authorised by the Labour Standards Law, which establish at fifteen the minimum age of employment, or even at twelve for some determined part-time jobs¹⁴¹. *Enjo kōsai* constitutes therefore an easy and quick way to make money, which schoolgirls use to fulfil their wish for expensive brands. Due to the fact that both these girls and their clients consider the practice as a job, with the clients buying various services sold by girls, none of them feel guilt or shame or have the feeling of being involved in illegal and immoral activities¹⁴².

Given this conception of *enjo kōsai* as a job, the practice may be examined from the perspective of the legal framework regulating child labour. However, the purpose of this sub-section is not to determine if Japan has violated its international obligations regarding child labour regulation, but rather, to assess whether *enjo kōsai* may be considered as a worst form of child labour and, as such, may be recognised as having a negative impact on children and their rights, in order to determine if it fulfils the criteria of ‘harmful practice’ as provided in the Joint Recommendation/General Comment. The ILO Convention n°182 provides in its article 3 that the worst forms of child labour comprise “(b) *the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances*; [...] (d) *work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children*”¹⁴³. Therefore, arguing that *enjo kōsai* has adverse consequences for children may be beneficial for its qualification under the ILO Convention and the Joint Recommendation/General Comment.

The difficulty, however, lies in the qualification of *enjo kōsai* activities that do not present any sexual behaviour, and for which the negative consequences are harder to prove. Therefore, the distinction between the various forms of *enjo kōsai* - including or not sexual behaviours - is here important. Firstly, the forms involving sexual behaviours are defined as child prostitution under the Act on Punishment, and as such, they clearly enter the scope of article 3(b) of the ILO Convention n°182 and are considered as a worst form of child labour that should be prevented. Moreover, the fact that the schoolgirls carry their activity alone or under the supervision of someone else is irrelevant to the qualification of the practice as child labour. Indeed, the existence of clients willing to pay for the services of underage girls is sufficient to the qualification in that clients, although they are not forcing the girls to sell their time and body, use them for child prostitution, such as defined in the ILO Convention and in the Act on Punishment.

¹⁴¹ See note 12, article 56

¹⁴² See note 21, at 65

¹⁴³ International Labour Office, Worst Forms of Child Labour Convention (n°182), article 3 (1999)

Secondly, when girls are involved in *enjo kōsai* activities that do not include any sexual behaviour, the situation is more complex. Indeed, in these cases, the practice does not explicitly fall under article 3(b) of the ILO Convention n°182. Nevertheless, it may be possible to consider it as falling under the scope of article 3(d), completed by the precision of the Worst Forms of Child Labour Recommendation n°190¹⁴⁴, due to the negative impact that the practice has on the long-term development of these teenagers. However, article 4 of the ILO Convention n°182 provides that “*the types of work referred to under Article 3(d) shall be determined by national laws or regulations or by the competent authority*”. This provision is interpreted by the Recommendation n°190, which states that a work susceptible of exposing children to “physical, psychological or sexual abuse”¹⁴⁵ should be taken into consideration when determining the national list of jobs falling under article. Unfortunately, the Japanese Labour Standards Law¹⁴⁶ does not provide for the qualification of *enjo kōsai* as a worst form of child labour.

Nonetheless, this thesis argues that all activities of *enjo kōsai*, sexual and non-sexual, fall under the scope of the ILO Convention n°182 for two main reasons. Firstly, as was developed above, the existence of sexual activities – consensual or not - are sufficient to qualify the practice under article 3(b) of the Convention. Secondly, in the absence of sexual activities, it can be argued that the risk of exposure to the abuse¹⁴⁷ is sufficient to qualify the practice under article 3 (d), without actually needing it to occur¹⁴⁸.

Moreover, the example of the cuddle cafés – as presented in the introduction to this thesis - may be used here as an illustration: sexual activities are not necessarily required to qualify a practice as harmful or a ‘worst form of child labour’. Indeed, no sexual behaviour is expected from the girls working in these places. Their job is ‘only’ to relax the client by lying down next to him and chatting with him, amongst other services¹⁴⁹. However, such activities, when carried out by teenage girls, undeniably impact their development and affect them at least psychologically¹⁵⁰. An analogous argument can be made here regarding the non-sexual activities of *enjo kōsai*. Even though the girls might not be abused or physically hurt, and even feel perfectly at peace with the way they lead their life, they are necessarily affected by the activity they conduct, which has negative consequences on their development as fully-fledged adults.

In conclusion, it can be argued that all forms of *enjo kōsai* - sexual and non-sexual activities - fall under the qualification of worst form of child labour, under article 3 (b) and (d) of the ILO Convention n°182 due to the negative consequences that the practice has on the children involved. The developments of this section, coupled with those of the other sections, allow this thesis to argue that the practice of *enjo kōsai* fulfils the criteria (a) and (b) of the Joint Recommendation/General Comment. This will be developed hereafter.

3.2.5. Discussion

The assessment carried out here above of the impact of *enjo kōsai* on children and their rights clearly demonstrates the existence of multiple negative consequences that schoolgirls can suffer when engaging in the practice. They might get physically harmed due to violence and abuses - sexual or not - inflicted by the client, suffer psychological damages as a result of the experience or be treated as

¹⁴⁴ International Labour Office, Worst Forms of Child Labour Recommendation (n°190), §3 (1999)

¹⁴⁵ Id., §3(a)

¹⁴⁶ See note 12, article 62

¹⁴⁷ Which was demonstrated in Section 3.2.2.

¹⁴⁸ See note 144, at §3 (a)

¹⁴⁹ *The Japanese love industry*, Vice News (2013), <http://www.vice.com/video/the-japanese-love-industry>, at minute 5.52

¹⁵⁰ Conclusions obtained from a meeting with Y. Noguchi, Senior Specialist in Labour Law, International Labour Office (ILO)

'delinquents' in conflict with the law by state authorities and police forces, instead of being considered as victims of exploitation. Moreover, an examination of the components of *enjo kōsai* also demonstrated that the practice presents the characteristics of child labour, although a controversy may exist regarding the non-sexual activities carried out during the compensated 'dates'. In this context, it can therefore be argued that the practice fulfils the criteria (a) and (b) of the Joint Recommendation/General Comment requiring, for the qualification of 'harmful practice', that (i) the practice be based on discriminations towards women and children, and (ii) present negative consequences that constitute a violation of the fundamental human rights of the people subjected to it.

Distinguishing between the girls involved in all forms of *enjo kōsai* - including then sexual activities - and those involved only in non-sexual *enjo kōsai* activities might prove important in certain parts of this thesis. It is, however, unnecessary in the context of the assessment of criteria (a) and (b) of the Joint Recommendation/General Comment because, regardless of their choice of activity, this thesis submits that all *enjo kōsai* girls are subjected to the same risks of being harmed by unsatisfied clients or insensitive police officers. Therefore, both situations will be examined as a whole in this discussion.

Human dignity, as defined in the Duhaime dictionary, is "an individual or group's sense of self-respect and self-worth, physical and psychological integrity and empowerment"¹⁵¹, while integrity refers to a sense of wholeness of the individual, based on qualities such as honesty¹⁵². Both dignity and integrity are fundamental to the optimal development of human beings, and as such, constitute fundamental rights protected by all human rights instruments. The denial of dignity or integrity of an individual resulting from a 'harmful practice' is therefore an unacceptable infringement of human rights, and even more so in the context of children's rights. Indeed, some authors have emphasised the importance of the respect of children's dignity, as practices that infringe the latter would hamper children's development and foster a culture in which their value is depreciated¹⁵³.

In *enjo kōsai*, schoolgirls are seen as merchandise that may be used by clients to satisfy their needs. They are not considered as growing human beings anymore, but are reduced to mere objects, not worthy of consideration. As a result, they may suffer from very low self-esteem, as well as physical and psychological harm. This objectification of young girls is clearly in contradiction with human dignity and integrity and constitutes a violation of the fundamental rights enshrined in the CRC and the CEDAW in that it prevents those girls from developing in optimal conditions and with all the tools needed to become fully fledged adults. Moreover, the social norms existing in Japan are based on male dominance, and devalue children, while in the same time encouraging various potentially harmful practices involving children. This cultural environment in Japan and its impact on children and their rights will be developed below.¹⁵⁴

Regarding the existence of discrimination towards children or women created by the practice, it can be argued that such discrimination does exist. As noted earlier, although the main subject of this thesis is the situation of schoolgirls involved in *enjo kōsai*, the practice also concerns male adolescents, as well as adult women, especially young adults, in their university years. *Enjo kōsai* therefore concerns both women, and male and female children. Male adults are only involved in the practice as clients. This tendency is the result of the cultural context of Asian countries, which will be elaborated further below. The male supremacy and the importance of the respect for elders in such societies relegates women and children to the background, which, *de facto*, creates a discrimination against them in the larger

¹⁵¹ Duhaime's Law Dictionary, <http://www.duhaime.org/LegalDictionary/H/HumanDignity.aspx> (visited 1st June 2016)

¹⁵² Oxford Dictionaries, <http://www.oxforddictionaries.com/definition/english/integrity> (visited 1st June 2016)

¹⁵³ C. McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 *The European Journal of International Law*, 655, at 703 (2008)

¹⁵⁴ See Section 3.3.

cultural context. The practice of *enjo kōsai*, and the opinion that society has of those involved in such activities, only exacerbates the gap between males and females by strengthening the gender-based stereotypes according to which, on the one hand, women - preferentially younger - exist to fulfil men's needs, but on the other hand, they are supposed to stay 'innocent and pure' until they become the 'property' of a man. Those who would not conform to such stereotypes would therefore be considered as unworthy. As such, this thesis argues that the discrimination towards women and children present in *enjo kōsai* is therefore not created by the practice itself, but on the contrary, is one of its root-causes.

Lastly, regarding the negative consequences resulting from *enjo kōsai* and subsequently harming the child, various impacts were examined above. This assessment leads this thesis to conclude that although some girls may not keep any negative feeling from their experience of compensated dating, most of them are impacted, either in the short or long-term, even more so when they were discovered by parents or authorities, and thus exposed to the public opinion.

To conclude on the assessment of criteria (a) and (b) of the Joint Recommendation/General Comment, the consequences of *enjo kōsai* on schoolgirls involved fulfil the criteria, in that the practice negatively affects girls at several levels, and prevent them from growing up and live their adolescence in optimal conditions, ostracising them from society and potentially exposing them to public shame and punishment.

3.3. Cultural aspects

3.3.1. Introduction

The third criterion of the Joint Recommendation/General Comment refers to the cultural context of the practice under examination. In order to qualify the practice as 'harmful' as defined by the Joint Recommendation/General Comment, the context must present various characteristics. As provided by criterion ©, the social context of the country should be conducive to the fostering and perpetuation of the practice concerned, and should be characterised by the existence of social norms based on discriminatory behaviours towards women and children, as well as a strong belief in male dominance. Two main elements of the criterion may be distinguished and will be examined in this section.

Firstly, a practice must be considered as "traditional, re-emerging or emerging"¹⁵⁵. It will be argued here that *enjo kōsai* may be qualified as a re-emerging practice (3.3.2.). Indeed, *enjo kōsai* girls are, to some extent, a new type of *geisha*, paid for entertaining their client. As will be developed, although the institution of *geisha* was, and still is, strictly organised, *enjo kōsai* is not necessarily: a parallel may be drawn between the practices, since both involve a woman or girl meeting a male client to entertain him against compensation. However, this parallel will be operated very cautiously, in order to avoid making an amalgam between *geisha* and *enjo kōsai* girls. Indeed, while the former is now a respectable institution, strictly regulated and organised¹⁵⁶, and a symbol of the traditional Japanese culture, the latter has developed as an undesirable by-product of the entertainment culture, potentially harmful for the girls involved, and lacking stricter regulation.

The second cultural characteristic to be considered is the existence of "social norms prescribing or perpetuating the practice". In this part, it will be argued that the climate of male dominance, the gender gap and the lack of human rights and sexual education in Japanese society foster the development of practices based on gender biases and discrimination towards women and children (3.3.3.).

¹⁵⁵ See note 32, at 5 §16 (c)

¹⁵⁶ T. Salvador, *The Evolving Role of the Geisha* (2002), <http://academic.mu.edu/meissnerd/geisha.html> (visited 4th June 2016)

Lastly, the fulfilment of the criterion (c) of the Joint Recommendation/General Comment by *enjo kōsai* will be discussed (3.3.4.).

