



Religious Persecution, Refugees, and Right of Asylum

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World War II and Refugees

- ▶ After World War II: 60 million refugees in Europe
- ▶ 1950: UN created United Nations High Commissioner for Refugees (UNHCR)



International Conventions



- ▶ 1951: The Convention Relating to the Status of Refugee was signed (145 States as parties, including China [1982] and ROK [1992] – geographic limitation to Europe)
- ▶ 1967: Protocol Relating to the Status of Refugees was signed (146 States as parties including China [1982] and ROK [1992] - without geographic limitations)

To Seek Asylum is a Human Right

- ▶ Universal Declaration of Human Rights, Art. 14: “**Everyone** has the right to seek and to enjoy in other countries asylum **from persecution**”



Who Is A Refugee?

- ▶ A refugee is a person who is outside its own country's territory owing to fear of persecution on protected grounds.
- ▶ Protected grounds include race, caste, nationality, religion, political opinions and membership and/or participation in any particular social group or social activities.



A Further Evil: Torture

- ▶ Torture is the act of deliberately inflicting physical or psychological pain in order to fulfil some desire of the torturer or to compel some action from the victim.
- ▶ Torture, by definition, **is a knowing and intentional act**. Deeds which unknowingly or negligently inflict pain without a specific intent to do so are not typically considered torture.



Why Torture?



- ▶ Torture can be carried out or sanctioned by individuals, groups and states. Reasons for torture may include **punishment**, revenge, **political re-education**, **deterrence**, coercion of the victim or a third party, **interrogation to extract information or a confession**, irrespective of whether it is false

Torture Is Prohibited!



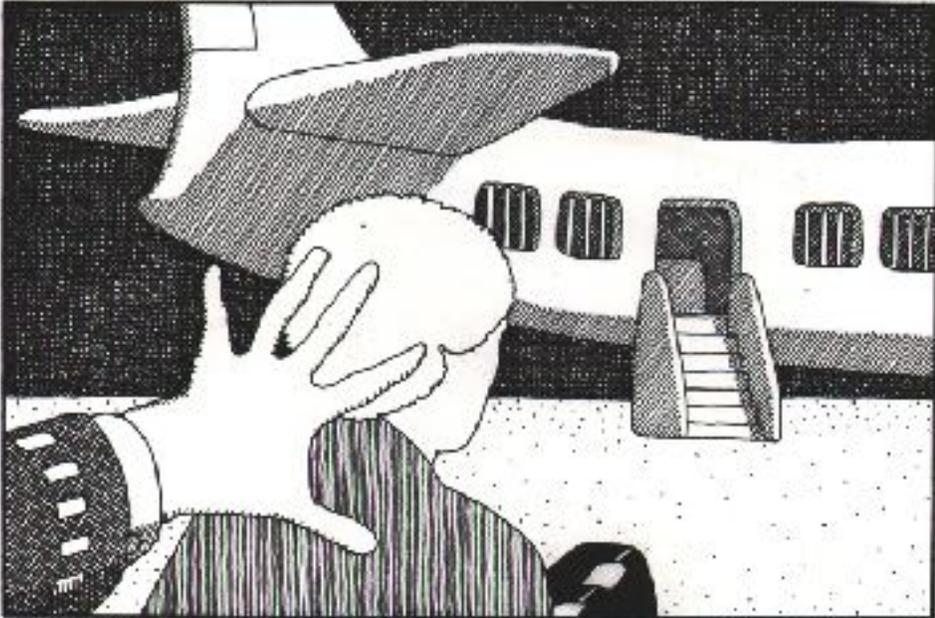
- ▶ **TORTURE IS PROHIBITED UNDER INTERNATIONAL LAW. IT IS A SERIOUS VIOLATION OF HUMAN RIGHTS.**
- ▶ Torture is prohibited by the 1987 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by 158 countries: China in 1988, ROK in 1995)



What Is Prohibited

- ▶ Under the Convention, torture means “any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person, committed, or intimidating or coercing him or a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.”

Non-Refoulement is an Obligation



- ▶ Rendering true victims of persecution to their persecutors is an odious violation of a principle called non-refoulement.
- ▶ Non-refoulement is a fundamental principle of international law which forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on "race, religion, nationality, membership of a particular social group or political opinion."

Do Not Return Victims to Persecutors!

