



GENERAL INCORPORATED ASSOCIATION  
ASIA-PACIFIC ASSOCIATION OF  
**JEHOVAH'S WITNESSES**



THE EUROPEAN ASSOCIATION OF  
**JEHOVAH'S WITNESSES**

13 July 2022

**In behalf of**

**The Asia-Pacific Association of Jehovah's Witnesses**

**And**

**The European Association of Jehovah's Witnesses**

**Contribution for the**

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Annex 2 – European Court of Human Rights, *Jehovah’s Witnesses of Moscow and Others v. Russia*, Application No. 302/02, 22 November 2010.

Annex 3 – The Royal College of Surgeons of England, *Caring for Patients Who Refuse Blood —A Guide to Good Practice for the Surgical Management of Jehovah’s Witnesses and Other Patients Who Decline Transfusion* (London, 2018).

## **ABOUT THE SUBMITTING ORGANIZATIONS**

**The Asia-Pacific Association of Jehovah's Witnesses (APAJW)** is a general incorporated association registered in Japan with membership in Australia, Fiji, Guam, Hong Kong, India, Indonesia, Japan, Kazakhstan, Korea, Kyrgyzstan, Malaysia, Myanmar, New Caledonia, Papua New Guinea, Philippines, Solomon Islands, Sri Lanka, Tahiti, Taiwan and Thailand.

**The European Association of Jehovah's Witnesses (EAJW)** is a charity registered in the United Kingdom (No. 1085157) with membership throughout the member States of the Council of Europe.

These associations work together to promote the protection of human rights and fundamental freedoms in various parts of the world, particularly when Jehovah's Witnesses face violations of such rights. This submission is prepared and submitted jointly.

## SUMMARY OF THE SUBMISSION

This submission to the Human Rights Council (HRC) on Japan highlights human rights issues and current failures to implement recommendations accepted by Japan during the previous Universal Periodic Review (UPR) cycle.

Jehovah's Witnesses in Japan and as a worldwide organization respectfully request the Government of Japan to:

- (1) Meet with representatives of Jehovah's Witnesses for realistic discussion of how discrimination in the provision of medical treatment may be eliminated;
- (2) Ensure that such discussion results in prompt and effective progress to eliminate this form of discrimination;
- (3) Ensure that clinicians respect patient autonomy and that they are free to provide health care using evidence-based therapeutic strategies for preempting blood transfusion for all patients who decline allogeneic blood, including Jehovah's Witnesses;
- (4) Abide by its commitment to uphold the fundamental freedoms guaranteed by the Constitution of Japan and the International Covenant on Civil and Political Rights (the Covenant) for all citizens, including Jehovah's Witnesses.

## I. INTRODUCTION

1. Jehovah's Witnesses have been present in Japan for almost 100 years. Their first national office opened in Kobe in 1927. In 2021 there were some 213,000 active adherents in Japan with more than 320,000 attending meetings for worship. Between March 2020 and April 2022, all worship events were conducted online by videoconferencing owing to the Covid-19 pandemic.
2. Jehovah's Witnesses cherish life and value good health. For this reason, they do not smoke tobacco or abuse drugs or alcohol, and avoid activities that endanger life. When necessary, they seek high quality medical care, and they appreciate the work of clinicians and other healthcare providers.
3. The Royal College of Surgeons of England has summarized the Witnesses' position as follows: "Although not opposed to surgery or medicine, Jehovah's Witnesses decline allogeneic blood transfusion for reasons of religious faith. This is a deeply held core value and any non-consensual transfusion is regarded as a gross physical violation."<sup>1</sup>
4. The European Court of Human Rights has stated: "The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a

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<sup>1</sup> The Royal College of Surgeons of England, *Caring for Patients Who Refuse Blood —A Guide to Good Practice for the Surgical Management of Jehovah's Witnesses and Other Patients Who Decline Transfusion* (London, 2018), para. C1.

blood transfusion.”<sup>2</sup>

5. This freedom to choose medical treatment compatible with religious beliefs is guaranteed by articles 17 and 18 of the Covenant, which Japan signed on 30 May 1978 and ratified on 21 June 1979.

