

**Report on the Significant Legal Problems and Political Risks Raised by the Recent
"Q&A on Responses to Child Abuse Related to Religious Beliefs" (宗教の信仰等に係る
児童虐待等への対応に関する Q & A) Promulgated by the Ministry of Health, Labour
and Welfare (厚生労働省)**

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I. Author Information

I am Frank S. Ravitch, Professor of Law, Walter H. Stowers Chair in Law & Religion, and Director of the Japan Program at Michigan State University College of Law. I am the author of eleven books with major publishers including Cambridge University Press, West Academic and Edward Elgar, as well as numerous articles, book chapters, essays, and amicus briefs to the United States Supreme Court. My research has primarily focused on law and religion in the United States and has also included significant work on law and religion in Japan.

In 2001, I served as a Fulbright Scholar on the Faculty of Law at Doshisha University and have kept a close relationship with Japan ever since. I am co-author of the first two comprehensive books on Japanese law published in English and have written articles and book

chapters on Japanese law and religion issues. I have also spoken around the world about Japanese law and religion and have been a strong advocate of adopting the Japanese approach as a model for the rest of world.

Additionally, I have spent the last ten years learning to speak Japanese. I did not speak Japanese when I was a Fulbright Scholar, but through my experience in Japan I came to feel a deep connection to the country. As a result, I decided to learn Japanese to be able to study original legal sources, show respect for the people and culture of Japan, and share with the world my love of Japan and Japan's approach to law and religion.

Unfortunately, as explained below, the new Ministry of Health, Labour and Welfare (厚生労働省) Q&A guidelines pose a significant threat to Japan's place in the world. I agreed to write this report not only because the application of the guidelines against the Jehovah's Witnesses violates nearly every tenet that has made Japan a global model for religious freedom, but because the MHLW Q&A guidelines violate Article 20 of the constitution of Japan and international law. Therefore, I feel a duty to protect Japan's reputation.

I note that I am not a Jehovah's Witness and am not Christian. I respect the right of all groups to have religious freedom consistently with international law. My experience in Japan has taught me that a country can respect the diversity of religions, as well as nonreligion, without needing to promote or adopt any of them. This makes Japan a special place in the world where

religious diversity is protected even if religion is often poorly understood.

Unfortunately, the response by MHLW to the conduct of the Unification Church, while certainly well meaning, poses a threat to the balance between religious freedom and religious neutrality that Japan has achieved. Events that shock the public conscience rarely make for good law, and the horrific assassination of former Prime Minister Abe, Shinzo and the aftermath with the Unification Church facilitated an overreach by MHLW.

Some parts of the MHLW Q&A are consistent with the Japanese Constitution and international law. The rest of this report, however, addresses the parts that are unconstitutional and violate international law. To be clear, I think MHLW began with the best intent considering the fallout from the Abe assassination, but the process for promulgating the Q&A was flawed and unbalanced. Therefore, the resulting Q&A guidelines are unbalanced.

The world is watching. I have already been contacted by someone in the US State Department Office of International Religious Freedom and have heard from Law and Religion scholars and lawyers in several countries about this issue. As always, I defended Japan's broader approach, but I also acknowledged that the Q&A guidelines violate Japanese law. When the Jehovah's Witnesses approached me to write this report I happily agreed because they are being unfairly persecuted and not only their rights, but Japan's reputation as a place of religious freedom and neutrality, are at stake until the MHLW Q&A guidelines are amended.

II. Introduction

On December 27, 2022 the Ministry of Health, Labour, and Welfare (厚生労働省) (hereinafter MHLW) released a Q&A on Responses to Child Abuse Related to Religious Beliefs, etc. (宗教の信仰等に関する児童虐待等への対応に関するQ & A). As explained in detail in this report, several sections of this Q&A document violate Article 20 of the Japanese Constitution, the Universal Declaration of Human Rights, and potentially the Religious Juridical Persons Act (宗教法人法律). No doubt, MHLW passed the Q&A with the important intent to protect children, but as the UN Special Rapporteur on Freedom of Religion and Belief explained in 2015 the sort of reactionary rules reflected in some sections of the MHLW Q&A often violate the religious freedom of both parents and children.

The MHLW Q&A was released after the assassination of former Prime Minister Abe Shinzo whose assassin blamed the Unification Church for destroying his mother's financial security through financial fraud and pressure. The conduct of the Unification Church posed a particular concern to the financial stability of families, but the Japanese government has already addressed this concern in a manner that is consistent with Article 20 of the Constitution of

Japan.¹ The MHLW Q&A, however, goes far beyond that, and crosses the line to illegality.

Specifically, the answers to questions 2-3, 3-1, 3-2, 3-3, 3-4, 3-5, 4-3, 4-5, 4-6, 4-7, and 6-1 raise serious legal concerns under Japanese Law and International Law. Parts of the answers to questions 4-8 and 7-2 also raise some legal concerns but could easily be corrected to remain substantively the same but more legally sound.

Importantly, the sections addressing issues such as sexual abuse are legal and are not questioned in this report. The government has a right to pursue claims of sexual abuse regardless of whether the abuse was perpetrated by family members, friends of the family, coreligionists, teachers, counselors, doctors, lawyers, or anyone else. I do not understand the Jehovah's Witnesses to be challenging those sections of the Q&A guidelines, and I am certainly not questioning those sections.

The sections challenged in this report all have one thing in common, namely, they violate parents' rights to raise their children in the family's religion. As this report will demonstrate in Part III, this is a fundamental right in Japanese law and in international law. The Q&A guidelines deemed problematic in this report could make it illegal for Christian, Jewish, Buddhist, Muslim, Hindu, Sikh and other religious parents to raise their children in their faith.