- ▶ 1987 Convention Article 3 stipulates:
- ▶ No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.
- ▶ For the purpose of determining whether there are such grounds, **the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.**



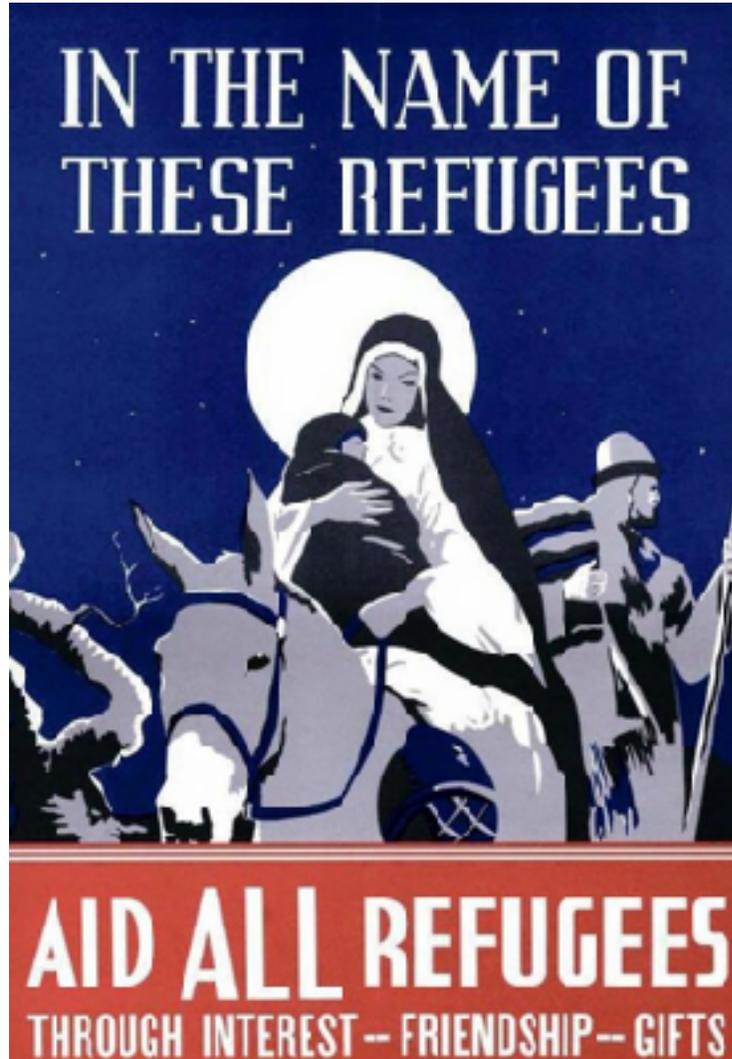
But How to Enforce These Provisions?

- ▶ No internal monitoring or enforcement body for compliance with legally binding Conventions and their Protocols.
- ▶ UNHCR not empowered to enforce the Convention.
- ▶ No formal mechanism for complaints against States, though they can be referred by another State to the International Court of Justice.
- ▶ An individual may lodge a complaint with the UN Human Rights Committee under the International Covenant on Civil and Political Rights or with the UN ECOSOC under International Covenant on Economic, Social and Cultural Rights.

What Real Consequences?



- ▶ At present, the only real consequences of violation are:
- ▶ 1. Public shaming in the press and media
- ▶ 2. Verbal condemnation of the violator by the UN and by other countries.



Defining Religion-Based Refugees

- ▶ Religious persecution is a systematic mistreatment of an individual or group due to their religious affiliation.
- ▶ Religious persecution is a human right problem.
- ▶ Up to 80% of all acts of persecution are directed against people of the Christian faith (International Society for Human Rights).



1. What Is a Religion?

- ▶ International conventions favor a **broad** concept of beliefs not only **religious** but **about** religion
- ▶ Atheism is included
- ▶ In 1993, *General Comment no. 22* of UN Human Rights Committee implied that included are also those “strange” religions that are “non-traditional,” “newly established,” or considered as not really religious by a government (“cults,” *xie jiao*, etc.)

2. How Religious Should the Refugee Be?



- ▶ 2004 UNHCR Guidelines: a special religious fervor or knowing well one's religion is not required
- ▶ Even infants can be religion-based refugees: the test refers to the point of view **of the persecutor** and the question is whether the applicant is, or would probably be, persecuted because of his or her religion

3. Credibility and *Sur Place* Claims

- ▶ It is a fact that some immigrants *simulate* a religious identity, or assert that they converted *sur place* (i.e. where they now live) to a religion persecuted in their home country, only in order to obtain asylum
- ▶ 2004 UNHCR Guidelines recognize this problem: cases should be examined individually for “credibility“ but without placing excessive burdens on the asylum seekers (tests on theological proficiency, etc.)



