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To Whom It May Concern

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Concerning: Jehovah's Witnesses Exposed to Discriminatory Treatment in Japan

As former UN Special Rapporteur on Freedom of Religion or Belief, I am deeply concerned about the Q & A Guidelines on Responses to Child Abuse Related to Religious Beliefs adopted by the Japanese Ministry of Health, Labor and Welfare in December 2022, which harbor serious risks of exacerbating the stigmatization of religious minorities, in particular Jehovah's Witnesses. Being myself unable to read Japanese, I had to access the Guidelines through an English translation.

Combatting and preventing child abuse in its various forms must obviously be a priority for all societies. The UN Convention on the Rights of the Child (CRC) imposes a clear obligation on all public authorities to regard "the best interest of the child" as "a primary consideration" (art. 3). State activities in support of the rights of children, however, can only be successful if they apply an adequately broad human rights approach, which also takes into account parental rights, rights of minorities, freedom of religion or belief, and other rights. Such a broad approach is also in line with the commitment expressed by the Vienna World Conference on Human Rights (1993) that all human rights should be understood as "universal, indivisible, interrelated, and interdependent."

Ample evidence from all over the world illustrates that minority groups have frequently suffered far-reaching interventions in the name of protecting children from the influence of their families and communities. Examples include ethnic minorities, indigenous peoples, religious minorities, or the “rainbow families” of sexual minorities. The main argument has always been that the family or community influence might have negative consequences for the wellbeing of the child. Growing up in an environment somewhat “different” from mainstream society would hamper the child’s development and future life opportunities – or this seems to be the underlying assumption. However, such interventions have often resulted in grave human rights violations of all affected parties: children, parents, as well as broader communities. In many cases, those responsible for interventions may have been acted in good faith; they may have been personally convinced thereby to promote the best interest of the child. This does not alter the fact, however, that human rights violations have occurred, often with far-reaching negative consequences.

It is against this background that the Q & A Guidelines on Responses to Child Abuse Related to Religious Beliefs give rise to concerns. The Guidelines lack adequate awareness of the broader human rights issues at stake. The only human rights provision cited throughout the text is art. 14 of the Convention on the Rights of the Child, which guarantees the right to freedom of thought, conscience, and religion of the child. There is no reference to the parental dimensions of religious freedom, as inter alia enshrined in art. 18, para. 4 of the International Covenant on Civil or Political Rights. Nor do the Guidelines take into account the rights of minorities, as contained in a number of the UN documents.

Even the reference to art. 14 of the CRC remains incomplete. It is true that the CRC treats the child as the right holder in the area of religious freedom. At the same time, it specifies in art. 14, para. 2 that parents or guardians have rights and duties “to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.” Providing “direction” includes issues like religious initiation, education, and socialization. The CRC thus clearly confirms parental rights in the

area of religious freedom. While the state can be expected to remain “neutral” (in the sense of being fair and unbiased) toward different religions and beliefs, families are not exposed to similar expectations of neutrality. Depending on the self-understanding of family members, the family can be a legitimate place to familiarize the child with religious teachings, norms, community practices, etc. This is in line with art. 18. para. 4 of the International Covenant on Civil and Political Rights (ICCPR), which stipulates: “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” Obviously, this provision also applies to parents from religious minorities. Indeed, it is fair to assume that its full relevance only unfolds against the background of discriminatory experiences to which minority families have frequently been exposed.

Art. 14, para.2 of the CRC must be read in the light of art. 18 para. 4 of the ICCPR, and vice versa. Accordingly, it would be wrong to conceptualize the relationship between the child, the parents, and the state as a triangle, in which parents and specialized state agencies have competing competences for protecting the wellbeing of the child. While parents have both rights and duties vis-à-vis their child, state agencies do not have the status of right holders. Instead, they are in charge of respecting and protecting the inter-related rights of the child and his or her parents. Interventions against parents, e.g. with regard to the evolving capacities of the child, can only be justified for clearly defined exceptions. The criteria for such interventions must be narrow and precise to make sure that state interventions into the relationship between children and parents remain strictly exceptional.

The Q & A Guidelines display a different logic. While pretending to protect the best interest of the child, the Guidelines ignore any other human rights issues – thereby inadvertently even eroding the rights of the child, which can only unfold in their interrelatedness with other human rights. Terms like abuse, neglect, incitement, etc. remains without a sufficiently clear definition thus providing entry points for potentially heavy-handed

interventions, which might turn the principles of human rights, including the CRC, upside down.

For example, in Question 3.2 the Guidelines ask whether “an act that uniformly restricts a child from socializing or marrying a person who does not believe in a particular religion (including uniformly restricting participation in general events such as birthday parties) constitute child abuse?” The answer is that restricting the child “from companionship that is accepted as common” would constitute “neglect.” There may be good arguments in favor of allowing children to participate in birthday parties and similar events of companionship, whenever they wish to do so. The problem is that by qualifying related parental restrictions as “neglect” state agencies might feel called to intervene in various ways. It is worth mentioning in this regard that the Guidelines fail to spell out criteria such as necessity or proportionality that would limit the scope and nature of state interventions.

Question 3.3 addresses religious prohibitions of certain forms of entertainment. Related limitations, unless “deemed reasonable based on educational considerations, etc.” are said to “constitute psychological abuse.” Again, this might open the flood gates to far-reaching forms of state intervention – to the detriment of parental rights, minority rights, and not least the rights of the child. One could in fact say that the very existence of the Guidelines already constitute an intervention, since they may have intimidating effects on families from religious minorities.

In the Answer to Question A 4-1 the Guidelines inter alia state: “when a guardian is aware that there are persons who directly or through a third party incite the child to behave in a manner that deviates significantly from social appropriateness, failure by the guardian to take preventive actions for such behavior, including having a child join such a religion, constitutes neglect.” A number of crucial terms in this sentence remain quite vague. What is “social appropriateness”, and what should count as a “significant deviation”? The related question refers to “violating laws and regulations” broadly, which can mean quite different things, including acts of conscientious objection. The verb “incite” is likewise open to different understandings.

The Q & A Guidelines display a shocking absence of awareness that ignorance toward the parental dimension of religious freedom in conjunction with a lack of terminological clarity might lead to serious human rights violations. Moreover, the Guidelines reinforce existing stereotypes against religious minorities in Japan by publicly stigmatizing families as potential child abusers. Apart from infringing the rights of parents, guardians, and broader communities, this also affects the rights of the child, i.e. the very rights that the Guidelines claim to foster.

I appeal to the Government of Japan to anchor its concerns for the wellbeing of children within an adequately wide understanding of human rights, all of which are “universal, indivisible, interrelated, and interdependent.” Obviously, this must include the right to freedom of religion or belief, a right held by children, parents, and members of minority communities broadly. The Q & A Guidelines on Responses to Child Abuse Related to Religious Beliefs adopted by the Japanese Ministry of Health, Labor and Welfare should be reconsidered to render them compatible with the spirit and wording of international human rights law.

In case of any questions, I am gladly available.

A handwritten signature in blue ink that reads 'Heiner Bielefeldt'.

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Former UN Special Rapporteur on Freedom of Religion or Belief (2010-2016)