## II. ISSUES

6. The Constitution of Japan<sup>3</sup> provides:

- i. Article 13: All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.
- ii. Article 14.1: All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.
- iii. Article 25.1. All people shall have the right to maintain the minimum standards of wholesome and cultured living.
- iv. Article 25.2. In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.

7. The Medical Practitioners' Act<sup>4</sup> provides at Article 19.1: “No medical practitioner who engages in medical practice may refuse any request for medical examination or treatment without legitimate grounds.”

8. The Medical Care Act<sup>5</sup> provides:

- i. Article 1-2.1 Medical care is to be provided in accordance with the physical and mental state of the medical care recipient, based on a relationship of trust between the physician, dentist, pharmacist, nurse, or other medical care professional and the medical care recipient, in a way which respects life and ensures the dignity of the individual.
- ii. Article 1-2.2. Medical care must be provided as a basis for efforts to ensure and improve the health of the nation, fully respecting the wishes of the medical care recipients.

9. The Local Autonomy Act,<sup>6</sup> which applies to public hospitals in Japan, provides:

- i. Article 244.2. No inhabitant shall be refused use of public facilities of the ordinary local public body without due reason.
- ii. Article 244.3. The ordinary local public body shall make no unreasonable discrimination of inhabitants using its public facilities.

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<sup>2</sup> European Court of Human Rights, *Jehovah's Witnesses of Moscow and Others v. Russia*, Application No. 302/02, para. 136, 10 June 2010.

<sup>3</sup> <https://www.japaneselawtranslation.go.jp/ja/laws/view/174>.

<sup>4</sup> <https://www.japaneselawtranslation.go.jp/ja/laws/view/3992>.

<sup>5</sup> <https://www.japaneselawtranslation.go.jp/ja/laws/view/4006>.

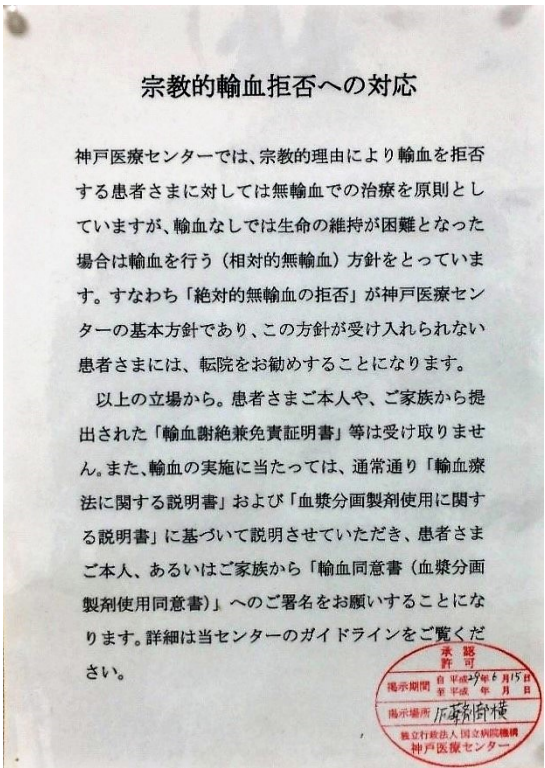

<sup>6</sup> <http://nippon.zaidan.info/seikabutsu/1999/00168/contents/094.htm> (English translation of the 1999 version of the law); <https://elaws.e-gov.go.jp/document?lawid=322AC0000000067> (latest version in Japanese).

10. In Japan, hundreds of Jehovah’s Witnesses are refused necessary medical treatment each year, solely because of their religious faith, even in public hospitals. There were 835 documented cases in 2021—one for every 255 adherents of the faith—following 713 in 2020, 765 in 2019 and 538 in 2018, revealing a consistent increase in this trend.