¹ On December 10, 2022 the Act on the Prevention of Malicious Donation Solicitations by Organizations (法人等による寄附の不当な勧誘の防止等に関する法) was enacted.

This may be one reason the Q&A guidelines are already attracting the attention of law and religion scholars around the world and of the U.S. State Department's Office of International Religious Freedom.

The concerns mentioned above and discussed in greater detail below have already come to fruition in the application of the MHLW Q&A guidelines against the Jehovah's Witnesses. In its recent actions towards the Jehovah's Witnesses the MHLW has joined the likes of Russia in singling out for persecution a poorly understood and often unpopular religious minority for unfair treatment. In doing so, the MHLW has relied on poor information, stereotypes, and discriminatory ideas.

I am not a Jehovah's Witness, so I do not have a personal connection to this situation. When asked to review the MHLW Q&A and its application to Jehovah's Witnesses, however, I was shocked by the clear violations of Article 20 of the Constitution of Japan and International Law. My deep respect for Japan and for religious freedom sparked my willingness to write this report in the hopes of protecting the rights of Jehovah's Witnesses and other religious minorities and protecting Japan from the immense reputational harm some parts of the Q&A may cause. Importantly, the MHLW Q&A is not even limited to religious minorities and could have a significant impact even on larger religions, which will exponentially expand the reputational harm to Japan.

The Jehovah's Witnesses have often been among the first groups targeted when it comes to modern assaults on religious freedom. Much of this is due to profound misperceptions about the Jehovah's Witnesses, their structure and their practices. In fact, in drafting the Q&A the MHLW listened almost exclusively to The Japan Society for Cult Prevention and Recovery (日本脱カルト協会). This group has done some important work addressing groups like Aum Shinrikyo and more recently the Unification Church, but reading their documents and statements regarding Jehovah's Witnesses came as a shock.

They seem to have bought into much of the propaganda and mythology used against Jehovah's Witnesses by the Russian government and some French anti-cult groups. Russia lost every case regarding its treatment of the Jehovah's Witnesses before the European Court of Human Rights and the United Nations Commission on Human Rights.² Moreover, France lost before the European Court of Human Rights when it used similar myths to target the Jehovah's Witnesses,³ as have other countries such as Greece.⁴ As a law and religion scholar, I have little doubt that if a case involving the Q&A as applied to the Jehovah's Witnesses was brought before

² Vladimir Yurlov, Ilya Nesterov, and Naran Beklyaev (submitters) v. Russian Federation (state party), United Nations Human Rights Committee (Adoption of views 10/24/2023); Case of Taganrog LRO and Others v. Russia, European Court of Human Rights, Third section (decided 9/7/2022); Case of Jehovah's Witnesses of Moscow and Others v. Russia, European Court of Human Rights, First Section (decided 11/22/2010).

³ *Affaire Association Les Temoins De Jehovah v. France*, European Court of Human Rights, Fifth Section (decided June 30, 2011).

⁴ *Case of Kokkinakis v. Greece*, European Court of Human Rights (decided May 25, 1993).

the United Nations Commission on Human Rights Japan would lose that case.

Moreover, MHLW and The Japan Society for Cult Prevention and Recovery seem to view the Jehovah's Witnesses as some sort of new and dangerous religious movement. They are neither. The Jehovah's Witnesses have been in existence since the 1870's. Even if they were a new religious movement, however, they would have a right to exist and practice their faith consistent with neutral laws.⁵

Of course, all religions were new religions at some point, and most were persecuted bases on stereotypes, misconceptions, and rumors. When dealing with a religion, new or otherwise, it is essential to rely on unbiased data about the conduct of the religion. To do otherwise is to repeat the mistakes of history and to scapegoat religions that are not well understood by the general public.

Neither the MHLW nor The Japan Society for Cult Prevention and Recovery upon which MHLW relied have produced any quantitative data to support their claims. Qualitative data is important, but while former members of almost any religious group or social group may have valid grievances, these say very little about the overall behavior of a religious group or social group. In fact, the UN Special Rapporteur on Freedom of Religion and Belief has explained when it comes to state intervention in religious parenting empirical data is essential:

⁵ See *infra* Sections III and IV.

[S]ituations may emerge in which the best interests of the child may actually require State interventions to protect him or her, for example against neglect, domestic violence or harmful practices. *Intervening measures must always be carried out with empirical and normative diligence* and furthermore they are connected to substantive and procedural safeguards (emphasis added).⁶

III. The Relevant Law

The Q&A guidelines raise significant violations of Article 20 of the Constitution of Japan. They also raise some less significant, but still relevant, questions under the Religious Juridical Persons Act. The guidelines also raise significant questions under The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and the Convention on the Rights of the Child. In 2015, the United Nations Special Rapporteur on Freedom of Religion and Belief issued a detailed report addressing the interaction of all the above international conventions in regard to "[t]he rights of the child and his

⁶ UN General Assembly, *Elimination of all Forms of Religious Intolerance*, A/70/286, 5 August 2015 at paragraph 34.

or her parents in the area of freedom of religion or belief." The Q&A guidelines violate almost every relevant tenet of the Special Rapporteur's report.