4. How Strong Should the Persecution Be?



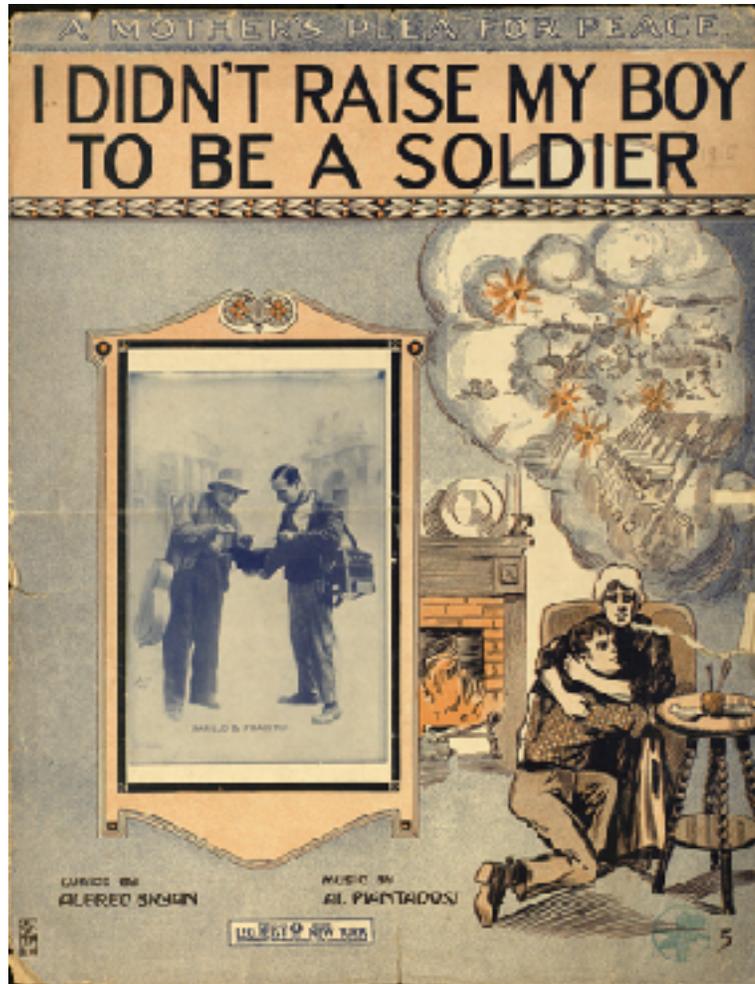
- ▶ If *private* practice of religion at home is allowed, but *public* worship and missionary activities are punished, UN and European guidelines still recognize the presence of a persecution
- ▶ In 2013, the Court of Justice of the European Union found against Germany, which had tried to deny refugee status to Ahmadis from Pakistan, claiming they could escape persecution there by worshipping in secret. Not good enough, the Court said, adding that believers should not prove that they are *individually* persecuted. That their *group* is persecuted is enough

What about Discrimination?

- ▶ “All discrimination does not necessarily rise to the level required for recognition of refugee status” (2004 UNHCR Guidelines, no. 17)
- ▶ However, even without being arrested or prevented from professing their faith, those suffering **serious** social discrimination because of their religion are entitled to refugee status
- ▶ In 2013, the European Court of Human Rights told France it should grant asylum to Egyptian Copts: they enjoy freedom of worship but are socially discriminated because of their religion