<b>Year</b>	<b>Documented Refusals of Medical Treatment</b>
<i>2018</i>	<b>538</b>
<i>2019</i>	<b>765</b>
<i>2020</i>	<b>713</b>
<i>2021</i>	<b>835</b>

11. Hospitals that refuse treatment to Jehovah’s Witnesses adopt a “Relative Non-Blood” policy. Refusal to consent to allogeneic blood transfusion in any circumstances, the international norm for Jehovah’s Witnesses (“Absolute Non-Blood”), results in an automatic denial of treatment.
12. At least 463 hospitals in Japan disclose such policies on their website. For example, the Tokyo Saiseikai Central Hospital’s website states: “For patients who refuse a blood transfusion based on their religious beliefs and faith: According to the basic policy to ‘provide the best medical services under any situation,’ the Hospital decided in 2008 to forgo providing treatment that may require a blood transfusion (including all surgeries and childbirths) for patients who refuse it based on their religious beliefs and faith. ... The above policy will apply to all patients regardless of their age (child or adult) or state of consciousness.”
13. Such policies are prevalent in Japanese hospitals for three principal reasons:
- i. Many university hospitals, which serve as teaching hospitals and are regarded as at the top of the hierarchy, have adopted this policy. Affiliated hospitals feel obliged to adopt similar policies.
  - ii. The Japan Society of Transfusion Medicine and Cell Therapy, Japan Society of Obstetrics and Gynaecology, Japan Surgical Society, Japan Society of Anaesthesiologists and the Japan Paediatric Society have jointly created guidelines for patients who refuse allogeneic blood transfusions on religious grounds. These guidelines allow for treatment of such adults but also permit refusal of treatment without justification.
  - iii. Consistent, deliberate and malign misapplication of a decision by the Supreme Court of Japan in 2000. The Court ruled unanimously in favour of a Jehovah’s Witness patient, following a non-consensual allogeneic blood transfusion, finding tortious liability against doctors who were aware of her refusal of this specific treatment modality.<sup>7</sup> The decision is interpreted as turning solely on the clinicians’ failure to provide adequate information to the patient. Many doctors and lawyers have concluded that they can avoid litigation by explaining the perceived necessity for a blood transfusion and giving the patient a choice either to accept it or to be denied any form of treatment.

<sup>7</sup> Tokyo High Court, *Takeda v. Japan*, Case No. 1997 (NE) 1343, February 9, 1998.

 <p style="text-align: center;"><b>宗教的輸血拒否への対応</b></p> <p>神戸医療センターでは、宗教的理由により輸血を拒否する患者さまに対しては無輸血での治療を原則としていますが、輸血なしでは生命の維持が困難となった場合は輸血を行う（相対的無輸血）方針をとっています。すなわち「絶対的無輸血の拒否」が神戸医療センターの基本方針であり、この方針が受け入れられない患者さまには、転院をお勧めすることになります。</p> <p>以上の立場から、患者さまご本人や、ご家族から提出された「輸血謝絶兼免責証明書」等は受け取りません。また、輸血の実施に当たっては、通常通り「輸血療法に関する説明書」および「血漿分画製剤使用に関する説明書」に基づいて説明させていただき、患者さまご本人、あるいはご家族から「輸血同意書（血漿分画製剤使用同意書）」へのご署名をお願いすることになります。詳細は当センターのガイドラインをご覧ください。</p> <p style="text-align: right;">  </p> <p style="text-align: center;"> <b>Notice displayed in the National Hospital Organization Kobe Medical Centre, 3-1-1 Nishiochiai, Suma-ku, Kobe City, Hyogo Prefecture, Japan</b> </p>	<p style="text-align: center;"><b>On the Handling of Refusals to Blood Transfusions Based on Religious Reasons</b></p> <p>At Kobe Medical Centre, our principle is to treat patients who refuse blood transfusions for religious and other reasons without blood. However, should life support be difficult without blood transfusion, we will perform blood transfusions (Relative Bloodless Surgery). This <b>“refusal of absolute bloodless surgery” is the basic policy of Kobe Medical Centre</b>, and we suggest that patients who cannot accept these terms transfer to a different hospital.</p> <p>From this standpoint, <b>we will not accept any documents regarding “Refusal of blood transfusions and release of liability”</b>, either from the patient or from the family. Also, when performing blood transfusions, we will explain the procedure based on the “manual for blood transfusion treatment” and “manual for using blood plasma fraction derivatives” and obtain a signature to the “agreement to blood transfusions (agreement to using blood plasma fraction derivatives)” either from the patient or from the family. For more details, please see our hospital guidelines. (Emphasis ours.)</p>
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14. From the nearly 3,000 documented cases in the four-year period from 2018–2021 we have selected 10 representative examples of unjustified discriminatory treatment refusal owing solely to the religious beliefs of the patient. Several of these relate to minor procedures, universally performed without recourse to allogeneic blood transfusion, highlighting the unreasonable religious discrimination suffered by Jehovah’s Witnesses. Initials are used to protect the privacy of the individuals concerned, who have agreed to this information being shared publicly.<sup>8</sup>