A. Article 20 of the Constitution of Japan

Article 20 of the Constitution of Japan reads:

[1.] Freedom of religion is guaranteed to all. 2. No religious organization shall receive any privileges from the State, nor exercise any political authority. 3. No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.⁷

Importantly, while Article 20 deals both with religious freedom and separation of politics and religion, the title for the Article in Japanese reads, 信教の自由 (shinkyō no jiyū), which means "freedom of religion." Section 1 of Article 20 states directly that "freedom of religion is guaranteed to all." The Japanese government and the Japanese courts have taken this freedom quite seriously. In fact, I have pointed to the ability of the Japanese courts to protect the

⁷ NIHONKOKU KENPO Art. 20. The official Japanese version reads: 信教の自由は、何人に対してもこれを保障する。いかなる宗教団体も、国から特権を受け、又は政治上の権力を行使してはならない。2 何人も、宗教上の行為、祝典、儀式又は行事に参加することを強制されない。3 国及びその機関は、宗教教育その他いかなる宗教的活動もしてはならない。

religious freedom of even unpopular religions while maintaining the importance of separation of politics and religion as a model for the world.⁸

Perhaps the most famous freedom of religion case decided, at least in part, under Article 20 involved a Jehovah's Witness. It has become known in law and religion circles as the *Kendō Refusal Case* or the *Kobe Technical College Case*.⁹ The case addressed whether those who practice a particular religion can gain an exemption from state action that places a significant burden on a religious practice. The case involved a municipal technical college in Kobe, which was the defendant in a suit brought by a student whose Jehovah's Witness faith prevented him from engaging in kendo (a martial art), one of the college's physical education requirements. This resulted in the student being unable to graduate and ultimately being expelled for failing to satisfy the requirement.

On appeal in an administrative suit challenging this disposition, the Supreme Court reasoned that for everyone to have the rights expressed in the education laws and under the Constitution, religious accommodations are appropriate because a seemingly neutral law can

⁸ See, Frank S. Ravitch, *ADVANCED INTRODUCTION TO LAW AND RELIGION* (Edward Elgar 2023) at Chapter 2(3)(2); Colin P. Jones and Frank S. Ravitch, *THE JAPANESE LEGAL SYSTEM* (West Academic 2018) at 185-86; Frank S. Ravitch; Frank S. Ravitch, *Secularism and Liberal Constitutionalism: Lessons from Japan*, 2017 *MICHIGAN STATE L. REV.* 149 (2017); Frank S. Ravitch, *A Basic Introduction to Constitutional Free Exercise of Religion in the United States and Japan*, 64 *DOSHISHA L. REV.* 85 (2014); *The Unbearable Lightness of Free Exercise Under Smith: Exemptions, Dasein, and the More Nuanced Approach of the Japanese Supreme Court*, 44 *TEXAS TECH LAW REVIEW* 259 (2011).

⁹ *Kobe Technical College Case*, Saikou Saibansho [Sup. Ct.] Mar. 8, 1996, 1995 Gyo-Tsu no. 74 (Second Petty Bench).

interfere with freedom of religion for some people. Thus, held the Court, the college should have provided an accommodation.

To deny an accommodation the government must have a very good reason to infringe on the interests of the religious individual. The Court explained that accommodations are a way to prevent a negative impact on the religious person resulting from the law, but that to the extent an accommodation allows a religious person to avoid a requirement or a hardship the government may require an equally demanding alternative.

This is quite important in the current context because the state can have an interest that overrides the right to religious freedom, but it must be a very strong interest. For example, looking at the Q&A guidelines the state interest in preventing sexual abuse or extreme financial pressure is something the state has an extremely strong interest in. Moreover, unlike the unconstitutional answers to questions discussed in Part IV of this report, sexual abuse and extreme financial pressure are strong state interests regardless of the religious nature of the individual or entity involved. Therefore, these concerns would easily meet the sort of interest the Japanese Supreme Court held would justify denial of a religious exemption.

There is some debate among Japanese scholars over whether the case was primarily decided under the constitution or under the education laws. The court's judgment does reference article 20 but has more extensive references to the School Education Act of 1947 and its

implementing regulations. The side supporting the argument that the constitution played at least an important role in the decision seems to have the stronger argument, and that position has garnered a great deal of support among Japanese constitutional law scholars. Regardless, after the case was decided many government entities began implementing systems to grant religious exemptions.

This case has become famous as a great decision worldwide in law and religion circles precisely because the Japanese Supreme Court protected an unpopular religious minority. The Japanese government has generally followed this lead in protecting religious freedom. The sections of the Q&A addressed in this report are a stark exception to this trend. While the application of the Q&A to Jehovah's Witnesses does not involve an exemption claim, it does involve the even more serious violations of religious freedom implicated by criminally punishing parents or by ending custody simply for raising a child with teachings and practices of a religion.

For present purposes the the *Kendō Refusal Case* demonstrates the understanding that Article 20, Section 1 must be interpreted broadly and that the state must have the most important of interests to deny a religious exception to a general law let alone to deny parents' custody of their children. MHLW must show more than a one sided, stereotypical, and factually unsupported interest to deny the rights of parents discussed in Part IV of this report. MHLW should at the very least have hard data based on significant empirical research that is uncontested

by similar research in order to take some of the extreme steps the Q&A guidelines recommend.

Moreover, the guiding principle under Article 20 generally is neutrality.¹⁰ The *Kendō Refusal Case* court found that a religious exemption to a generally applicable law maintains neutrality because general laws are more likely not to consider religious minorities and therefore an exemption removes burdens that may fall predominantly on religious minorities. Yet, as discussed below in Part IV sections of the MHLW Q&A violate both the religious freedom concepts under Article 20, section 1 and the neutrality concepts that underlay all of Article 20.