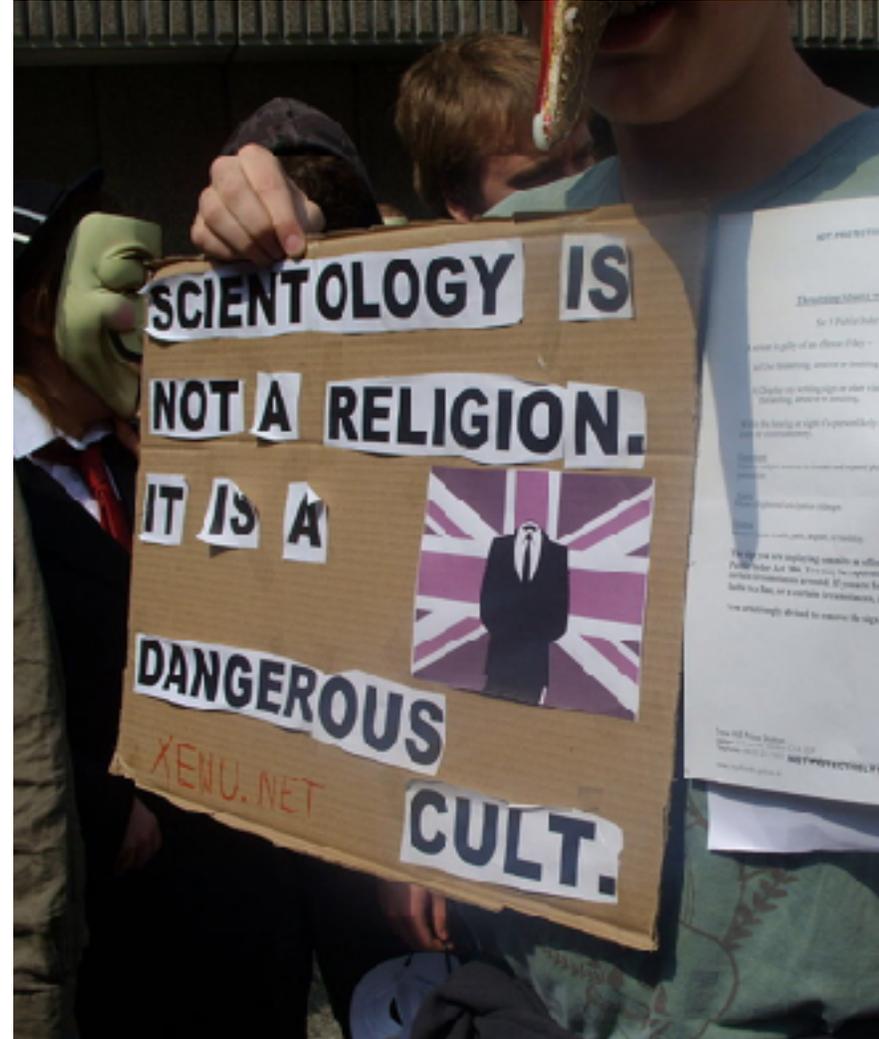
5. Accusations of Common Crimes



- ▶ “Prosecution and punishment pursuant to a law of general application is not generally considered to constitute persecution”: however, “there are some notable exceptions” (2005 UNHCR Guidelines, no. 26)
- ▶ For example, UNHCR has stated that conscientious objectors escaping a country not recognizing their right not to serve in the military because of their religion, may obtain religion-based asylum

“Evil Cults”?

- ▶ Some countries maintain that certain groups are “evil cults” rather than religions, and are prosecuted not as religions but because they “manipulate” or defraud their “victims”
- ▶ Similar accusations were brought against Scientology in various countries
- ▶ Courts in the United States in 1997 and in Australia in 2012 granted refugee status to Scientologists respectively from Germany and Uzbekistan, claiming the real reason for prosecuting Scientology there was hostility toward its religious ideas