15. **Gunma:** On 23 November 2021, HS (78, F) attended the Geriatrics Research Institute and Hospital with a left femoral neck fracture. She was diagnosed as requiring surgery, but the hospital refused any form of treatment because she did not accept allogeneic blood transfusions. The hospital did not consider referral to another centre and discharged HS even though she was unable to move by herself.

16. **Chiba:** On 19 October 2021, HH (69, F) attended Tokyo Dental College Ichikawa General Hospital Orthopaedics Department owing to a fracture of the right little finger. The treating doctor initially agreed to provide care but subsequently refused treatment, because even if there were only a 1 percent chance of transfusion, they could not proceed without her consent to transfusion. By the time that HH located a hospital willing to treat her, it was too late for surgery and she has lost movement in the finger. This seriously impacts on her daily life and

<sup>8</sup> Those mentioned in the representative examples have agreed for their names and personal details to be provided to a third-party organization. Further details can be provided, if necessary.

employment.

17. **Shizuoka:** TY (33, M) was diagnosed with a large epidermoid cyst. On 17 September 2021, he attended the Plastic Surgery Department at the Japanese Red Cross Shizuoka Hospital. TY was told that there was 99 percent probability that surgery would not require blood transfusion but if, in the clinicians' opinion, allogeneic blood was indicated, they would administer it. Therefore, he was not able receive treatment. Later, TY obtained successful resection surgery in a different hospital for the lesion of which the final diagnosis was skin cancer.
18. **Kanagawa:** On 14 May 2021, SS (62, F) attended Kawasaki Municipal Ida Hospital Breast Surgery Department for cancer treatment. The doctor told her that they had performed more than 2,000 surgeries and never transfused allogeneic blood for this type of surgery, but nevertheless she was required to sign a transfusion consent form. She refused, and the hospital refused treatment.
19. **Fukui:** HK (50, M) was referred to University of Fukui Hospital Cardiology Department for treatment of paroxysmal atrial fibrillation. The doctor in charge had prior experience of treating Jehovah's Witnesses and agreed to catheter treatment without using allogeneic blood. On 4 March 2021, 10 minutes before the planned procedure, treatment was refused unless HK signed a document agreeing to blood transfusion. This was required according to the hospital's policy.
20. **Gunma:** On 8 August 2020, YT (62, F) attended Maebashi Red Cross Hospital for a third molar extraction. The hospital refused treatment because she would not sign the allogeneic blood transfusion consent form. They said there was a near 100 percent possibility that transfusion would not be clinically indicated, but such consent was the prerequisite for surgery at this hospital.
21. **Tokyo:** On 18 March 2020, RI (68, F) attended Kyorin University Hospital Plastic Surgery Department for treatment of ingrown nails. The hospital refused treatment, stating that they could not perform surgery without consent to allogeneic blood.
22. **Hokkaido:** In February 2020, five hospitals (Sapporo Mirai Clinic, Fukuzumi Obstetrics and Gynecology Hospital, Misono Obstetrics and Gynecology Hospital, Sapporo Tokushukai Hospital, Sapporo Shiroishi Obstetrics and Gynecology Hospital) refused to accept NH (32, F) as an obstetric patient to give birth at their institution because of her advance refusal of allogeneic blood transfusion.
23. **Tokyo:** RA (69, F) attended JCHO Tokyo Shinjuku Medical Centre Otolaryngology Department as an outpatient for nasal allergy and had booked surgery for an inferior turbinate incision. On 12 June 2019, the attending clinician apologized to her for having to cancel the surgery. The doctor stated that he had conducted more than 100 of these surgeries and had never had a bleeding patient, but the hospital refused admission.
24. **Tokyo:** MS (30, F) went to Toho Women's Clinic as an antenatal patient and was diagnosed with a minor uterine fibroid. The clinic said this did not constitute a high-risk pregnancy and would not affect childbirth. MS was referred to the Japanese Red Cross Tokyo Katsushika Perinatal Centre (formerly Katsushika Red Cross Maternity Hospital) and attended the Obstetrics and Gynaecology Department on 2 March 2019. The doctor informed her that they had a policy to refuse Jehovah's Witnesses unless they accept allogeneic blood transfusions.