B. The Religious Juridical Persons Act (宗教法人法)

The Religious Juridical Persons Act only has tangential relevance to the guidelines, but it does reflect the general protection of religious freedom that has been a hallmark of Japanese law. Article 1(2) of the Act states:

Freedom of religion as guaranteed in the Constitution must be respected in all phases of government. Therefore, no provisions in this Act must be construed as restricting any individual, group, or organization from disseminating teachings, conducting ceremonies

¹⁰ Ehime Tamagushi case, Saiko Saibansho [Sup. Ct.] Apr. 2, 1997, 51 Saiko Saibansho Minji Hanreishu [Minshu] 1673 (Japan); Colin P. Jones and Frank S. Ravitch, *THE JAPANESE LEGAL SYSTEM* (West Academic 2018) at 181-86.

and functions, or conducting other religious acts on the basis of the said guaranteed freedom.¹¹

Moreover, Article 85 reflects the language of Article 1(2) by denying MEXT (文部科学省) or any other government entity empowered to enforce the Religious Juridical Persons Act the ability to interfere with religious conduct of a religious corporation or its members.¹² This is obviously based on the understanding that the government may not interfere with religious practices or teachings barring a significant public welfare interest. Article 86 explicitly states as much and explains that the Religious Juridical Persons Act does not interfere with the power of government to enforce laws or regulations designed to protect the public welfare.¹³

At first glance Article 86 might be viewed to support the enforcement of the MHLW Q&A, but there are two problems with that interpretation. First, the Q&A is neither a law or a formal regulation and therefore is not covered by Article 86. Second, and more importantly, even if the Q&A were a law or formal regulation, as explained throughout this report some parts of the

¹¹ Religious Juridical Persons Act (宗教法人法), Article 1(2). The Japanese version reads: 憲法で保障された宗教の自由は、すべての国政において尊重されなければならない。従つて、この法律のいかなる規定も、個人、集団又は団体が、その保障された自由に基づいて、教義をひろめ、儀式行事を行い、その他宗教上の行為を行うことを制限するものと解釈してはならない。

¹² *Id.* at Article 85.

¹³ *Id.* at Article 86.

Q&A are unconstitutional and therefore would not be a valid law or regulation subject to Article 86.

Regardless, Article 1(2) and Article 85 of the Religious Juridical Persons Act reflect the broad constitutional protections that the government itself acknowledges are given to religious freedom. This is consistent with Article 20 of the constitution.

C. The Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief; Convention on the Rights of the Child

The interaction of the various human rights declarations and conventions that relate to the religious freedoms and rights of parents and children is complex. Yet, in 2015 the United Nations Special Rapporteur on Freedom of Religion and Belief issued a detailed report addressing the interaction of all the above international laws and found that they can operate together to give significant protections to both the religious freedom of parents and children.¹⁴ This approach has also been supported by decisions of the United Nations Human Rights Commission and the European Court of Human Rights.¹⁵

The following two quotes from Special Rapporteur's report demonstrate the obvious violations of international law posed by some sections of the MHLW Q&A guidelines. In fact, the first quote seems to foresee the MHLW Q&A guidelines' overreach:

¹⁴ UN General Assembly, *Elimination of all Forms of Religious Intolerance*, A/70/286, 5 August 2015.

¹⁵ Vladimir Yurlov, Ilya Nesterov, and Naran Beklyayev (submitters) v. Russian Federation (state party), United Nations Human Rights Committee (Adoption of views 10/24/2023); Case of Taganrog LRO and Others v. Russia, European Court of Human Rights, Third section (decided 9/7/2022); Case of Jehovah's Witnesses of Moscow and Others v. Russia, European Court of Human Rights, First Section (decided 11/22/2010).

Fears that some State agencies could be tempted to use the child’s right to freedom of religion or belief as a pretext for undue interference are generally understandable. As a matter of fact, in some countries, far-reaching State interventions into families in the spheres of religious initiation, socialization and education of children actually do occur — at times also by invoking an alleged interest of the child. Such problematic State interventions disproportionately affect families belonging to religious minorities, new religious movements or small communities often stigmatized as “sects”. . . In extreme cases, children have been taken away from their families, for instance under the pretext of saving them from ill-defined “superstitious” religions — a pretext often invoked against indigenous families in the past.¹⁶

The above quote might as well have been written specifically about the sections of the MHLW Q&A guidelines addressed in Part IV of this report. The following quote is also directly applicable to the Q&A guidelines:

38. For many believers, religion represents an all-encompassing reality which permeates all spheres of life. Religious rituals and ceremonies may thus be involved when parents welcome newborn children as members of the family and the larger community, when they familiarize children with their religious lifeworld, or when they teach them the basic rules of interaction, ethical principles and how to perform prayers and religious ceremonies. Freedom of religion or belief protects such religious socialization processes

¹⁶ *Elimination of all Forms of Religious Intolerance*, at paragraph 29.

broadly, as part of the right to manifest one's religion or belief "in worship, observance, practice and teaching" [citing to article 18, para. 1, of the International Covenant on Civil and Political Rights]. Here again, article 14 of the Convention on the Rights of the Child must be seen in continuity with other provisions of freedom of religion or belief, as enshrined in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and other international instruments.¹⁷

These quotes are consistent with several concepts that undergird the UN Special Rapporteur's approach. First, raising children within a religion is a central aspect of religious freedom for almost all religions. Second, children too have rights in this context but as the Convention on Rights of the Child explains the level of maturity of a child is highly relevant. At younger ages the rights of parents to raise their children are coextensive with the rights of the child. Third, parental rights never allow sexual abuse, physical abuse, or significant neglect through the denial of basic needs such as eating. Fourth, for a country or government entity to deny parents their rights to raise their children within their religion it must rely on strong empirical evidence and not simply on stereotypes, myths, the stories of a few former members of the religion, or similar sorts of "evidence" that does not consider the behavior of a religious group as a whole. After all, there are bad examples and people who do horrific things in many social groups whether religious or not, and without empirical evidence linking that behavior to the group or its practices individual behavior--including behavior that is or should be criminal--may be inaccurately ascribed to an entire group.

¹⁷ *Id.* at paragraph 38.