3.3.2. Traditional, re-emerging or emerging character of the practice

The word *geisha* (芸者) is composed of ‘*gei*’ (芸), meaning art, performance, and ‘*sha*’ (者), designating a person, and literally means « performance person ». The existence of *geisha* can be traced until the *Edo* Period (17th) and constitute one of the oldest entertainment institution in Japan¹⁵⁷. *Geisha* are often wrongfully considered as prostitutes, although their primary role is to entertain their client through their social skills and various artistic performances¹⁵⁸. This thesis will not expand further on the lifestyle of *geisha*, but strives instead to provide the reader with a sufficient insight to understand the parallel made between them and *enjo kōsai* girls.

The institution of the *geisha* is the pioneer of what is known as *mizu shobai*¹⁵⁹ - the nightlife entertainment world –, which now encompasses a multitude of activities, such as hostess clubs, nightclubs, bars, cabarets, but also soaplands¹⁶⁰ and brothels. As argued by one author, the commoditisation of women’s company fostered by this century-old practice led to the creation of a niche for *enjo kōsai*, and more largely JK Business, to develop¹⁶¹. Indeed, although the *mizu shobai* is legally and socially strictly restricted to adults, Hedlin notes that the diversification of activities, and thus the appearance of clients with various needs and tastes, inadvertently opened the door to the involvement of underage girls, desirous to capitalise on their youth to benefit from the industry¹⁶². JK Business, including *enjo kōsai*, is therefore the unfortunate result of the transformation of women’s companionship into an ever-expanding industry with a multitude of branches, some intended to be developed, such as hostess clubs or soaplands, and others, most notably the JK Business, an accidental by-product of the industry - due to the fact that children were never intended to become part of the *mizu shobai*.

As already explained, *geisha* and *enjo kōsai* girls constitute distinct subculture of *mizu shobai* and as such, differ on many levels regarding the organisation of the practice and the way they carry it out. However, some important similarities may be identified, which allow this thesis to make a parallel between the century-old practice and its 21st century version.

Firstly, various types of *geisha* could be identified, who were specialised in diverse artistic fields¹⁶³. Among them, some would have a sexual relationship with their client, while others would not¹⁶⁴. This can also be said of *enjo kōsai* girls, who, as was developed above, define the rules of the meeting with their client, and what type of activity will be included or not.

¹⁵⁷ Id.

¹⁵⁸ For further information on the lifestyle of *geisha*, notably:

M. Iwasaki, *Geisha of Gion* (2002), autobiography

Y. Inoue, *Mémoires d’une geisha* (1997), biography

Further readings available at <http://kamishichiken.tumblr.com/post/125797697819/masterpost-of-non-fiction-geisha-maiko-and> (visited 4th June 2016)

See also note 156

¹⁵⁹ L. Dalby, *Geisha*, 319 (1983)

¹⁶⁰ See note 1

¹⁶¹ R.-A. Hedlin, *Breaching Mizu Shobai: The Geisha Spirit on the High School Playground*, 1 *Sociology and Anthropology Student Union Undergraduate Journal*, 27 (2014)

¹⁶² Id.

¹⁶³ Some were specialised in musical instruments, others in the art of speech, others were renowned for their dance or entertainment skills. Lastly, some of them were educated to the art of sex and how to pleasure a man

See note 159, at 56

¹⁶⁴ See note 159, at 55

Secondly, *geisha* belonged to a teahouse for most of their life. Within this context, they became, to some extent, independent and educated women, with extensive communication and artistic skills, necessary to seduce clients into coming back and paying them more¹⁶⁵. This independence is similar to the independence sought by schoolgirls when engaging in *enjo kōsai*. The latter act as businesswomen, carrying their activity thoughtfully and in a calculated way. They determine the amount of money they need, and then use their conversational skills to praise the man and entertain him so that he will be more likely to buy them what they want or give them a lot of money.

However, the similarities between the practices of *geisha* and *enjo kōsai* stop here. One of the practices - the *geisha* institution - is legally recognised as a real, respected occupation and a professional life choice, and strictly regulated¹⁶⁶. On the other hand, the perpetuation of *enjo kōsai* is based on legal uncertainty. Indeed, various laws exist to protect children against exploitation and sexual abuses¹⁶⁷. However, no legal instrument addresses specifically the practice, and depending on the way the girl conducts her activities - with or without an employer, with or without sexual intercourse, etc. -, she might find herself in a legal loophole, where she would lack protection in case of abuses.

In conclusion, although they do not carry their activities in the exact same way, and major legal and professional differences distinguish the traditional *geisha* from the *enjo kōsai* teenage girls, both practices serve the same purpose, namely, meeting male clients in order to entertain them against compensation. In this way, this thesis suggests that *enjo kōsai* can be considered a new, updated form of *geisha*, adapted to the needs of the 21st century clients and fostered by the commodification of women's company. As such, the practice of *enjo kōsai*, although a recent practice, could nevertheless be considered as a re-emerging cultural practice, mimicking the institution of *geisha*.

Once the traditional, re-emerging, or emerging character of a practice has been determined for the purposes of the Joint Recommendation/General Comment, it is still necessary to examine the existence of social norms, in this case, based on male dominance and discrimination towards women and children and fostering or perpetuating the cultural practice. This element will be assessed in the following part.

3.3.3. Existence of social norms prescribing or perpetuating the practice

As mentioned earlier, the creation of the phenomenon of JK Business was fostered by the merchandising of women's company - and sometimes their body -, prevalent in Japanese society. This commodification has been imitated and adapted throughout history¹⁶⁸, first pioneered by the *geisha*, updated by hostesses, and followed by the creation of diverse branches according to the wishes of clients.

Various cultural particularities may be identified to explain the perpetuation of *enjo kōsai* in Japanese society. Firstly, an overview of the wider Japanese cultural and social context surrounding and fostering *enjo kōsai* will be provided. More precisely, the particularities of relationships between men and women, gender discrimination, and the conditions fostering *enjo kōsai* will be developed (3.3.3.1.). Secondly, gender biases and the prevalence of sexual representation in Japanese media and entertainment, as well as the particularities of the sex industry and the interaction between the nightlife institutions and the business sector, will be examined (3.3.3.2.). Lastly, the particular situation of children - especially girls - in this cultural context, the way they are perceived, and their relation to their body and sexuality will be presented (3.3.3.3.).

¹⁶⁵ See note 161

¹⁶⁶ See note 156 (visited 4th June 2016)

¹⁶⁷ See section 3.2.2.2.

¹⁶⁸ See note 161

3.3.3.1. Cultural and social context

The commodification of women and girls, as developed above, illustrates the patriarchal character of Japanese society and the existence of deeply rooted gender roles¹⁶⁹. In this context, women and girls are expected to behave as the 'perfect wife', before and after they marry and have few opportunities for emancipation¹⁷⁰. Although this is slowly changing, with more and more career-oriented women in search of independence, the context is set for discriminatory practices against women and girls to further develop. Moreover, research has shown that the importance of having a good work and career has led to many Japanese men staying single for a long period¹⁷¹. As a result, the use of paid women or girls to alleviate their (sexual) needs becomes legitimated¹⁷² and a vicious circle is created. On the one hand, men become dependent on these females who stroke their ego and fulfil all their wishes against some money, and lose their ability to interact constructively with the other gender in general. On the other hand, females, especially younger ones, come to think that being paid to offer various services - not necessarily sexual - is an interesting prospect for the future, with a wage much higher than the wage earned by a woman in more common jobs¹⁷³. Moreover, a study carried out in 2009 amongst Japanese high school girls showed hostessing has become one of the most popular professions¹⁷⁴. The prevalence of such occupations will be developed hereafter, with particular attention to the role of idols, celebrities and media in securing a steady supply of women and girls for these jobs.

This propensity for men to stay single and the legitimisation of the use of paid women or girls to fulfil their needs, coupled with the aforementioned idea of « the younger, the better »¹⁷⁵ may explain the booming business of using schoolgirls as 'companions'. On one side, girls, in search of independence and rebelling against the social norms, consider the activity as a part-time job¹⁷⁶, and offer services just as their 'elder sisters' - the hostesses - do¹⁷⁷. On the other side, clients, who are used to such entertainment, do not feel shame or guilt¹⁷⁸ for resorting to the services of children¹⁷⁹. Moreover, the role of media in the glamorisation of such jobs¹⁸⁰, and the lack of social and sexual education of the population¹⁸¹, provide a flawed understanding of social and sexual relationships to men, women and children, and do nothing to change the gender mentalities. As such, it therefore encourages the perpetuation of old gender stereotypes and discriminatory patterns of behaviours.

Furthermore, it is important to understand these gender relationships through the perspective of the entertainment industry, which presents a great importance in the Japanese lifestyle and is at the centre of many interactions between people. This will be examined hereafter.

¹⁶⁹ See note 11, at 6 §18

¹⁷⁰ See note 39, at 321

¹⁷¹ *Id.*, at 322

¹⁷² See note 161, at 30

¹⁷³ *Id.*, at 29

¹⁷⁴ H. Tabuchi, *Young Japanese Women Vie for a Once-Scorned Job*, The New York Times (2009), http://www.nytimes.com/2009/07/28/business/global/28hostess.html?_r=0 (visited 5th June 2016)

¹⁷⁵ See note 78 (visited 2nd May 2016)

¹⁷⁶ See note 21, at 65

¹⁷⁷ See note 161

¹⁷⁸ Indeed, they see it as a job, and consider that if the girls are consenting to engage in the practice, the latter therefore becomes legitimate.

See Sections 2.3.2., 3.2.4., 3.3.3.2., and 3.3.3.3.

¹⁷⁹ See note 22, at 19

¹⁸⁰ This will be examined hereunder.

¹⁸¹ See note 11, at 6 §18-19

3.3.3.2. Night-life, entertainment and sex industry

Mizu shobai in general, and more particularly the sex industry, has an important place in the Japanese social life. Indeed, Japanese people of all ages spend much of their recreational time in entertainment places, such as izakaya (居酒屋, bistro), karaoke, arcades, as well as in the red light districts, for the adults. This thesis argues that the entertainment and sex industries largely encourage the over-sexualisation of women and girls, which subsequently leads to the creation of new profitable practices involving women and girls.

Such places play an undeniable role in the Japanese social and business life. Firstly, as noted earlier, men tend to stay single for a long time, and therefore often resort to the services of professional to fill their needs for companionship - and sometimes sex – and sometimes do so with girls who are under the age of majority and/or consent. Secondly, the intervention of nightlife institutions in the business sector is also an important feature illustrating the popularity and flourishing of such institutions. Indeed, it is common for employees to participate in *nomikai* (飲み会, literally drinking meeting)¹⁸², after-work parties intended to strengthen the bond between workers and increase the loyalty of the employees to their company. Moreover, Japanese businessmen traditionally invite their business partners to entertainment places, to offer them to relax and enjoy the company of beautiful ladies, in order to strengthen their business relationship.

To ensure a steady supply of women, who, as presented multiple times already, are objectified and commodified, expected to fulfil men's wishes and needs (either as wives, or as professionals), the occupations related to *mizu shobai* are glamorized and presented as trendy and profitable¹⁸³. Hostesses, idols and other professional entertainers are therefore seen as successful women, whose job earned them beauty, money, fame, and men, allegedly everything a modern woman would want, according to the media, who play an important role in the glamorisation of such activities. However, this sexualisation, especially of women, by celebrities, who become then the most enviable people, is not particular to Japan, but is a worldwide phenomenon that raises concerns regarding the protection of children and their understanding of sexuality¹⁸⁴. Indeed, teenagers are subjected daily to advertisements for their favourite idol or for hostess or telephone clubs, via flyers, posters, promotion video, etc.¹⁸⁵. This, coupled with the current cult of beauty conveyed by celebrities and media, leads people – both men and women - and especially teenagers, to develop a distorted conception of what is successful and desirable for a woman¹⁸⁶.