The hospital president told her that if she had said she was one of Jehovah’s Witnesses when she called, they would have been able to reject her there and then.

25. Worldwide, virtually all medical and surgical procedures have been performed without allogeneic blood transfusion, by respected clinicians at renowned institutions.<sup>9</sup> When implemented in a timely fashion, use of clinical management strategies that avoid transfusion results in equal or superior clinical outcomes and reduced costs to hospitals and the health care system compared to traditional care using allogeneic blood transfusion.<sup>10</sup>
26. In 2009, the World Health Organization (WHO) recommended that doctors use “alternatives to transfusion” where possible so as not to expose patients to the “serious” medical risks associated with blood transfusions and that “[m]ost elective surgery does not result in sufficient blood loss to require a blood transfusion”.<sup>11</sup>
27. More recently, the WHO published a 2021 policy brief regarding the use of medical and surgical treatment strategies that make optimal use of patients’ own blood.<sup>12</sup> The document emphasizes that the systematic use of medical treatment strategies to avoid allogeneic blood transfusion is associated with excellent clinical outcomes (for example, lower mortality, shorter hospital stays), improved quality of healthcare (for example, anaemia management, reduced surgical blood loss, reduced iatrogenic blood loss), better patient safety (decreased post-operative infection rates, avoidance of transfusion-transmitted disease, avoidance of transfusion complications), equivalent or lower costs, and respect for patient rights.
28. While the refusal of blood transfusion by Jehovah’s Witnesses is primarily based on religious grounds, many non-Witness patients and doctors prefer to be treated without the use of allogeneic blood transfusion owing to mounting medical evidence of the hazards and complications that may result from its use and the superior outcomes achievable by avoiding allogeneic blood transfusion. Professor James P. Isbister (Emeritus Consultant in Haematology and Transfusion Medicine and Clinical Professor of Medicine, University of Sydney Medical School) states: “It really is a sobering thought, when one considers that allogeneic blood transfusion has the potential for a wider range of adverse clinical outcomes than probably any other medical intervention.”<sup>13</sup>
29. Similarly, Professor Donat R. Spahn (Professor of Medicine, University of Zurich Medical School, and Chairman of the Institute of Anaesthesiology, University Hospital, Zurich, Switzerland) states: “After considering all available evidence on transfusion and outcome, we are left with the conclusion that transfusion is a major multiplier of morbidity and mortality. Maintaining the status quo as we see in transfusion practice today would just not be accepted or tolerated in any other field of medicine in the context of current safety and quality standards.”<sup>14</sup>

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<sup>9</sup> See <https://www.jw.org/en/medical-library/>.

<sup>10</sup> Leahy MF and others, “Improved outcomes and reduced costs associated with a health-system-wide patient blood management program: a retrospective observational study in four major adult tertiary-care hospitals”, *Transfusion*, vol. 57, No. 6 (June 2017), pp. 1347–58. Available at: <https://pubmed.ncbi.nlm.nih.gov/28150313/> (accessed 12 July 2022)

<sup>11</sup> World Health Organization, *The clinical use of blood in general medicine, obstetrics, paediatrics, surgery and anaesthesia, trauma and burns* (Geneva, WHO, 2009), pp. 7, 10, 18, 72–73, 126–128, 139–141, 146, 255–258, 262, 264–265 and 272. Available at: <https://www.who.int/publications/i/item/WHO-BTS-99.2> (accessed 11 July 2022).

<sup>12</sup> World Health Organization, *The urgent need to implement patient blood management: policy brief* (Geneva, WHO, 2021). Available at: <https://apps.who.int/iris/handle/10665/346655>

<sup>13</sup> National Blood Authority (Australia), “What is the Evidence Telling Us?”, video. Available at: <https://www.blood.gov.au/health-professionals> (accessed July 11, 2022).