When considered as a whole these concepts dictate that nations respect the right of parents to raise their children within their faith, but when children reach an age of development where they are able to make their own considered choices about religion they have a protected right to do so. Until that point, however, the parents have the right to raise the child within their religion:

43. The small child typically receives his or her first religious instructions within the family and/or the local religious community. Parents engaged in religious instruction thereby exercise their parental rights, while at the same time directing the child in the exercise of his or her own right to freedom of religion or belief. With the tacit or express consent of the parents, the religious community can also take an active role in familiarizing the child with religious or belief matters. States are obliged to respect and protect such activities, including by facilitating the development of the appropriate infrastructure needed for religious communities, especially minority communities, to be able to pass on the tenets of their faith to the next generation.¹⁸

Moreover, when a nation or government agency does involve itself in religious parenting it must rely on strong empirical evidence and not stereotypes or other non-empirical factors:

61. . . .When dealing with religious minorities, small communities or new movements, often branded as “sects”, some State agencies seem to operate on the assumption that, in case of doubt, children should be separated from their parents. Lack of diligence and

¹⁸ *Id.* at paragraph 43.

respect, possibly based on prejudice, is thus a source of major human rights concerns, also from the perspective of the Convention on the Rights of the Child.

62. In some situations, State interventions may actually prove necessary to safeguard the best interests of the child, for instance if the child's rights to life, health or education are imperiled. However, any such situation warrants a careful empirical and normative assessment. Empirical diligence is needed, inter alia, to avoid stereotypical ascriptions, possibly based on rumours, overgeneralizations or merely abstract, possibly far-fetched fears. Members of small religious communities or new religious movements often run an increased risk of having their rights infringed. In extreme cases, parents have lost their custody rights without any serious empirical investigation having taken place and without being granted effective legal remedies. Besides empirical negligence, there is also the danger of normative negligence if due weight is not given to all the human rights concerns at stake and the criteria set out for limitations are ignored.¹⁹

The sections of the Q&A guidelines addressed in Part IV of this report violate almost every principle set forth in the UN Special Rapporteur's report. Moreover, they may violate a recent decision of the UN Human Rights Commission that specifically involves the persecution of Jehovah's Witnesses in Russia.²⁰

¹⁹ *Id.* at paragraphs 61 and 62.

²⁰ Vladimir Yurlov, Ilya Nesterov, and Naran Beklyayev (submitters) v. Russian Federation (state party), United Nations Human Rights Committee (Adoption of views 10/24/2023).

IV. Application of the Relevant Law to the Q&A on Responses to Child Abuse Related to Religious Beliefs" (宗教の信仰等に関する児童虐待等への対応に関するQ & A) Answers

2-3, 3-1, 3-2, 3-3, 3-4, 3-5, 4-3, 4-5, 4-6, 4-7, and 6-1

This section will apply the above-mentioned laws to each section of the Q&A guidelines that violate Japanese and/or international law.

Q&A 2-3: Does it constitute child abuse to force a child to participate in religious activities such as worship services, lectures on doctrine, etc., and to force the child into certain movements or postures, such as throwing down the whole body on the ground, for a long period of time so that the child cannot move, or to force the child to participate in religious activities late into the night? (Answer) An act of forcing a child into certain movements or postures for a long period of time so that the child cannot move constitutes physical abuse. *Also, forcing a child to participate in religious activities, etc., during hours that may interfere with the child's schooling or daily life constitutes neglect, as it is inappropriate from the perspective of the child's development and nurturing.* Other acts described in Q3-1 (Answer) constitute psychological abuse.

The part of this answer that is problematic has been highlighted for emphasis. This could apply to almost any religion. Catholics, Protestants, Jews, Muslims and many other religious groups have after school and or weekend religious classes or activities. In fact, one of the most common claims for a religious exemption worldwide is for children to be excused from school for major religious holidays. In fact, as a child I needed to take off from school for the Jewish High Holidays and I had religious school two days a week after school. This "interference" with my "schooling or daily life" did not negatively impact my "development and

nurturing." In fact, quite the opposite.

The irony of this answer is that it would make the parenting of children by almost every Catholic, Protestant, Jewish, Muslim, Jehovah's Witness, and Sikh parent abuse under Japanese law, while allowing parents who force their children to go to cram schools from a very young age or who allow their children to take off from school for a family vacation to do nearly identical things.

The highlighted part of this answer strains credulity and is an obvious violation of Article 20 of the Constitution of Japan, under which a school would likely be required to accommodate religious children to take off for holidays.²¹ Moreover, it is a clear violation of every international human rights law discussed above.

Q&A 3-1 Does forcing a child to participate in religious or missionary activities, forcing a child to make life choices, imprinting fear continuously from childhood through severe verbal reprimands or threats using inspirational language, etc. constitute child abuse? Also, what about ignoring a child, constantly showing attitude of rejection or discrimination toward a child for the purpose of having the child participate in religious activities, etc., or because of or as a result of the child's reluctance to participate in such activities? (Answer) *Threatening a child with words such as "If you don't/if you do something, you will go to hell" or "you will be destroyed" or with images or materials that stir up fear, imprinting fear on a child, or continuously showing a rejecting attitude such as ignoring or harassing a child, to force a child to participate in religious activities or impede a child's own free decision-making regarding his/her career path, place of employment, etc. (including refusal to sign a document that requires a guardian's consent or to*

²¹ See, e.g., Kobe Technical College Case, Saikou Saibansho [Sup. Ct.] Mar. 8, 1996, 1995 Gyo-Tsu no. 74 (Second Petty Bench).

fill out an emergency contact form), all constitute psychological abuse or neglect.

Again, the highlighted parts of this answer go to the core of religious belief for some religions. Yet, parents are free to threaten or say horrible things to their children for nonreligious reasons. A lot of Christian, Muslim and some Buddhist schools talk about going to hell for violating religious tenets. Is the MHLW rendering Christian, Muslim, and some Buddhist education a form of psychological abuse and neglect? If not, how can it apply the guidelines only to more unpopular religious groups without violating the principle of neutrality under Article 20 of the Constitution of Japan and without violating international law? It cannot.