The deep-rooted and persistent process of the commodification of women has opened the path to many perversions, leading to the rapid expansion of the sex industry in Japan. Books, magazines, pornographic television shows or movies, sex shops – amongst which *burusera shōjo* shops - adapted to the needs of all customers, even the most perverted, developed rapidly. Subsequently, such forms of entertainment have integrated and even mainstreamed these fetishes into the Japanese culture. However, in the same time, they also conveyed a flawed perception of social and sexual relationships between men and women, encouraging violent and non-consensual sexual behaviours. Shocking examples of this include, notably, magazines featuring articles which provided advice about where to go in Thailand to find the 'best' prostitutes, how to rape a company's office lady, or how to molest

¹⁸² J. Spacey, *Nomikai: Work Parties in Japan*, Japan Talk (2015), <http://www.japan-talk.com/jt/new/nomikai> (visited 5th June 2016)

¹⁸³ Y. Kamise, *Occupational Stigma and Coping Strategies of Women Engaged in the Commercial Sex Industry: A study on the Perception of « Kyaba-Cula Hostesses » in Japan*, 69 *Sex Roles*, 42 (2013)

¹⁸⁴ See note 161, at 33

¹⁸⁵ See note 40, at 479

¹⁸⁶ Precisions will be given later on how the glamorisation of the entertainment industry impacts Japanese children, see Section 3.3.3.3.

women in the trains¹⁸⁷. Another example, which has been subjected to the criticisms of the international community, as well as internal ones, is the dissemination of child pornography materials through movies and video games, for example, which essentially depict virtual children¹⁸⁸. Although the production and dissemination of child abuse material is prohibited in Japan¹⁸⁹, this does not apply to virtual representation of children, and producers usually argue their constitutional freedom of expression to advocate in favour of the production of such materials¹⁹⁰. Discussions took place at the domestic level, between local governments and private companies. These discussions resulted in the ban of the sale of such products to people under eighteen years of age in various prefectures. Yet, their appropriateness for adults has never been discussed¹⁹¹, which is unfortunate. Indeed, such contents provide a flawed image of relationships between adults and children, not only to children, but also to adults, comforting them in their belief that such behaviours - as these described in the pornographic material - with minors are condoned by their society.

In conclusion, the prevalence of the entertainment and sex industries is strikingly present in Japanese culture. This was created by the normalisation of male desires, and the construction of a whole industry around this conception. Moreover, the expansion of the sex industry has been facilitated by a climate of tolerance and acceptance of the *mizu shobai* industry and its benefits, by state authorities and society at large. Under international pressure following the capitulation of Japan after the Second World War, the government adopted the Anti-prostitution Law in 1956, but strictly limited the definition of prostitution and the circumstances in which it is illegal, and furthermore, did not give much attention to ensuring effective enforcement of the law¹⁹². This demonstrates the willingness to not interfere too much with this industry, commonly considered as beneficial and even, to some extent, needed, as it provides numerous well-paid jobs - mainly to women -, fulfils the needs of customers, and profits the business market, and more largely, the economy of the country.

Following the assessment of the wider cultural context surrounding social relationships in the Japanese culture, it is important to examine the particular situation of children evolving in such a culture. This assessment will provide a complete overview of the conditions surrounding *enjo kōsai* and fostering the involvement of children in the practice.

3.3.3.3. Children in this context

Teen culture around the world is based on trends. The latest fashion trends, the celebrity world, and television series they watch, amongst others. How well adolescents manage to integrate the world's trends into their life will determine whether they will be made popular. Japanese teenagers are no different in this respect. They evolve in a society where "identity, status and belonging are so closely bound up with buying power and demonstrated consumer knowledge of trends and brands"¹⁹³. In this consumerist society, where brands and beauty prevail, young girls, especially, are expected to appear as 'perfect future wives' due to aforementioned strong gender stereotypes: as a consequence, teenagers need money – oftentimes a lot of money - to be able to buy all the brand products that will show their high-standards as a person.

¹⁸⁷ See note 15, at 19

¹⁸⁸ See note 11, at 5 §12-16

¹⁸⁹ See note 13, article 7

¹⁹⁰ C. Mathews, *Manga, Virtual Child Pornography, and Censorship in Japan*, in Center for Applied Ethics and Philosophy, *Applied Ethics, Old Wine in New Bottles?*, 165 (2011)

¹⁹¹ Id., at 166

¹⁹² See note 40, at 466

¹⁹³ S. Buckley, *Encyclopedia of Contemporary Japanese Culture* (2002)

As a consequence, many adolescents take a part-time job to earn extra money. However, the wage in legally recognised part-time jobs is not usually high enough to allow them to buy brand products that they covet. In such conditions, girls especially, turn towards more rewarding and easier jobs, usually related to the entertainment market, and in some cases, end up becoming involved in illegal and unhealthy activities, notably *enjo kōsai*, which allow them the purchase power they desire.

This willingness to engage in such activities is further strengthened by the aforementioned climate of gender discrimination and commodification of women and girls conveyed by the media and the Japanese society at large. Indeed, by presenting sexualised jobs as desirable, the status these jobs bring is thus greatly valued. As a result, a market is created and the demand for the products of this market - in this case, women and girls - increases considerably. And that is where the JK business, and specifically *enjo kōsai*, is created. Indeed, teenage girls have understood that their young body constitutes a brand product, one on which they can capitalise, but only for a limited time¹⁹⁴.

The phenomenon of idols may be used as an illustration of the commodification and over-sexualisation of young people and how the Japanese media present their job as enviable. Idols are “highly produced and promoted singers, models and media personalities, [...] who tend to be young, or present themselves as such”¹⁹⁵. These young people - male or female - are highly publicised and sexualised, in order to attract more and more fans, and expected to appear as high-standards and flawless - naive, young, innocent and pure¹⁹⁶. Teenagers envy those idols who are just their age, but are known and loved across the country, and appear to meet all the criteria of success. Moreover, the climate of competition prevalent in the educational system, and the existence of gender stereotypes encourage young girls to turn to easier and more profitable ways of making money - as presented to them by media. However, this perception by adolescents of entertainment jobs as desirable, including, in their mind, *enjo kōsai*, clashes with the public opinion on the latter practice. This contradiction was explained by one author, stating that “open displays of teenage girls’ sexuality are permissible if they are seen as serving the noble cause of the nation-state building project, but displays of lower class teenage girls’ sexuality will be read as obscene and disgraceful and thus have to face up to police fine and public humiliation”¹⁹⁷.

In addition, it is interesting to mention that children lack education in areas such as human rights, sexual health and social interactions. The competitive climate fostered in the educational system isolates children from one another, and reduces their free time, and as a result, their possibilities to socialise and interact¹⁹⁸. Students therefore have a poor experience of human relationships and lack social skills¹⁹⁹. As a result, they are left to themselves, and have to find their own ways to experience relationships²⁰⁰. In the context of glamorisation of sexualised jobs, and with the permanent expansion of the entertainment industry, *enjo kōsai* appears as a form of ‘social intercourse’ that would give opportunities to adolescents to explore themselves, meet members of ‘other social groups’ and by doing that, improve their social skills and discover the wider society, in order for them to prepare for the future. Moreover, as presented in Section 3.2., the prevalence of male dominance, and the importance of the respect for adults and elders, lead to discrimination towards children, where youth

¹⁹⁴ See note 68 (visited 2nd May 2016)

¹⁹⁵ P.W. Galbraith, J.G. Karlin, *Idols and Celebrity in Japanese Media Culture*, 2 (2012)

¹⁹⁶ *The Dark Side of the Japanese Idol Industry*, Japan Info (2015), <http://jpninfo.com/12837> (visited 6th June 2016)

¹⁹⁷ See note 62, at 327

This can be linked with the development about the involvement in the juvenile justice system, Section 3.2.3.

¹⁹⁸ M. L. Johnson, J.R. Johnson, *Daily Life in Japanese High Schools*, Japan Digest (1996), <http://spice.fsi.stanford.edu/sites/default/files/digest9.pdf> (visited 7th June 2016)

¹⁹⁹ See note 11, at 6 §18-19

²⁰⁰ See note 68 (visited 2nd May 2016)

are expected to work hard towards adulthood and only considered worth being taken into account when they reach the age of majority. As a consequence, female children suffer from a triple discrimination: gender inequality, ageism, and sex negativity²⁰¹.

In conclusion, the conjunction of all these elements - consumerism, glamorisation by the media, lack of social skills, multiple discrimination - may partially explain why teenage girls decide voluntarily to engage in *enjo kōsai*. The young girls do not see any wrongdoing or immorality in becoming engaged in *mizu shobai* activities involving older men, as these activities are presented as desirable and rewarding. This, coupled with the extreme sexualisation of children, especially girls, by the media in various materials, and the large exposure of children to sexual or sexualised content - in movies, games or ads, for example - encourages rapid development and popularity of the JK Business. It also increases the interest of men and girls in engaging in it, men due to their attraction for ever-younger women, and girls due to the benefits they see in it. Indeed, this activity fulfils the girls' need for money, help them improve their social experience, and empower them by providing them with the skills, independence and self-confidence they need to evolve positively in their society.

In these circumstances, *enjo kōsai* is seen by the population either as a benign form of social experimentation that young people engage in to pass through adolescence into adulthood by learning with adults how to behave in mature relationships²⁰² or alternatively as an example of youth gone astray, requiring the intervention of authorities to punish and redress 'delinquent' children. Unfortunately, both of these conceptions have consequences on the way *enjo kōsai* is dealt with, especially at the legal level. Indeed, *enjo kōsai*, as explained in Section 3.2., may have disastrous consequences for children, and facilitates children's - sexual - exploitation. Due to the fact that they consented to the practice and decided to conduct their business by themselves²⁰³, children are therefore at risk of abuses, and in need of protection. The denial by the State, and by society at large, to acknowledge this fact is contrary to their right to protection²⁰⁴ under the CRC²⁰⁵, the OPSC²⁰⁶, and the ILO Convention n°182²⁰⁷. It is also contrary to the commitment adopted during the World Congress against Commercial Sexual Exploitation of Children²⁰⁸. Moreover, the lack of protection of children engaged in these activities has been pointed out by the Special Rapporteur on the sale of children, child prostitution and child pornography, who notably deplored the lack of involvement of the State and of the media in acting against the sexualisation of minors in the materials publicly available²⁰⁹.

²⁰¹ See note 62, at 333

²⁰² See note 68 (visited 2nd May 2016)

²⁰³ This will be elaborated on in Section 3.4.

²⁰⁴ See note 59, at 1

²⁰⁵ Especially articles 6, 19, 24, 34 and 36

²⁰⁶ Especially articles 3, 8 and 9

²⁰⁷ Article 3

²⁰⁸ First World Congress against Commercial Sexual Exploitation of Children, The Stockholm Declaration and Agenda for Action (1996)

Second World Congress against Commercial Sexual Exploitation of Children, The Yokohama Global Commitment (2001)

Third World Congress against Commercial Sexual Exploitation of Children, The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents (2009)

²⁰⁹ See note 11, at 16 §63

3.3.4. Discussion

The aforementioned developments provided a basis for the analysis of the fulfilment of criterion © of the Joint Recommendation/General Comment by the social norms existing in Japan. In the rationale behind the Joint Recommendation/General Comment, the drafters clarify that “*harmful practices are deeply rooted in social attitudes according to which women and girls are regarded as inferior to men and boys based on stereotyped roles* » and that « *harmful practices are grounded in discrimination based on sex, gender and age, among other things, and have often been justified by invoking sociocultural and religious customs and values, in addition to misconceptions relating to some disadvantaged groups of women and children*”²¹⁰. These precisions enable the drafters to considerably widen the scope of the qualification of ‘harmful practices’ to all violent behaviours imposed upon women and children by social norms. Although the forced character of *enjo kōsai* will be developed further below²¹¹, some conclusions may already be drawn regarding the existence of social norms encouraging the practice.

In the presentation of the Japanese social and cultural context, this thesis noted that women and children are subjected to discrimination in favour of adult men. In this context, young girls, more specifically, are subjected to multiple forms of discrimination due to their age and gender. The model of male dominance, which constitutes an element of the Japanese society, has contributed to the development, over the years, of a discriminatory environment, as was developed above. In these circumstances, it should therefore come as no surprise that practices undermining the status of women and young girls, such as presented in the Section 3.3.3.2., would flourish and expand rapidly, thus reducing women and girls to mere consumer goods. Moreover, the extreme sexualisation of underage children, not only by the media but also in their virtual representations, further exacerbates the commodification of female children and legitimates their use in JK Business, including *enjo kōsai*.