<sup>14</sup> *Ibid.*

30. In March 2017, the European Commission issued a guide for national health authorities on patient blood management throughout the EU. The European Commission observed that “a large body of clinical evidence shows that in many clinical scenarios both anaemia and blood loss can be effectively treated with a series of evidence-based measures to better manage and preserve a patient’s own blood, rather than resorting to a donor’s blood”.<sup>15</sup>

### III. IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS

31. While religious discrimination in provision of healthcare was not specifically addressed by the HRC in its previous review in 2018, Japan supported several recommendations by member States that are relevant to this matter.
32. In the National Report dated 31 August 2017, under the heading “Prevention of any forms of discrimination and elimination of any discriminatory provisions (human rights education and training included)”, Japan confirmed: “Regarding the prevention of any forms of discrimination and the elimination of any discriminatory provisions (recommendations 63 and 65), the Japanese Constitution forbids any irrational discrimination. ... In the areas which are highly public and closely related with civil life such as employment, education, medical care and transportation, discriminatory treatment is prohibited by the relevant laws and regulations.” (A/HRC/WG.6/28/JPN/1, para. 11)
33. The Report of the Working Group, dated 4 January 2018, contained numerous recommendations for strengthening the protection of human rights. These originated with Malaysia, Qatar, the Bolivarian Republic of Venezuela, Australia, Philippines, the Republic of Moldova, Costa Rica, Rwanda, Uganda, Ukraine, Azerbaijan, Ethiopia, India, Afghanistan, Panama, Chile, Colombia, Croatia, Finland, Sierra Leone, France, Guatemala, Kenya, Nepal, Liechtenstein, Indonesia, Kazakhstan, Iraq, Sudan, Morocco and Israel, many of whom made specific reference to the Paris Principles. (A/HRC/37/15, paras. 161.37–161.52)
34. At A/HRC/37/15, para. 161.59, the Netherlands recommended: “Adopt a broadly applicable anti-discrimination law, including a comprehensive definition of discrimination, with a view to ensuring the prohibition of all forms of direct and indirect discrimination, including on the basis of age, gender, religion, sexual orientation, ethnicity or nationality.”
35. At A/HRC/37/15, paras. 161.78–161.79, Uzbekistan and Cuba recommended: “Continue implementing measures to eradicate all forms of discrimination.”
36. At A/HRC/37/15, para. 161.84, Australia recommended: “Take further steps to effectively ... protect the rights of minorities.”
37. In the Addendum to the Report of the Working Group, dated 1 March 2018, Japan accepted to follow up the above recommendations, with minor reservations not relevant to this submission. (A/HRC/37/15/Add.1)
38. Japan accepted these recommendations to make efforts for the elimination of discrimination, including explicitly discrimination against minorities and/or because of religion. Despite this, Jehovah’s Witnesses continue to suffer egregious discrimination with respect to medical

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<sup>15</sup> European Commission, *Building national programmes of Patient Blood Management (PBM) in the EU—A Guide for Health Authorities* (Brussels, EU, 2017), pp. 9 and 14. Available at: <https://op.europa.eu/en/publication-detail/-/publication/5ec54745-1a8c-11e7-808e-01aa75ed71a1/language-en> (accessed 11 July 2022).

treatment that is otherwise available to the general population. Such discrimination is solely because of their sincere personal religious beliefs.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

39. Jehovah’s Witnesses in Japan and as a worldwide organization express concern for the overt and explicit discrimination suffered by law-abiding adherents of their faith. They respectfully request the Government of Japan to take the necessary steps to:
- (1) Meet with representatives of Jehovah’s Witnesses for realistic discussion of how discrimination in the provision of medical treatment may be eliminated;
  - (2) Ensure that such discussion results in prompt and effective progress to eliminate this form of discrimination;
  - (3) Ensure that clinicians respect patient autonomy and that they are free to provide health care using evidence-based therapeutic strategies for preempting blood transfusion for all patients who decline allogeneic blood, including Jehovah’s Witnesses;
  - (4) Abide by its commitment to uphold the fundamental freedoms guaranteed by the Constitution of Japan and the Covenant for all citizens, including Jehovah’s Witnesses.