Q&A 3-2 Does 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? Also, what about repeating words and actions that criticize such people to children in daily life? (Answer) If a child is uniformly restricted from companionship that is accepted as common according to social conventions considering the child's age and developmental level, thus impairing the child's social skills, it constitutes neglect. In addition, continuously showing threats or rejection as described in Q3-1 (Answer) as a means of restricting companionship or marriage, or calling the child's friends, teachers, or other persons with whom the child has companionship "enemies," "Satan," or other similar names, or otherwise causing the child to have a strong fear of them, constitutes psychological abuse.

There is no particular section of this answer that is highlighted because the entire answer violates religious freedom and common sense. Many religions try to prevent intermarriage as a form of preserving the religion. Many Jewish families encourage their children to marry only

other Jewish people as a way to preserve the religion which has survived more than 3500 years in part because of a low rate of intermarriage. The Zoroastrian faith, which is also over 3000 years old goes even further and absolutely prohibits intermarriage. Similarly, Roman Catholics, Eastern Orthodox, and Muslim parents often discourage intermarriage.

There are also faiths that strongly discourage their children from even interacting with outsiders. These faiths appear to be the focus of the last sentence in the answer. Yet, all over Japan and the world there are parents who refuse to allow their children to associate with those they view as being from a different class or even due to longstanding family or community feuds. These parents often use extremely strong language and yet as long as they don't say anything religious it appears the MHLW would not interfere. In fact, even today in Japan there are families who refuse to allow their children to be friends with, date, or marry those believed to be from a Burakumin background and in so doing they often use horrific terms to describe those they believe to be Burakumin to keep their children from becoming friends.

The obvious violation of the principle of neutrality required under Article 20 and under international law here is impossible to overstate. This answer tramples directly on parents' rights to raise their children within the faith and at the same time it treats religious limitations on marriage or socialization worse than other limitations often imposed for nonreligious reasons.

Q&A 3-3 Does prohibiting a child from enjoying any entertainment such as fairy tales, cartoons, comic books, and games because of religious doctrines constitute child abuse? What about limiting entertainment to only those approved by religious organizations? (Answer)

An act of prohibiting entertainment for the purpose of contributing to the child's supervised education does not immediately constitute child abuse. However, a blanket ban on entertainment deemed appropriate for a child's age in light of socially accepted norms, on the grounds of religion, etc., constitutes psychological abuse. In addition, limiting entertainment to only those approved by religious organizations, etc., unless such limitation is deemed reasonable based on educational considerations, etc., constitutes psychological abuse as an act that undermines the child's free will, even if it is based on religious beliefs, etc.

Again, this entire answer violates Japanese and international law. It is very common for Evangelical Protestants and many other religious groups to try to keep their children from engaging with media they view as sacrilegious or violative of religious values. In America there is a famous cartoon series called VeggieTales that is designed for Evangelical Christian children so that they can enjoy cartoons consistent with the faith. In fact, there is also an entire genre of Christian music and television programming that many Evangelical parents around the world limit their children to watching so as to not expose them to values and beliefs antithetical to their religion. To deem this child abuse is to directly violate international law as cited in Section III.

Q&A 3-4 Does forcing a child to declare his/her religious beliefs in front of others constitute child abuse? (Answer) An act of forcing a child to declare his/her religious beliefs even though the child himself/herself does not believe in the religion, or an act of forcing a child to reveal his/her religious beliefs to others (including an act of forcing a child to wear decorations, etc. that objectively reveal his/her beliefs in a particular religion) without taking into consideration the child's will of not wanting others to know about his/her religious beliefs, etc. constitutes psychological abuse, as it seriously harms the child's feelings.

With this answer the MHLW has declared the Jewish, Hindu, Sikh, and Muslim religions to be inherently psychologically abusive. Observant members of each of these religions wear clothing (decorations under the answer) or headwear that identifies them as a member of their religion. Moreover, through this answer the MHLW has declared many forms of Christianity to be innately psychologically abusive. Many Christian groups have traditions of confirmation where children at a certain age complete parts of their religious education and are confirmed in front of the religious community.

This answer is an obvious violation of religious neutrality under Article 20 of the Constitution of Japan, and it also potentially violates freedom of expression under Article 21 and freedom of conscience under Article 19 of the Constitution of Japan. Moreover, it is a brazen violation of international law and has all the failings referenced in the report of the UN Special Rapporteur.

Q&A 3-5 Does it constitute child abuse or child labor if a religious organization, etc. or a child's guardian under instruction by a religious organization, etc. repeatedly has a child participate in religious missionary activities? (Answer) *Forcing a child to participate in religious missionary activities through acts such as those described in Q3-1 and Q3-2 also constitutes psychological abuse.* In addition, if threats or assaults are used to force a child to participate in religious missionary activities, it may constitute compulsion under the Penal Code, so it is necessary to take coordinated response by promptly sharing information with the police. Note that those who work and receive remuneration in the same manner as ordinary workers (such as clerical work at the reception desk) based on the belief that it is a religious service or

practice may be regarded as workers, since judgment shall be made in accordance with the actual circumstances of each case based on the specific working conditions. Child guidance centers should also take the above points into consideration and respond to cases where these situations are suspected to have occurred, in cooperation with the police and the Labour Standards Inspection Office.

The highlighted section seems targeted at Jehovah's Witnesses and some Evangelical Christian groups. Both the United States Supreme Court and the European Court of Human Rights have held that the Jehovah's Witnesses have a protected right to proselytize and do so with their children so long as there is no physical abuse involved. Of course, Japan is not bound by the decisions of either of these Courts, but as discussed above under Japanese law the MHLW would need a highly compelling reason to charge parents with psychological abuse for the highlighted practice. Moreover, under international law MHLW would need to present empirical evidence demonstrating a given practice causes the children psychological harm.