UNESCO defines culture as “*the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, [which] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs*”²¹². This definition clearly demonstrates that the cultural context of a society encompasses various elements, which, put together, can lead to the emergence of various practices. This thesis argues here that *enjo kōsai* should be considered as such a practice, born from the social norms and lifestyle existing in Japan. Indeed, the existence of long-lasting gender discrimination, which confines women to determined roles – wives, companions –, male dominance, and the over-sexualisation of ever younger children constitute a significant part of Japanese people’s value system, and the importance of the *mizu shobai* industry aptly summarises their lifestyle and system of social relationships.

It could be argued that *enjo kōsai* was never meant to be created and is simply an unfortunate by-product of the *mizu shobai* culture and therefore was not ‘prescribed’ by social norms, as is provided in the Joint Recommendation/General Comment. Indeed, as is explained by one author, there may be disagreements in a society about the recognition of a practice as part of this society’s culture; however, the mere fact that there is a lack of unanimity amongst the members of a society as a basis to deny the existence of cultural traditions is an invalid argument²¹³. Hence, although this thesis does not deny the unintended character of the practice, it also argues that the latter was undeniably fostered by the highly sexualised environment and facilitated by the broad tolerance of the State and society towards the fact that older men would pay for a date with a schoolgirl.

²¹⁰ See note 32, at 3 §6-7

²¹¹ See Section 3.4.

²¹² UNESCO, Universal Declaration on Universal Diversity, Preamble (2002)

²¹³ A.Dundes Renteln, The Cultural Defence, 11 (2004)

In conclusion, *enjo kōsai* can undoubtedly be considered as fulfilling the elements of criterion © of the Joint Recommendation/General Comment, as it is a practice that is "kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors"²¹⁴. Indeed, it presents a host of discriminatory behaviours towards women and children, as set out in the criterion, and is perpetuated by the social norms and lifestyle peculiar to Japanese people, that were examined throughout this chapter.

However, it is important to emphasise the fact that *mizu shobai* institutions, especially those related to prostitution and sexual services, are neither illegal, nor harmful or dangerous, as long as they are conducted in the respect of human rights and of the national law. However, as elaborated above, it has opened the door to undesirable by-products, most notably the JK Business. Cultural tolerance towards these types of activities, even when carried out by underage girls therefore constitutes a infringement of human and children's rights instruments, as it negatively affects children's development and dignity. In this context, it would be beneficial for state authorities to emphasise the distinction between the permissible activities - those with adults - and the illegal ones - those with children - and to encourage the population, as well as the local authorities, to understand and respect this distinction.

This thesis has already demonstrated the fulfilment by the practice of *enjo kōsai* of criteria (a), (b) and (c) of the Joint Recommendation/General Comment. The final criterion of this instrument is that of the forced character of the practice. This criterion is of particular importance to the context of this thesis, given the belief on the one hand that the practice was not imposed on girls but chosen by them, and on the other, the subsequent reaction of the society towards these girls, based on this conception. These concepts will be examined hereafter.

3.4. Consent and forced character

3.4.1. Introduction

The last criterion of the Joint Recommendation/General Comment, in order to qualify a practice as 'harmful practice', focuses on the forced character of the practice. The discussion in this chapter will therefore strive to determine whether or not *enjo kōsai* was imposed on schoolgirls by the society or if it constitutes only a trend, leading many of them to engage voluntarily in the practice, without any outside influence.

As mentioned in the previous chapter, some consider the involvement of young girls in *enjo kōsai* as a way of improving their social skills and discovering their sexuality²¹⁵. In this context, the question arises as to whether or not teenagers have a right to explore their sexuality, and to what extent this right could be narrowed to protect them against abuses and violence.

In this regards, it is important to remind the reader that this thesis does not strive to provide a psychosocial study on the sexuality of adolescents in Japan. This part will therefore only be devoted to a discussion regarding the existence of a right of adolescents to experiment with their sexuality, and the difficult balance between freedom to experiment and protection against abuses. It should also be noted that this thesis considers the term 'sexuality' as encompassing not only sexual behaviours, but also all behaviours intervening in the seduction's game.

Furthermore, as explained in Section 3.2., the fact that the schoolgirls voluntarily engaged in the practice and consented to meet older men against money encourages many Japanese people in thinking that the girls should bear the consequences of their acts, as negative as they could be. Such

²¹⁴ See note 32, at 6 §16(c)

²¹⁵ See Section 3.3.3.3.

opinion is often shared by the police forces. This conception, coupled with the low age of consent provided by the law²¹⁶ - thirteen years old -, creates a legal loophole, used by the schoolgirls, their clients, and the police forces to legitimate the practice of *enjo kōsai*.

Although the criterion (d) clearly specifies that the existence of a « full, free and informed consent » from the victim is not relevant to the assessment of the qualification of a 'harmful practice', this chapter will nevertheless examine the characteristics of children's consent in this particular practice and to what extent it should be taken into account when adolescents decide to engage in such potentially damaging experiences.

This section will therefore firstly examine the existence and extent of a right of sexuality for children (3.4.2.). Secondly, it will examine the notion of consent and its importance in the frame of children's rights (3.4.3.). Lastly, the fulfilment of criterion (d) of the joint Recommendation/General Comment by the practice of *enjo kōsai* will be assessed (3.4.4.).

3.4.2. Right to explore one's sexuality

The Committee on the Rights of the Child, in its General Comment n°4 on adolescent health and development²¹⁷, recognised adolescence as a period of important changes for the child during which the child must be provided with all necessary information and guidance to grow up in optimal conditions and become a fully fledged adult, especially regarding his/her sexual and reproductive health. Indeed, during this period, children are more likely to be subjected to social and peer pressures, and this may cause them to engage in risky behaviours and as a consequence, be irreversibly harmed, physically or mentally²¹⁸ - STDs, PTSD, abuses, among others. Moreover, this conception is reinforced, notably, by the Programme of Action of the ICPD and the Fourth World Conference on Women²¹⁹, which emphasised the importance of teenagers to be provided access to information and services that will "enable them to deal in a positive and responsible way with their sexuality"²²⁰.

These statements and recommendations highlight the acknowledgment that adolescents have a sexuality of their own, which they tend to experiment earlier than before, especially due to their wide exposure to sexual and sexualised materials, through the media and the entertainment industry²²¹. It is, thus, of the utmost importance to provide them with the tools necessary for them to experiment safely. On the other hand, it is also vital to protect all children against violence and sexual abuses that they may suffer when engaging in sexual activities. On this point, the Canadian Committee on Sexual Offences against Children and Youth stated already thirty years ago that "the most difficult issues for law is to strike an appropriate balance between protecting children from sexual abuse and exploitation, on the one hand, and permitting the sexual expression of young persons as they proceed through adolescence into young adulthood, on the other"²²². The discussion regarding the difficulty to strike a balance between sexual experimentation and child exploitation is therefore not a new one. However, it

²¹⁶ See note 113, articles 176-177

²¹⁷ See note 120

²¹⁸ Id., 1§2

²¹⁹ United Nations, Report of the Fourth World Conference on Women, UN. Doc. A/CONF.177/20/Rev.1, 111 §267 (1995)

²²⁰ United Nations, Report of the International Conference on Population and Development, UN. Doc. A/CONF.171/13, 44 §7.3 (1994)

²²¹ K. Walsh, *The Sexual Rights of Children and the Age of Consent*, 2nd Global Conference on Good Sex, Bad Sex: Sex Law, Crime and Ethics, 9 (2010)

²²² Committee on Sexual Offences Against Children and Youth, *Sexual Offences Against Children in Canada: Report of the Committee on Sexual Offences Against Children and Youth* (1984)

now manifests itself in new ways, through the controversies surrounding the development of new practices, such as *enjo kōsai* and the JK Business.

This balance, and the deriving perception of a right to experiment one's sexuality, may differ depending on the cultural context and social norms of a society²²³. Indeed, societies worldwide have different views on children's sexuality, some stricter, and others more permissive. In various places in the world, discrimination is even made between boys and girls, mainly due to the perception of girls and women as temptress, and of boys and men as having natural sexual desires. In some societies, it is additionally considered that girls belong to their male relatives or husband, and are therefore deprived of any right on their body²²⁴. As a consequence, the perception of adolescents' sexuality varies greatly and it is not possible to find a universal model.

As was developed above, the situation in Japan is complex²²⁵. Indeed, on the one hand, (i) the quasi permanent exposure of children to sexual and sexualised material representing or targeting them, emphasised by the media, (ii) the almost open encouragement by the entertainment industry towards young girls to engage in sexualised activities, and (iii) the lack of action from the local and national authorities to prevent this sexualisation of children, function as an incentive for adolescents to engage in various behaviours and experiment their sexuality. Moreover, as was developed above, teenagers' lives are influenced by trends, and *enjo kōsai* is a form of trend for Japanese girls. They consider this type of activity 'lightly', and for them, it is a simple "form of sexual exploration and with tangible as well as stable profits"²²⁶. It is considered, by some parts of the society as a way of discovering their body and the power it can exercise on men²²⁷, and claiming their ownership on their body and their independence. In this context, *enjo kōsai* is considered as an activity encouraging teenagers to experiment with their sexuality, in order to prepare for more mature relationships in the future. The age of the partner in these cases is not relevant, neither for the girls, who are looking for wealthy clients, interested in younger bodies, nor for society, which tends to consider it an exercise of mature relationships. In addition, it is interesting to note that some of these girls have a boyfriend, with whom they might or might not be sexually active, and who is usually not aware of his girlfriend's activity²²⁸. Their clients are in these cases a way to 'spice up' their relationships, while also making money.

On the other hand, (i) the tendency to separate male and female adolescents, in order to prevent them from socialising too much and thus being distracted from their studies²²⁹, (ii) the widespread view of adolescents as 'pure and innocent' who should remain as such until adulthood, and (iii) the conception of *enjo kōsai* girls as 'delinquents' may lead some to think that it is neither desirable nor moral for teenagers to experiment activities that are supposed to be reserved to adults.

The situation, thus, appears to be complex and paradoxical. One could therefore wonder where to draw the line between protection and freedom²³⁰, as the cultural context itself does not seem to define it clearly, and whether *enjo kōsai* should be considered as a way to explore one's sexuality or as a harmful activity, from which adolescents need to be protected. Indeed, no explicit right to explore one's sexuality exists in the human rights instruments. However, as mentioned in the beginning of this

²²³ See note 221

²²⁴ Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of the United Arab Emirates, UN. Doc. CRC/C/ARE/CO/2, 9 §47 (2015)

²²⁵ See Section 3.3.

²²⁶ See note 62, at 330

²²⁷ J. Smyth, *Enjo Kōsai: Teen Prostitution, a Reflection of a Society's Ills*, The Tokyo Weekender (1998), http://flatrock.org.nz/topics/men/name_brand_beauties_on_sale.htm

²²⁸ See note 39, at 323

²²⁹ See note 198 (visited 7th June 2016)

²³⁰ S. Van der Hof, B-J. Koops, *Adolescents and Cybercrime: Navigating Between Freedom and Control*, 3 Policy & Internet, 1 (2011)

section, children are provided with rights related to their sexual and reproductive health²³¹. These rights ensure them mainly information and access to services, such as sexual education, psychological support, access to health facilities, family planning, to cite some. Amongst these rights, a particularly important one relates to the access to sexual education. Indeed, through widespread and accurate sexual education, not only to the children, but also more widely to the whole population, it is possible to initiate a change in the mentalities regarding gender stereotypes and the particularity of adolescents' sexuality. Moreover, the European Court of Human Rights ruled, in several cases, that sexual identity is encompassed in article 8 ECHR²³², but that this right is not absolute and may be restricted²³³. Although Japan is not a State Party to this Convention, and is therefore not bound by it, the mention of such interpretation is interesting for the argument developed in this sub-section.

A useful example of the aforementioned paradox between freedom and protection focuses on 'sexting', which may be defined as "the sending and receiving of sexual suggestive or explicit pictures"²³⁴. Many adolescents are now using their mobile phone to send 'sexts' to their partner. Some authors argue that it is part of the dating process and of the experimentation of their sexuality by adolescents²³⁵, while other consider it as child pornography produced by the child himself, who would be in a position of self-exploitation²³⁶. In such cases, the child may therefore appear at the same time as a victim and as an offender of self-exploitative child pornography. These situations being contradictory, the question arose therefore as whether children have a right to 'sext', which would be considered as encompassed in a right to explore one's sexuality. Again, opinions diverge. However, as was mentioned above, the European Court of Human Rights ruled in favour of the sexual identity as encompassed in the right to private life, acknowledging, however, that restrictions are allowed, if they meet requirements of necessity and proportionality²³⁷. The same dilemma arises in the regulation of *enjo kōsai*. The difficulty in both these cases is therefore to determine which behaviours would or would not lead to harmful consequences for the children involved, and which legal response would be appropriate in the different situations²³⁸.