Q&A 4-3 Does a case in which a child is not allowed to enter high school, university, etc., with the background of religious beliefs, etc., constitute child abuse? (Answer)The same applies as described in Q4-2 (Answer) regarding enrollment in or advancement to high school.

In addition, an act of refusing to allow a child to go on to university (including refusing to follow procedures such as signing documents requiring parental consent or filling in emergency contact information, or refusing to allow a child to take a part-time job to earn money to cover necessary expenses such as school fees), in itself does not immediately constitute child abuse. *However, when a child wishes to go on to higher education and can do so in view of his/her family's financial situation (including cases in which scholarships or other forms of support are used), an act of prohibiting further education by reason of religious doctrine, etc., as in the manner below, constitutes psychological abuse.*

- *Threatening a child with "If you don't/if you do something, you will go to hell" etc.*

- *Trying to make a child give up, saying things like “It is useless to go to school because the world will be destroyed.”*
- Continuously showing a rejecting attitude such as ignoring the child or refusing to provide financial support

The highlighted portion of this answer is highly problematic as a violation of neutrality and the principle of equality. Under this answer parents can discourage higher education or refuse to pay for it for any reason other than a religious one. This is a form of religious discrimination. Parents who think higher education is a waste of time, or who want their children to go into the family business so refuse to pay for or support higher education are not abusive, even if they use highly charged language, but a parent who does the same exact thing for religious reasons is abusive? This is exactly the form of unequal treatment warned against by the UN Special Rapporteur and that violates neutrality under Article 20 of the Constitution of Japan. Q&A 4-8 raises similar concerns.

Q&A 4-5 Does the refusal to perform necessary medical treatment (such as blood transfusions) on a child because of religious beliefs or rules constitute child abuse? (Answer) Refusing to allow a child to visit a medical institution without reasonable cause, or refusing to allow a child to receive medical treatment (surgery, medication, blood transfusion, etc.) deemed necessary by a physician (including forcing a child to carry a card indicating his/her will to refuse a blood transfusion), regardless of the reason, constitutes neglect. When necessary, emergency measures through temporary custody or a petition for suspension of parental authority by the child guidance center's director (Article 834-2 of the Civil Code and Article 33-7 of the Child Welfare Act) should be considered.

This Q&A addresses very important issues that have already been addressed by many countries around the world. Yet, in reviewing the available information the MHLW relied upon there seems to be no references at all to the rich global law on this topic. As with much of the Q&A it appears that the MHLW relied almost exclusively on the somewhat one-sided information provided by The Japan Society for Cult Prevention and Recovery (日本脱カルト協会).

Nonetheless, Q&A 4-5 raises important issues. Can a parent deny a child life saving medical treatment or a treatment that may prevent significant medical harm based on religious beliefs? What if there are safe alternatives to the treatment that do not raise religious concerns? This issue arises a lot around the world. For example, Christian Scientists and some Fundamentalist Protestant groups believe in forms of faith healing and will not treat themselves or their children even with lifesaving medicines. Most countries and US states to address this have found that the right of the child to life saving treatment or treatment that may prevent significant medical harm outweighs the rights of the parents and that such treatment may be given. Various countries and US states have different procedural mechanisms for protecting the child based on government interests or the interest in public welfare. Still, a small number of nations and U.S. states allow parents to decide even in these extreme situations.

Most systems, however, do not allow violation of parental religious decisions for minor

medical situations that do not threaten the life or long-term health of the child. Some systems, however, do require treatment even under these circumstances. Part of the reason for this is that in some medical situations the risk of complications may be low, but the possible complications could be significant.

The majority of countries and US states to address the issue have found that when there is a safe alternative to a treatment to which parents object for religious reasons that alternative should be used. There have been cases around the world where doctors, hospitals, other relatives, or governments have sued to enforce treatment only to learn that other available treatments would be equally effective, and that the treating physician simply did not know about the alternatives or preferred the initial treatment even upon learning of safe and effective alternatives. Most of these cases resulted in the alternative treatment being required so long as it was empirically shown to be equally safe and effective.

This leads me to raise an oddity in the Q&A, which is the direct reference to blood transfusions. By itself this is a normal example but combined with other Q&A examples that seem targeted at Jehovah's Witnesses who generally oppose blood transfusions on religious grounds it is troubling. Scientologists refuse all psychological treatment, even when there is a risk of suicide, some Christian Fundamentalists and Christian Scientists refuse all medical treatment, yet the only example given is blood transfusions. This seems a bit odd.

Regardless, the majority position globally is that the state does have an interest in protecting children when parents refuse medical treatment for the child that is either lifesaving or would prevent long-term medical harm. When the impact of refusing treatment is minor, however, the majority position is to defer to the parents' decisions. Yet, it is important that the treating medical professionals and the government consider safe and effective alternatives that will protect the life and health of the child without violating religious tenets.

There are, of course, countries that go further than this and allow the state to interfere with parental decisions even in minor cases, and there are countries that defer to the parental decision even when the life of the child is at stake. Q&A 4-5 seems to take the approach of denying parental rights even in minor cases. Yet there is no record of the MHLW considering the majority approach among global democracies which protects children from any significant harm while protecting the religious rights of the family in minor cases or those where safe and effective alternative treatments are available that do not violate the religion of the family.

Q&A 4-6 Does an act of restricting a child from participating in various school events because of religious beliefs or rules constitute child abuse? (Answer) An act of restricting a child's participation without taking into consideration ensuring appropriate upbringing and educational opportunities for the child, despite the child's own wish to participate, constitutes psychological abuse or neglect, even if it is based on religious beliefs, etc.