As noted already, sexual and sexualised materials are widespread, and extensively available in Japan. However, they usually give a distorted image of sexuality, based essentially on violent behaviours. Moreover, talking about sex is a taboo, and although sexual education was included in the school curriculum, teachers, as well as parents, are generally reluctant to talk about it. Children thus do not have many people to turn to when in search of information. The internet, and the available materials, therefore become their source of information and feed them with misconceptions about sex, leading some of them to think that it is dirty, others that violent sexual intercourse with older people is a normal and desirable behaviour²³⁹.

In light of these developments, this thesis argues that children have a right to explore their sexuality freely. However, when children engage in activities that might expose them to various risks – sexual

²³¹ The Human Rights of Children and their Sexual and Reproductive Health, http://www.reproductiverights.org/sites/default/files/documents/pub_fac_adoles_rtsfchildren.pdf (visited 13th June 2016)

²³² Article 8 ECHR – Right to respect for private and family life

²³³ A. Gillespie, *Adolescents, Sexting and Human Rights*, 13 Human Rights Law Review, 623, at 634 (2013)

²³⁴ See note 230, at 14

²³⁵ M. Levick, K. Moon, *Prosecuting Sexting as Child Pornography*, 44 Valparaiso University Law Review, 1035, at 1038 (2010)

²³⁶ See note 233, at 626

²³⁷ Article 8(2) ECHR

²³⁸ A. Slane, *Sexting and the Law in Canada*, 22 Canadian Journal of Human Sexuality, 117, at 118 (2013)

²³⁹ M. Osumi, *Woman leads sex education drive to enlighten clueless youths*, The Japan Times (2016), http://www.japantimes.co.jp/news/2016/01/03/national/woman-leads-sex-education-drive-enlighten-clueless-youths/#.V15_Jyjnj6c (visited 13th June 2016)

abuses, violence, psychological aftereffects, exploitation, for example -, it is not the behaviour of the child alone that must be taken in consideration – as is often the case – but the whole relationship. Indeed, the age of the partner, the existence of compensation, as well as the conditions in which the meetings take place, are distinctive elements that should also be taken into consideration when determining which activities are or not harmful. *Enjo kōsai* undeniably presents risks for the teenagers who involve in it. As such, although it may be considered by some parts of the society as a way for teenagers to experiment mature relationships, it should be considered as unhealthy and harmful for them. Subsequently, measures should be taken in order to prevent the practice from occurring.

These reflections allow us to draw the line between behaviours that can be considered as natural for adolescents and those that are not and should be regulated. Moreover, although it is of the utmost importance to implement measures to prevent the over-sexualisation of teenage girls, and prosecute their clients, the reflection should also focus on the girls themselves, and whether the practice is imposed upon children by the cultural context, by the partner, or by both. In addition, although it is deemed superfluous by criterion (d) of the Joint Recommendation/General Comment, the extent of the girls' consent in the practice must also be examined, due to the importance played by the consent in the conception of *enjo kōsai* by the society at large, the police forces, the clients, and the girls themselves. This will be developed hereafter.

3.4.3. Consent

Although the existence of consent is irrelevant in the application of the criteria of the Joint Recommendation/General Comment, the fact that most of the girls who engage in *enjo kōsai* do it on their own free will, as was developed above²⁴⁰, must be taken into account. Indeed, due to the low age of consent, legal loopholes are created and used by the different stakeholders – the girls, the police forces, the clients – in their interest (3.4.3.1.). Moreover, as was also developed previously²⁴¹, the cultural context of the Japanese society and the peculiar conception of sexuality lead adolescents to willingly engage in potentially harmful activities, without fully understanding, on the one hand, the risks to which they expose themselves, and on the other hand, the fact that they are simply perpetuating gender stereotypes and discriminatory social norms (3.4.3.2.). This close interaction between cultural context and consent legitimates, therefore, the examination of this concept before assessing whether the practice under examination is “*imposed on women and children by family members, community members or society at large*”²⁴².

3.4.3.1. Age of consent and paradoxical situations

The age of sexual consent is fixed at thirteen years old in the Japanese law²⁴³. However, The Act on Punishment²⁴⁴ and the Child Welfare Act²⁴⁵ provide protection to children against sexual abuses and exploitation, considering children as being all people under eighteen years of age. Moreover, as was presented above²⁴⁶, the minimum age of criminal responsibility is set at fourteen years of age. A legal loophole is therefore created by the coexistence of these laws. Indeed, these laws may be interpreted in various ways depending on who is relying on them and several difficulties therefore arise, which hinder the effective protection of children against sexual exploitation.

²⁴⁰ See Section 2.3.1.

²⁴¹ See Sections 3.3 and 3.4.2.

²⁴² See note 32, at 5 §16

²⁴³ See note 113, articles 176-177

²⁴⁴ See note 13, article 2(1)

²⁴⁵ Child Welfare Act, articles 4 and 34(1)(vi) (1947)

²⁴⁶ See Section 3.2.3.

Firstly, contradictions may be noted in the existing protection. The aforementioned Act on Punishment, the Anti-Prostitution Law²⁴⁷ and the Penal Code²⁴⁸ protect children against sexual abuses and exploitation and child prostitution to varying extents. The definition of child prostitution is notably wider in the Act on Punishment than in the Anti-Prostitution Law, ensuring a better protection to children. However, the age of consent defined in the Penal Code hinders this protection. Indeed, the Penal Code, as well as the Anti-Prostitution Law, present consensual sexual activities as part of the sexual freedom, even when compensated²⁴⁹. Only when force or coercion is used against a person over thirteen years of age is the behaviour considered illegal. As such, consensual intercourse is therefore accepted as legitimate, as long as the girl is over thirteen – under this age, the activity becomes a statutory rape, and is in all cases illegal²⁵⁰. Secondly, the protection provided focuses mainly on sexual abuses and exploitation, therefore leaving aside the non-sexual compensated activities²⁵¹. This fails to protect effectively all the schoolgirls involved in *enjo kōsai*. Lastly, a difficulty arises when the time comes to prove the existence of compensation, or of violence or coercion²⁵². While the former would bring proof of the breach of the Act on Punishment, the latter would prove the breach of the Penal Code. Without such evidence, the illegality of the activity is not ensured, as the legal framework, regardless of the age of the partner, does not prohibit consented sexual intercourse with a minor over thirteen years of age. Moreover, the Penal Code requires a complaint from the victim for the prosecution of the offender. Although the Act on Punishment does not, little may be achieved without solid evidence against the client, such as the testimony of the girl. The latter, however, is rarely keen to file a complaint against one of her clients, either out of fear of retaliation, loss of popularity, shame, or prosecution by police authorities²⁵³, or because she developed a profitable business and has no intention of ending it²⁵⁴.

These legal loopholes may be interpreted differently depending on the interests of the one relying on it. *Enjo kōsai* girls and their clients will usually invoke their sexual freedom in order to be able to continue their activity, or will claim that no sexual activity is conducted, avoiding therefore the scope of the existing legal instruments. Police forces, on the contrary, whose attention seem to focus on the girls rather than on their clients as was developed above in this thesis²⁵⁵, will rely on the Penal Code²⁵⁶, the Juvenile Act²⁵⁷, and the Anti-Prostitution Law to claim the illegality of the activities carried out.

The reactions to *enjo kōsai*, however, are largely encouraged by the Japanese cultural context and social norms, which fostered a distorted conception of sexuality and of relationships between men, women and children. This will be examined hereafter.

²⁴⁷ See note 105, article 3

²⁴⁸ See note 113, articles 176-177

²⁴⁹ See note 161, at 32

²⁵⁰ See note 113, articles 176-177

²⁵¹ See Section 3.2.2.

²⁵² The existence of compensation is one of the constitutive elements of the infraction in the Act on Punishment, while violence or coercion is an element required in the Penal Code

²⁵³ See Sections 3.2.2. and 3.2.3.

²⁵⁴ See Section 3.2.4.

²⁵⁵ See Section 3.2.3.

²⁵⁶ See note 113, Chapter VII, article 41

²⁵⁷ Juvenile Act, Chapter II, Section 1, article 3 (1948)

3.4.3.2. Extent of the consent

The definition of the sexual consent at the age of thirteen implies that, above this age, children are considered able to make their own choices regarding their engagement in sexual activities. This is confirmed by the acknowledgment of the sexual and reproductive rights of adolescents and their right to sexuality²⁵⁸. However, as was developed earlier in this chapter, the line between accepted behaviours and harmful ones is difficult to draw, and is heavily influenced by the cultural context and social norms. This context provides children with flawed information about sex, and encourages them to engage in potentially harmful behaviours.

As a consequence, the adolescents who decide to engage in such activities, notably *enjo kōsai*, usually think that they are claiming their independence, and expressing their personal agency, by taking advantage of adult men²⁵⁹. This conception is reinforced by the lack of human rights and sexual education in school and at home, where sex is a taboo topic.

In this context, one may wonder whether the teenage girls who decide to engage in *enjo kōsai* fully understand the risks and consequences of the practice and the impact such activities may have on them in the future. Indeed, although it is not denied that children over the age of thirteen may have developed the cognitive capacities necessary for them to understand such concepts as sexual activities and what they entail, fully informed consent may only be given when the children are provided with all the necessary tools and information to allow them to actually weigh the advantages and risks and then make their decision. It is thus the role of all people responsible of the upbringing of the child in optimal conditions – which include the State, caregivers, educational staff and society at large – to guide him/her through adolescence, as is provided by article 5 of the CRC. However, as already mentioned, such support is not fully offered to children – because of the cultural context and the conception of sex as a taboo, among other reasons.

In these circumstances, this thesis suggests that children cannot be considered as sufficiently informed to be able to give a fully informed consent to the practice. Although this is not significant in the analysis of the criterion (d) of the Joint Recommendation/General Comment, it clearly shows a lack of interest and intervention of the aforementioned stakeholders in the optimal education of Japanese children regarding their rights as children, and their sexuality as adolescents. This subsection's objective was therefore only dedicated to raise awareness to the importance of the respect of children's rights to information²⁶⁰ regarding all matters they might be involved in, and the consequences that this lack of information may create. Building on the aforementioned, the last part of this chapter will focus on the assessment of the fulfilment of criterion (d) by the practice of *enjo kōsai*.

3.4.4. Discussion

The developments examined above provide noteworthy elements for the assessment of the fulfilment of criterion (d) of the Joint Recommendation/General Comment, which considers a practice as 'harmful' when it is "*imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent*"²⁶¹. Indeed, although the nature of the consent given by the schoolgirls when engaging in *enjo kōsai* is not relevant in the case of 'harmful practices', its examination, as well as that of the concept of adolescents' sexuality in the Japanese society provides valuable insight into the decision-making process surrounding the practice of *enjo kōsai*.

²⁵⁸ See Section 3.4.2.

²⁵⁹ See note 161, at 34

²⁶⁰ Article 17 CRC

²⁶¹ See note 32, at 5 §16(d)

The importance played by the cultural context and social norms in the Japanese society has been demonstrated several times throughout this thesis, notably regarding the development of the entertainment industry. In this context, one can therefore question to what extent this context weighs on teenagers and influences their decisions. Although this thesis claimed that adolescents have a right to explore their sexuality, and make their own choices in the matter, the importance of drawing a line between the authorised and illegal behaviours was also emphasised. Indeed, children are not always able to take decisions that are in their best interest, and for which they fully understand the consequences. This thesis suggests that engaging in potentially harmful sexual activities, such as *enjo kōsai* constitutes one of these decisions. The schoolgirls follow a trend, fostered by the media and the sex industry without, however, having all the necessary information to fully comprehend the decision they are making.

It can be argued that the practice of *enjo kōsai* falls under the criterion (d) of the Joint Recommendation/General Comment, due to the aforementioned cultural and social context surrounding adolescents' lives. Indeed, despite the fact that the practice itself is not imposed on children by the society, the distorted conception of sexuality, and the widely accepted fact that it is normal for older men to seek young girls to fulfil their needs – sexual and non-sexual – deceive adolescents in believing such practice as merely a way of experimenting their sexuality profitably. The possibility of such practice is therefore forcibly imposed in their lives and reinforced by their frequent exposure to sexual and sexualised material.

However, it is also true that the personal decision of some schoolgirls to arrange meetings with men in exchange of money is not forcibly imposed on them by anyone. Moreover, this consent is seen by a part of the society as a proof of the 'delinquent' character of these girls, who are characterised as needing to be punished for having been involved in such 'shameful' activities. It is therefore difficult, in such case, to determine whether to consider *enjo kōsai* as imposed forcibly upon schoolgirls.

Therefore, it is difficult to make an explicit argument that the practice of *enjo kōsai* clearly fulfils criterion (d) of the Joint Recommendation/General Comment. This thesis argues that it fulfils partially the criterion, in that the stakeholders involved in the protection of children and their education do not provide them with the necessary tools to take the decision to engage in the practice with full knowledge of the consequences and the impact it can have on their lives. Indeed, the media and the entertainment industry – including the sex industry – encourage them to become involved in unhealthy activities, by widely spreading misconceptions about adolescents' sexuality and by displaying sexual and sexualised materials representing underage girls. Moreover, the State and local authorities do not make enough efforts in preventing such sexualisation of children and the society at large fosters the perpetuation of gender stereotypes and discriminatory behaviours between males and females. Lastly, the taboo character of sex and the unwillingness of parents and teachers to provide children with proper sexual education leave the latter with no choice than to experiment by themselves, using other means to obtain information, such as the Internet, where they may get flawed information.

To elaborate on this argument, a parallel may be operated with the practices of female genital mutilation and child marriage, recognised in the Joint Recommendation/General Comment as harmful practices²⁶². These practices are embedded in the social norms of the countries and communities in which they occur, and the members of these communities feel compelled to respect them, notably out of fear that their children become outcasts if the tradition is not perpetuated in their family²⁶³. The situation is different regarding *enjo kōsai*. Indeed, the children who decide to engage in the practice do so of their own will, and do not feel compelled to perpetuate it as a tradition. They consider it as an

²⁶² Id., at 6 §19-20

²⁶³ UNICEF, Female Genital Mutilation/Cutting: A Statistical Overview and Exploration of the Dynamics of Change, 15, 52 & 74 (2013)

independent activity that they can stop whenever they feel it. The main difference between these practices, therefore, is the fact that practices like female genital mutilation and child marriage are imposed on children by the community and its social norms, without giving any choice to the children, while *enjo kōsai*, on the contrary, is not imposed on children, but fostered through the cultural context, social norms and the behaviour of the community, which encourage children in this choice. In conclusion, this main element of fostering – rather than obligation - leads this thesis to claim that criterion (d) of the Joint Recommendation/General Comment is only partially fulfilled.

However, the partial-fulfilment of one of the criteria of the Joint Recommendation/General Comment by a practice does not mean that, when taking all the criteria into consideration, the practice cannot be considered as a 'harmful practice', though perhaps to a lesser extent. The developments examined throughout this chapter will therefore be assembled and examined hereafter. Conclusions will be drawn regarding the qualification of *enjo kōsai* as a 'harmful practice'.

3.5. Conclusion

This chapter was dedicated to the examination of the different criteria of the Joint Recommendation/General Comment and the evaluation and discussion of the characteristics of the practice of *enjo kōsai*.

The first two criteria examined related to the impact of *enjo kōsai* on children and their rights. This section clearly demonstrated the existence of negative consequences, on the short and long term, for children who decide to engage in the practice, not only physically, but also psychologically. Moreover, these consequences affect both the girls involved in sexual activities and those who only accept non-sexual meetings with their clients. In addition, it was demonstrated that the blame is placed mainly on the schoolgirls, considered as 'delinquents', while the clients are rarely prosecuted.

Regarding the developments of this first part, it is important to emphasise the fact that although the Joint Recommendation/General Comment explicitly mentions various examples of widespread harmful practices, such as female genital mutilation, forced marriage, polygamy and honour crimes, it also provides criteria necessary to qualify a practice as 'harmful practice'. This allows to widen the scope of the prohibition to all practices that fall in the criteria, and could therefore be considered harmful and as such, prohibited by both Conventions. Moreover, the examples used by the Committees illustrate the range of customs that could fall in the scope of the Joint Recommendation/General Comment. Indeed, the examples do not solely include practices that are instantly hurtful and life threatening – such as female genital mutilation - but also some that have disastrous consequences on the longer term – like polygamy or forced marriage. This distinction is important regarding the qualification of *enjo kōsai* as a 'harmful cultural practice'. Firstly, it shows the willingness of the drafters to consider broadly the scope of the qualification of 'harmful practices' so that it does not only cover cultural practices that are old and widely known in the world, but also various types of practices that have adverse consequences on children, despite the fact that they do not constitute a priority for the international institutions. Secondly, the cultural environment surrounding a practice is inherently linked to the practice itself, as, on the one hand, the former fosters the latter, while, on the other hand, the latter becomes a characteristic feature of the former. Subsequently, the broadening by the Joint Recommendation/General Comment of the scope of qualification of a practice as 'harmful practice' also opens the interpretation of the concept of 'culture' to a larger variety of elements susceptible to constitute a culture. A broader interpretation of the concept of 'culture' therefore leads to a deeper understanding of a practice by placing it in perspective with its cultural environment²⁶⁴.

²⁶⁴ See Section 3.3.

The second section examined the third criterion of the Joint Recommendation/General Comment related to the cultural context of the practice and the existence of social norms perpetuating discriminatory behaviours towards women and children. In this section, particular features of the Japanese culture, essential to the understanding of the context in which *enjo kōsai* exists, were analysed. In the first sub-section, the temporal character of the practice was examined, and it was concluded that it could be considered as a re-emerging practice, an updated version of *geisha*, although with important differences existing between these practices, especially regarding the regulation and legal character of both practices.

In the following sub-sections, the social norms behind the development and perpetuation of the practice were examined and their discriminatory character presented. In this part, different elements were analysed. Firstly, the wider cultural and social context related to the relationships between men and women in Japan was examined, which showed a predisposition for the development of a 'companionship industry', due to the propensity for men to stay single, and use professional women to satisfy their needs instead. The gender inequality between men and women was also examined, which demonstrated the prevalence of the belief in male dominance and a discriminatory conception of women. Secondly, the context of the nightlife entertainment industry was examined, including the importance of the sex industry in Japanese people's lives. The commodification of women by these industries and the role of the media in sexualising women and glamorising the entertainment jobs were demonstrated. Lastly, the impact of this particular context on children was assessed, potentially susceptible of explaining the nonchalant involvement of adolescents in the practice of *enjo kōsai*. On that occasion, the characteristics of students' life and what they are exposed to – mass consumerism, discrimination, sexualisation, lack of social skills – were discussed.

Lastly, the last criterion was then examined, linked to the forced character of the practice. This section was devoted to determining whether or not the practice is imposed on children by individuals or by the society at large. In the course of this examination, it was demonstrated that it is important to study the existence of the adolescents' right to explore their sexuality, and the importance and extent of the consent in their decision-making process. In this instance, this thesis concluded that adolescents have sexual rights, which are based on the idea that teenagers are in a period where they are likely to experiment with their sexuality, and should, in such cases, be given support and information so that they can do it safely. The difficulty in drawing a line between the acceptable and the harmful behaviours was also elaborated. In addition, although it is not deemed relevant in the Joint Recommendation/General Comment, the importance of the adolescents' consent in potentially harmful practices, such as *enjo kōsai*, was also developed, in order to highlight the role played by the cultural context and social norms in the decisions made by adolescents regarding their social and sexual life.

These developments lead this thesis to argue that the practice of *enjo kōsai* may be qualified as a 'harmful practice' as provided by the criteria of the Joint Recommendation/General Comment, however, only to a certain extent. Indeed, the main elements of the criteria are demonstrated in that *enjo kōsai* (i) has negative consequences for the schoolgirls, which constitute a breach of their rights as human and children and considerably hamper their development as fully-fledged adults – although they might argue the contrary; and (ii) is surrounded by social norms that perpetuate discrimination and undermining views of women and children. However, the last criterion remains only partially fulfilled, due to the fact that, although the cultural context plays an important role in the perpetuation of the practice, this latter is not imposed on adolescents by this context, by is merely fostered by it. In that sense, the qualification of harmful practice as defined by the Joint Recommendation/General Comment is partially applicable to the practice of *enjo kōsai*.

4. Reaction to the issue of *enjo kōsai*

4.1. Introduction

Japan has, over the years, ratified many human and children's rights instruments and adopted various laws and regulations in order to protect children against abuses and violence. However, their implementation and the effective protection of Japanese children present some visible flaws, especially when girls involved in *enjo kōsai* are concerned. As presented throughout this thesis, the cultural context and social norms are the main reason of these difficulties. Indeed, depending on the law used and its interpretation, the local authorities and police forces tend to consider *enjo kōsai* girls either as 'delinquents' who deserve punishment, or as experimenting adolescents, who are old enough to make their own choices regarding their sexual and dating life – when they are older than thirteen years of age²⁶⁵.

In this context, it is of vital importance that the government, as well as the international community, be aware of the serious violations of these girls' rights that occur, not only when engaged in *enjo kōsai*, but also when handled by the authorities. The purpose of this thesis is not to overly criticise the Japanese legal system regarding children, but rather to identify the legal gaps hindering the prevention of the practice, and to suggest some leads to strengthen the Japanese authorities' response to the issue, and the international community's awareness of the problem. However, if a practice may be qualified as a 'harmful practice', steps taken by the State in order to prevent this practice must be examined. Therefore, a concise discussion of the Japanese government's reaction towards *enjo kōsai* and the impact it has on schoolgirls (4.2.), and the awareness of the international community to the problem (4.3.) will be made in this chapter.

4.2. National level

Several regulations exist in Japan to protect children against harm – in the context of labour²⁶⁶, in cases of sexual abuse²⁶⁷, when using the Internet²⁶⁸, to name but a few. The main instruments applicable to the practice of *enjo kōsai* have already been the subject of analysis and developments in this thesis; this section will therefore not examine these instruments in detail. However, the principal difficulties identified regarding those instruments will be briefly summarised.

The teenage girls involved in *enjo kōsai* face legal loopholes that, on the one hand, serve them when they want to circumvent the law in order to continue their activities, but, on the other hand, prejudice them when interpreted and used against them by the police or by the offenders. Indeed, the definition of various age limits in the legal system creates paradoxical situations in the application of the law. As was presented before, the age of sexual consent is set at thirteen²⁶⁹, while the minimum age of criminal responsibility is set at fourteen²⁷⁰ and the minimum age of employment is fifteen – twelve for determined part-time jobs²⁷¹. These different age limits create contradictions in the application of the legal instruments, and allow the different parties to choose the most advantageous provisions to defend their case. Moreover, as argued by numerous authors, age limits should not be applied to

²⁶⁵ See Section 3.4.3.

²⁶⁶ See note 12

²⁶⁷ See note 13

See also note 113, articles 176-177

²⁶⁸ Law Concerning Regulations of Acts of Soliciting Children Through Matching Business via Internet (2003)

²⁶⁹ See note 113, Chapter XXII, articles 176-177

²⁷⁰ Id., Chapter VII, article 41

²⁷¹ See note 12, article 56

children's behaviours, due to the fact that children evolve differently, each individual at his/her own pace. Therefore, defining age limits in fields where children's behaviour might be based on an informed decision as much as on a mere childish impulse does not take into account these evolving capacities of children²⁷². This is particularly true regarding sexual activities and criminal behaviours. The aforementioned contradictions, coupled with the cultural context and the tendency of authorities and the population to view *enjo kōsai* girls as 'delinquents', while considering normal for older men to be willing to meet young people, leads to inequitable and discriminatory situations for these girls, who constitute the focus of the authorities, rather than their clients. In addition, focusing only on the regulations of the protection against sexual abuses leaves girls who do not choose to have sexual activities with their clients without legal protection, since the latter behaviour is considered as a mere meeting with minors, which is not illegal, as long as no violence, coercion or abuse is involved.