The absurdity of this answer is hard to ignore. Children will often feel peer pressure to participate in various school events. The majority is always considered in the timing and nature of these events. Thus, school events may fall on major religious holidays, may involve practices that violate religious tenets (such as fighting or martial arts that violate the tenets of Quakers and Jehovah's Witnesses), or may involve practices that are prohibited by a religion (for example a pig roast).

Religious parents have the right under Japanese Law to an exemption from any required participation in these events so the idea that not allowing their children to participate because of religious concerns is abusive borders on the absurd. Moreover, asserting that parents are engaged in abuse for simply following the tenets of their faith is an obvious violation of international law. Once a child is developed enough to make decisions about attendance at these events the parents will have less ability to restrict attendance, but at younger ages international law demands that the government not interfere with parents' decisions in these matters.

Q&A 4-7 If a person seriously neglects the nurturing of a child, it constitutes neglect. However, if there are activities related to religion, such as service activities and missionary activities (such as retreats, seminars, pilgrimages to holy places) in the background, does it constitute child abuse? (Answer) An act of significantly neglecting the nurturing of a child by participating in religious activities such as service activities and missionary activities (such as retreats, seminars, pilgrimages to holy places) constitutes neglect, even if there is a background of solicitation by a religious group, etc.

This answer raises a question. Does the answer refer only to situations where the parent leaves the child alone for long periods of time when participating in religious activities? If so, this could certainly be neglect, but what differentiates it from similar neglect by working parents? This answer is not problematic to the extent it simply clarifies that religious reasons will be treated the same as other reasons for child neglect in the form of being away from the child for long periods of time. To the extent, however, the answer suggests that religious reasons should be more suspect than other reasons, such as work, this answer raises numerous legal concerns. Thus, I would want more clarity on the meaning of this answer before stating that it does or does not violate Article 20 or international law.

Q&A 6-1 When responding to a case of child abuse related to religion, what special precautions should be taken, including responses to the child and explanations to the guardians? Are there any differences between cases in which it is known at the time of notification/discovery that the case is related to religion, etc., and cases in which it is not?

(Answer) *A child who may have been subjected to child abuse related to religion, etc., may be strongly influenced by his/her guardian's ideas and values based on the doctrine of religion, etc., and may have difficulty in recognizing his/her situation as a problem and complaining about it.* It is necessary to objectively assess the child's situation, and if child abuse is suspected, to provide explanation and guidance to the child and his/her guardians based on the definition of child abuse.

However, it is assumed that there may be cases where it is difficult to improve a parent's behavior or thoughts toward a child based on religious doctrines, etc., even by providing guidance. There are also concerns, as a result of providing guidance, etc., that child abuse by the guardian may escalate, and that religious groups may intensify their efforts towards the family. Therefore, it is necessary to place the highest priority on ensuring the safety of the child and, when necessary, to take measures such as temporary custody without hesitation.

The highlighted sections of Q&A 6-1 raise serious legal concerns when applied to situations involving the parts of Q&A 2-3, 3-1, 3-2, 3-3, 3-4, 3-5, 4-3, 4-5, 4-6, 4-7 addressed in this report. This is because the practices addressed in these sections are not inherently abusive and they are protected by both Japanese law and international law as discussed in this report. Therefore, to the extent Q&A 6-1 refers to the above referenced Q&A answers it is legally invalid. To the extent it addresses other sections of the Q&A or non-highlighted sections of those sections discussed in this report it could remain legally enforceable consistently with Japanese and international law. The key is to remove or significantly amend the above referenced Q&A sections to render them legal.

Q&A 7-2 also raises some concerns to the extent it suggests foster parents cannot include a foster child in their family religious practices. Because foster care tends to be a government initiated and more temporary situation, the length of care could impact whether the foster parents have the right to raise a foster child in a faith to the extent that biological or adoptive parents can. I simply raise this because foster care can on occasion involve years of parenting which might give a foster parent parental rights regarding religion similar to a biological or adoptive parent.

V. Brief Conclusion

In conclusion, the answers to questions 2-3, 3-1, 3-2, 3-3, 3-4, 3-5, 4-3, 4-5, 4-6, 4-7, and 6-1 of the Responses to Child Abuse Related to Religious Beliefs (宗教の信仰等に関する児童虐待等への対応に関する Q & A) violate Article 20 of the Constitution of Japan as well as international law.²²

The answers to these questions are an assault on the rights of all religious people in Japan to raise their children within their faith traditions. These are rights recognized by most democracies around the world and by international law. Most importantly, they are rights recognized by the Constitution of Japan.

I have been proud to write about and speak to audiences around the world regarding Japan's role as a leader in religious freedom under the law and as a nation welcoming to all regardless of religion or nonreligion. I know that Japan has the resources to avoid the reputational harm potentially caused by the Q&A guidelines, and by their application to the Jehovah's Witnesses, while still strongly protecting the rights of children to be free from sexual and financial abuse. All it will take is careful amendments to some provisions of the MHLW Q&A, and the use of empirical data rather than listening only to biased sources.

The world is beginning to watch Japan on this issue and as a scholar and person with a

²² As explained in Part IV of this report some of these answers violate the law in part, but other parts of the answers are legal. For these answers the focus should be on the parts highlighted and discussed in this report.

deep connection to, and profound respect for, Japan, it is my hope that the MHLW will rise above the stereotypes and legal violations in the Q&A guidelines and amend the answers to questions 2-3, 3-1, 3-2, 3-3, 3-4, 3-5, 4-3, 4-5, 4-6, 4-7, and 6-1 of the Responses to Child Abuse Related to Religious Beliefs Q&A. By doing so, MHLW can carry out its essential mission to protect children while not causing Japan to join the likes of Russia as a violator of human rights and religious freedom.