Moreover, the recent comments of the Japanese Government to the report of the Special Rapporteur on the sale of children, child prostitution and child pornography²⁷³ shows the lack of data and accurate information on the extent of *enjo kōsai* and related problems amongst adolescents. It also demonstrates a denial by the Government that *enjo kōsai* constitutes a real problem in the country and that it affects a considerable number of children, according to unofficial statistics provided by various sources²⁷⁴.

Despite these difficulties, the efforts made by the Japanese government in improving its regulations and enhancing the protection of children against any form of abuses must be acknowledged. Indeed, various measures regarding the exploitation of children have been implemented. Legal measures encompass the aforementioned instruments prohibiting the use of children in prostitution and child pornography²⁷⁵, as well as the regulations linked to the use of Internet or of telephone clubs, largely used by teenage girls to come in contact with potential clients²⁷⁶. Other measures include counselling offices, shelters, educational programmes and various other means of support²⁷⁷, which are usually coupled with the action of non-governmental organisations²⁷⁸.

More recently, the Tokyo Metropolitan Police Department decided to introduce new instruments or revise older ones in order to tighten the regulations regarding the JK Business, since they are not subjected to the laws applicable to the sex industry²⁷⁹. Despite the fact that the new rules would only apply to legally recognised businesses, and therefore not to the activities organised independently by many girls, this decision is welcomed, as it constitutes a recognition of the problem presented by the JK Business, and a first step to tackle the issue. One can only hope now that the movement will continue to extend geographically, and will target all forms of JK Business, not only professional ones, but also those carried out independently.

²⁷² See note 140

²⁷³ Comments by the Government of Japan on the Report of the Special Rapporteur Regarding her Mission to Japan, UN. Doc. A/HRC/31/58/Add.3 (2016)

²⁷⁴ Amongst some, see note 227 (visited on 19th June 2016)

²⁷⁵ See notably note 13

²⁷⁶ See note 268

See also note 18, at 11 & 20

See also note 40

²⁷⁷ See note 18

²⁷⁸ Colabo, notably, is an organisation working with *enjo kōsai* girls and providing them support, food, and more generally help in order for them to find a way towards a normal life: <http://www.colabo-official.net>

²⁷⁹ *Panel Urges New Regulatory Oversight for 'JK' Schoolgirl Dating Services*, The Japan Times (2016), <http://www.japantimes.co.jp/news/2016/05/25/national/panel-urges-new-regulatory-oversight-jk-schoolgirl-dating-services/#.V2ZBYSjn6f> (visited 19th June 2016)

4.3. International level

Japan has ratified many human and children's rights instruments, notably the CRC²⁸⁰, the OPSC²⁸¹, and the CEDAW²⁸² and is therefore bound by their provisions. These ratifications also allow the international community to be aware of the respect in Japan of the rights enshrined in these Conventions, through the action of these Conventions' Committee – the periodic reviews.

The analysis of the Concluding Observations of these Committees demonstrated the recurrence of some concerns already expressed above in this thesis. Firstly, the prevalence of discriminatory behaviours and gender-based stereotypes affecting women and children were expressed in various Concluding Observations. Indeed, although the efforts of the State in improving the human and children's rights' situation are not denied - but on the contrary, largely acknowledged - the cultural context and social norms prioritising male dominance are persisting, and hinder an effective action of the State²⁸³. Moreover, the influence of Internet²⁸⁴ and the media in the perpetuation of these stereotypes was recognised²⁸⁵. Secondly, the Committees expressed concerns regarding (i) the low penalties provided in case of violence on, abuse or exploitation of minors and the low rate of prosecution of offenders²⁸⁶, (ii) the need of a claim in cases of rape or forcible indecency²⁸⁷, (iii) the low age of sexual consent, which creates contradictions in the laws and diminishes the protection of children²⁸⁸, and (iv) the treatment of some child victims as 'delinquents'²⁸⁹. Thirdly, the Committees have deplored the lack of data on the situation of the rights of children, which would allow an easier identification of areas of concerns²⁹⁰. Lastly, the lack of dissemination of the Conventions, and especially the lack of education on human and sexual rights, which leads to the perpetuation of cultural biases and stereotypes towards women and children, was explicitly pinpointed²⁹¹.

²⁸⁰ In 1994

²⁸¹ In 2005

²⁸² In 1985

²⁸³ Report of the Committee on the Elimination of Discrimination Against Women, UN. Doc. A/49/38 (SUPP), 101 §549, 558, 570 (1994)

See also, Report of the Committee on the Elimination of Discrimination Against Women, UN. Doc. A/58/38, 134 §359 (2003)

²⁸⁴ Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 12, Paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, UN. Doc. CRC/C/OPSC/JPN/CO/1, 4 §32 (2010)

²⁸⁵ Committee on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Japan, UN. Doc. CEDAW/C/JPN/CO/6, 6 §29, 7 §35 (2009)
See also, Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eight Periodic Reports of Japan, UN. Doc. CEDAW/C/JPN/CO/7-8, 5 §20 (2016)

²⁸⁶ Report of the Committee on the Elimination of Discrimination Against Women, UN. Doc. A/58/38, 135 §363 (2003)

²⁸⁷ Committee on the Elimination of Discrimination Against Women, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Japan, UN. Doc. CEDAW/C/JPN/CO/6, 7 §33 (2009)

²⁸⁸ Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eight Periodic Reports of Japan, UN. Doc. CEDAW/C/JPN/CO/7-8, 6 §22 (2016)

See also Committee on the Rights of the Child, Concluding Observations: Japan, UN. Doc. CRC/C/15/Add.231, 5 §22 (2004)

²⁸⁹ Committee on the Rights of the Child, Concluding Observations: Japan, UN. Doc. CRC/C/15/Add.231, 11 §51(c), 12 §53 (2004)

²⁹⁰ See note 284, at 1 §5

See also Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: Japan, UN. Doc. CRC/C/15/Add.90, 2 §9 (1998)

²⁹¹ See note 287, at 4 §19

See also note 289, at 4 §20

This thesis deems regrettable that so few explicit references to the practice of *enjo kōsai* are made in the Concluding Observations of the Committee on the Rights of the Child - only one reference in four Concluding Observations²⁹². No other mention to this issue, and more generally to the larger problem of the JK Business, is made in the Concluding Observations of the examined Committees. However, the most recent Concluding Observations of the Committee on the Rights of the Child date back to 2010. Therefore, given the latest report from the Special Rapporteur on the sale of children, child prostitution and child pornography²⁹³, which extensively addresses the problem, this thesis hopes that the next cycle of Concluding Observations of the aforementioned Committee will tackle the problem more seriously.

Moreover, the lack of awareness of the international community to this issue appears also in the documents of the international non-governmental organisations. Indeed, except for ECPAT, which issued documents addressing explicitly and extensively the issue in 2004²⁹⁴ and 2006²⁹⁵, no other international NGO addresses this issue substantially. Local NGOs are indeed involved in the problem²⁹⁶, but their publications are only in Japanese, which limits the audience to which these types of information are available. One could think that communication between local NGOs and INGOs based in Japan would facilitate the resolution of the dissemination difficulties, as the former could convey the information to the latter, which could then internationally raise awareness about the issue. However, in practice, the field of action of the INGOs is essentially centred on overseas programmes and they have different priorities²⁹⁷. This lack of communication between both institutions therefore hampers a wide dissemination of the local NGOs' information.

4.4. Conclusion

Although the Japanese authorities are making sizeable efforts to improve the human and children's rights' situation in the country, important difficulties still exist, as exemplified by the practice of *enjo kōsai*. Indeed, legal measures, as well as other types of measures – preventive or re-integrative -, have been adopted throughout the years to protect children against harm. However, the main problem faced by these measures lies in the existence of strong discriminatory social norms and gender-based stereotypes, which give the prevalence to the adult males over women and children. In this context, the protective and preventive measures cannot be effectively implemented as long as this cultural environment persists. The situation in Japan may therefore be defined as such: equality is acquired *de jure*, but not *de facto*. Theoretically, children are protected against harm and discrimination, but in practice, the persistence of discriminatory social norms prevents the laws to be fully effective. The efforts deployed by the State in adopting measures must, therefore, be coupled with efforts to change the mentalities. However, this last statement presents a major problem. Indeed, the examination of the Concluding Observations has shown strong reluctance of the State to acknowledge the existence of various issues, especially when they place the country in a bad light. The practice of *enjo kōsai* is subjected to the same treatment. This appears notably in the Comment by the Government on the Report of the Special Rapporteur on the sale of children, child prostitution and child pornography²⁹⁸.

²⁹² See note 289, at 11 §51

²⁹³ See note 11

²⁹⁴ See note 59

²⁹⁵ See note 18

²⁹⁶ <http://www.colabo-official.net>

²⁹⁷ See the programmes of action of UNICEF Japan, <http://www.unicef.or.jp/> (visited 6th July 2016), Save the Children Japan, <http://www.savechildren.or.jp/> or Plan Japan, <https://www.plan-international.jp/english/organization.html>

²⁹⁸ See note 273

The lack of willingness to investigate into cultural problems, and provide information about it, hinder the effective implementation of the measures adopted, and thus creates a vicious circle.

Moreover, as was developed earlier, the national and international regulations are largely centred on the prohibition of child prostitution and sexual abuses and violence on minors. This result in the framework not encompassing the non-sexual activities carried out by the schoolgirls in the frame of *enjo kōsai* – such as dinner or stroll, amongst other activities -, which also impact the schoolgirls but are subsequently not covered by any law.

In conclusion, the practice of *enjo kōsai* and its legal status is characterised in Japan by ambivalent behaviour from the State. On the one hand, measures have been adopted in order to protect children against violence and abuses, but on the other hand, the existence of the practice itself is denied, which creates protection gaps in the applicable regulations, and decreases the protection available to children engaged in *enjo kōsai*. Moreover, this chapter has demonstrated the lack of awareness of the international community to the problem, due to dissemination challenges, both linguistic and relationship based – between the local NGO community and the INGOs.

The qualification of *enjo kōsai* as a 'harmful practice' under the Joint Recommendation/General Comment would increase the awareness, and encourage legal reactions to this practice, in that it would highlight the adverse consequences such a practice has on children, and the causes of its development and perpetuation. It would hopefully also increase the attention given to the problem, not only by the State, but also by the international community. It would therefore put pressure on the State to tackle the problem more seriously, and encourage other countries to examine in their jurisdiction if similar practices occur. The concluding chapter of this thesis will therefore be dedicated to summarising the different findings of this thesis regarding the qualification of *enjo kōsai* as 'harmful practice' and providing some suggestions to the Japanese authorities in order to prevent the perpetuation of the practice.

5. General Conclusion

5.1. Chapter Overview

This thesis was devoted to the examination of the context and reasons surrounding the practice of *enjo kōsai* in order to assess whether the practice can be qualified as a 'harmful practice' under the criteria of the Joint Recommendation n°31 of the Committee on the Elimination of Discrimination against Women/General Comment n°18 of the Committee on the Rights of the Child on harmful practices. The purpose of this analysis was to highlight the complexity of tackling such a practice, due to the numerous elements surrounding its manifestation. Indeed, identifying a practice as a 'harmful practice' under international standards is a useful way of raising awareness about it, but is not sufficient to eradicate it. The existence of deep-rooted discriminatory social norms and gender-based stereotypes usually allows the perpetuation of the harmful practice and the difficulty therefore lies in the need to tackle these discriminatory behaviours before being able to prevent the practice itself.

In the Chapter 2, the origins of *enjo kōsai*, the precursory activities to it and the importance of understanding the complex relationship between the social and business aspects of it were developed. Secondly, the main actors of the practice and their motivations were examined. This chapter allowed the reader to have a substantial overview of the factors that led to the creation of the practice and the reasons that pushed both young and older people to become involved. On this occasion, attention was drawn on the involvement of schoolgirls – and some boys - from different social backgrounds, although the reasons usually diverged. The distinction was thus made between the adolescents involved for "traumatic reasons", and those for "pleasure and utilitarian purposes". This highlights the fact that all Japanese teenagers could be affected by the practice, regardless the social environment in which they live. The use of the Internet and mobile phone was also presented as a convenient way for the girls and their clients to come into contact and arrange compensated meetings without being easily identifiable.

Chapter 3 was dedicated to an assessment of the characteristics of the practice of *enjo kōsai* in order to determine whether it could be qualified as a 'harmful practice' under the criteria of the Joint Recommendation/General Comment. The first section assessed criteria (a) and (b) regarding the impact of the practice on children and their fundamental human rights. The second section examined criterion (c) linked to the cultural context of the practice and the existence of social norms prescribing or perpetuating it. The last section analysed the fulfilment of criterion (d) and the forced character of the practice upon children. Although this element can be considered as superfluous to the fulfilment of this criterion, this section also considered the role played by the consent of the child in the practice, due to its importance in the society's reaction to *enjo kōsai*. This chapter concluded by arguing that *enjo kōsai* can be qualified as a 'harmful practice' but only to a certain extent, due to the fact that adolescents decide freely to engage in it. The practice is indeed not forced upon them, but merely fostered by the cultural context.

These developments allowed the practice of *enjo kōsai* to be examined in perspective with various concepts, notably the importance of the cultural context and social norms of a society in the development of a practice. Indeed, the fulfilment of the criteria of the Joint Recommendation/General Comment is based mainly on the existence of discriminatory behaviours and gender-based stereotypes towards women and children. As was extensively developed in this thesis, Japanese society is based on the concepts of male dominance and respect of elders. Women and children are considered to be inferior to adult males, and female children, especially suffer from multiple forms of discrimination. In this context, adolescent girls are therefore eager to break from these prejudices and claim their independence. As was explained above, one profitable way that they discovered to achieve this was to become involved in activities such as *enjo kōsai*, which they consider not only as a rewarding business, but also as a means to exploit wealthy adult men.

However, the distorted conception of sexuality and the misinformation fed to adolescent girls by the media and the entertainment industry largely contribute to their involvement in such potentially harmful activities. Although it is the result of their consent, the decision of schoolgirls to engage in the JK Business, and more particularly in *enjo kōsai*, is mainly the result of the social context that fosters that kind of behaviour without giving the adolescents the necessary tools to take an informed decision about it, thoroughly instructed about the risks and consequences.

The analysis regarding the consent of the children to their involvement in *enjo kōsai* presents some importance in order to effectively determine the steps to be taken to prevent the practice. Indeed, due to the fact that it is not imposed by the community at large, but fostered by the underlying existence of discriminatory social norms, the measures to be taken to tackle the problem diverge from those taken in cases where the practice is known and considered as a tradition by the whole community. For instance, in the cases of female genital mutilation or child marriage, the measures adopted and awareness-raising campaigns have to target the whole population, in order to draw the attention of the community at large on the adverse consequences of the traditional practice. In the case of *enjo kōsai*, a large portion of the population does not feel compelled to pay attention to the problem, considering that it is the fault of the girls themselves for having become involved in such shameful activities. To summarise, in the former case, the population is aware of the fact that the girls do not have the choice to be subjected to female genital mutilation or to be married, although they might agree to it. In the latter case, however, the population considers that the practice is a deliberate choice of the adolescents, who should solely bear the consequences of their decisions. This distinction helps frame the necessary measures to adopt to tackle the practice and prevent it from occurring. Some people do not feel concerned by the problem, considering that it falls solely upon the girls' shoulders, some are in favour of it – mainly the girls, their clients, and the entertainment industry –, and some are in disfavour and consider that the girls should be punished for being involved. In such a context, the legal measures adopted in order to prevent the practice have to be adapted to the reaction of these people, in order to effectively draw their attention and increase their awareness of the problem. Suggestions will be made further on regarding the measures to consider.

Chapter 4 of the thesis was devoted to the examination of the reaction to the practice at the national and international levels. This chapter firstly tackled the contradictory behaviour of the Japanese government, desirous to improve the situation of its population and respect their fundamental rights, by adopting numerous legal measures, but at the same time, refusing to acknowledge the existence of deeply rooted discrimination and stereotyped behaviours which foster the ideal context for the development of potentially harmful and degrading practices, such as the subject of this thesis, *enjo kōsai*. Moreover, inconsistencies in the laws, undermining the implementation of an effective protection for children against harm, were identified. Secondly, this chapter highlighted the lack of awareness of the international community to the practice, probably due to the scarcity of documents addressing the topic extensively and in an easily accessible language - such as English.

5.2. Conclusion

In conclusion, the cultural context and environment surrounding the practice of *enjo kōsai* fulfil the criteria of the Joint Recommendation/General Comment to a great extent, allowing this thesis to argue that it can be qualified as a 'harmful practice' under international standards. Such qualification would increase the awareness of the international community to the problem, and hopefully work as an incentive for the Japanese government to intensify its efforts in tackling the cultural background that perpetuates male dominance and discrimination towards women and children, and subsequently fosters such practices as *enjo kōsai*. However, as was already mentioned, this action would not have any concrete consequences unless practical steps are taken.

Nonetheless, this thesis stresses that it is important not to rush the implementation of legal measures. This means that the qualification of *enjo kōsai* as ‘harmful practice’ does not imply that the practice must immediately and completely become illegal, with the consequence of prosecuting all actors involved. Indeed, the impact would only be even more serious. Firstly, it would imply the prosecution of the schoolgirls involved – at least those over the age of fourteen, age of the minimum age of criminal responsibility. Secondly, it would have the adverse effect to drive the practice even deeper underground than it is already. Moreover, forbidding something to children usually makes them want to do it even more, especially if they can benefit from it. Along with their clients, adolescent girls would undoubtedly find new means of communication and more secluded areas to meet, making it more difficult for the authorities to protect these children against harm. In this context, they would be at more risk of being harmed in any way – prosecution, physical or mental harm, etc. – than they are now. Caution is therefore needed when deciding to tackle a practice based on a cultural context and social norms so deeply rooted in the society. As such, measures have to be taken gradually, in order to make them accepted by society more easily.

That being said, it is important to clarify that it is not the purpose of this thesis to argue that all activities related to prostitution or JK Business should be made completely legal or illegal, or that drastic changes should be undertaken immediately. On the contrary, the following will offer suggestions in order to change the cultural context and mentalities in Japan, causes of the development and perpetuation of the practice, with the aim, in the end, to eradicate the practice and prevent it from re-emerging. For the time being, this thesis suggests that it would be wiser to use the current regulations and apply them in the best interest of the child²⁹⁹ - that is to say, prosecuting the clients for child exploitation and offering support to the girls -, while working, in the same time, on a change of mentalities. The changes operated would strive to reach a *de facto* equality between men, women and children, and raise awareness regarding children’s rights and the abuses they may suffer by engaging in JK Business activities. This would ensure the respect of the best interests of the child, and ensure a stronger enforcement of the non-discrimination principle³⁰⁰. Only later, once this objective fulfilled, should the law then be modified to prohibit completely and explicitly all activities related to *enjo kōsai* – sexual and non-sexual -, under the qualification of ‘child exploitation’. This qualification would draw the focus on the clients, who would risk prosecution, rather than on the girls victims – as is the case now.

5.3. Recommendations to prevent *enjo kōsai* in Japan

The first step to be taken would be to identify the root causes and reasons of the involvement of schoolgirls and older men in *enjo kōsai*, coupled with the identification of all the actors potentially involved in the practice and its development, directly or indirectly – media, local and national authorities, parents, and the school, most notably. As was mentioned above, all adolescents are potentially at risk of being involved in the practice. However, their reasons usually diverge depending on their social background, and family and/or school environment. This identification would allow to distinguish between various groups and determine adapted measures of awareness-raising targeting each group. For instance, for girls who engage in *enjo kōsai* for recreational purposes, education about their human and sexual rights would be the most efficient way of preventing them to engage in the practice. Alternatively, for girls who are forced to choose such activities for their own survival, the efforts should focus on the support and assistance that would help them grow up in optimal conditions, without having to resort to such potentially damaging activities as *enjo kōsai* to survive.

²⁹⁹ Article 3 CRC

³⁰⁰ Article 2 CRC

At a later stage, the focus should be drawn on the adoption and effective implementation of safeguards and restrictions intended to protect the schoolgirls already involved or becoming involved in *enjo kōsai* and guarantee that they can carry out their activities safely, without actually legalising the practice. As was already mentioned, the existing laws have to be used in the best interest of the child during the period of transition. However, this does not imply that nothing should be done to improve the situation. Indeed, in addition to the laws, efforts should be made to provide schoolgirls with child-friendly procedures allowing them to feel safer to file a complaint in cases of abuse, especially regarding the reaction of police officers to these girls – who often consider them as ‘delinquents’, which does not encourage the girls to go talk to them. In addition to child-friendly procedures, efforts should be made to increase the effective prosecution of offenders, who usually escape conviction.

At the same time as the strengthening of legal procedures, concrete measures should be adopted to tackle the underlying social norms surrounding the practice of *enjo kōsai* and the consequences of the practice on children. Firstly, the government should ensure that the girls involved in *enjo kōsai* are given easy and free access to support and assistance through academic support, and counselling, psychological and medical services. These services would especially benefit the girls who experience difficulties with their families or at school, have low self-esteem and would be easily influenced in engaging in *enjo kōsai* due to the benefit and the confidence it would give them. The existence of easily accessible services would provide them with somebody to whom they could talk freely and seek help.

Secondly, the actors susceptible to influence adolescents’ lives should be involved in the matter. Teachers, police forces and parents should be informed about the existence of such practices, and the fact that all children – mainly adolescents, but not only – may be at risk. Training sessions should be organised in order to prepare to react to such behaviour in the way that is best for the child, that is to say, without considering him/her as a criminal. On the contrary, they should become trustworthy people in the eyes of the child, and be able to offer him/her help and assistance, but also information about the serious consequences that their involvement in the practice may bring. Moreover, media and actors of the entertainment industry should also be involved. Indeed, the latter have a large influence on adolescents and, as was developed above in this thesis, usually spread a sexualised image of teenage girls, and encourage them to get involved in JK Business activities.

Lastly, the most important measure in tackling *enjo kōsai*, and more generally JK Business activities lies in education. Indeed, sexual and human rights education would provide adolescents with all the information necessary to weigh the advantages and risks of the practice they want to engage in and without being influenced by the social and peer pressure. Although sexual education already exists in the school curricula, it was demonstrated that teachers are reluctant to talk about it, which leaves teenagers with partial or no information about their sexual and reproductive rights, and the risks of experimenting with their sexuality without being completely informed about the consequences it can bring. Moreover, better sexual and human rights education would in the long term, break the prevalence of the concept of male dominance. This would subsequently increase gender equality and with it, break the existing social norms and gender-based stereotypes that allow the practice of *enjo kōsai* to develop and perpetuate.

5.4. Thoughts for further reflection

The discussions developed in this thesis, although specifically targeting a particular practice in a determined country, could be translated to other practices adversely affecting children in other parts of the world. Indeed, the intention of the drafters of the Joint Recommendation/General Comment was to open the scope of the qualification of ‘harmful cultural practice’ to a large variety of practices negatively affecting women and children, as developed in Chapter 3. Therefore, the research conducted in this thesis constitute a basis applicable to this variety of practices, provided that the

cultural environment and social norms surrounding the practice examined be taken into account, in order to understand its root causes – religion, discrimination, misinformation about hygiene, for example -. This would subsequently allow the researcher to have an overview of the elements that need to be tackled in order to prevent the practice from occurring. It would also provide valuable information necessary to adapt the measures subsequently adopted.

This thesis therefore aspires to offer some leads to, hopefully, stimulate the interest of the reader to the complex relationship between the culture of a community and the practices developed in this context. Indeed, this relationship should, as argued by this thesis, be at the heart of the discussions to tackle and legally regulate ‘harmful cultural practices’.

Some food for thoughts may subsequently be offered:

- The benefits of widening the definition of ‘culture’ and ‘cultural rights’ when tackling a practice that would not appear, *prima facie*, as a cultural or traditional practice.
- The importance of considering the cultural environment surrounding all practices – all over the world - and the role it plays in the reaction to, and regulation of, these practices by the population and the state authorities.
- The difficulty of legally regulating emerging practices that present both harmful and harmless aspects. ‘Sexting’ or ‘*enjo kōsai*’ could be considered, on the one hand, as harmful for children, as they are exposed to abuses and violence. However, on the other hand, they could constitute a way for adolescents from the new generation to experiment with their sexuality and build their decision-making process.
- The investigation of the role played by cultural practices in the building of national identity of young people. The desire to acquire a feeling of belonging to a nation might lead young people to engage in various activities without considering the consequences; i.e. the young celebrities in the United States, Korean-Pop idols, to cite some. By engaging in these practices, which could prove harmful, children reinforce their feeling of belonging to the country, its values and its culture.

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