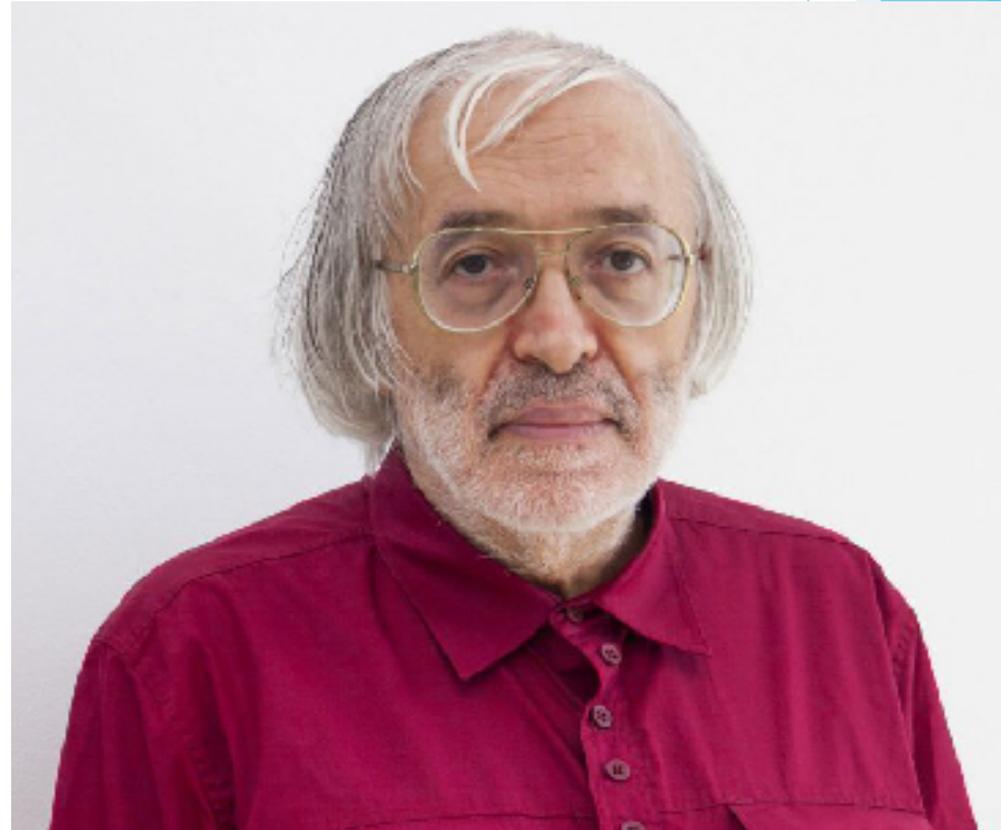
The Bivolaru Case

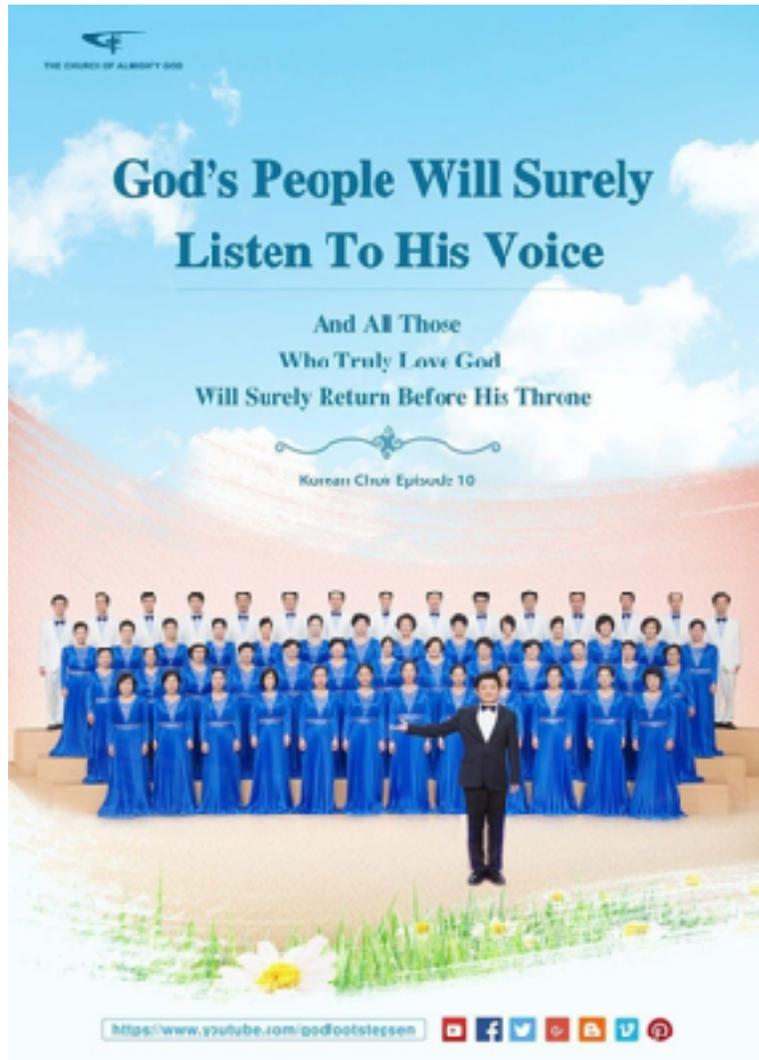


- ▶ A landmark decision by the Swedish Supreme Court (2005)
- ▶ Gregorian Bivolaru, founder of the Romanian group MISA, regarded as a “cult” by Romanian authorities, was prosecuted because of an alleged sexual relationship with a minor - **officially, he was not prosecuted for his religious teachings but for a common crime**

A Crucial Precedent

- ▶ Swedish Supreme Court decision on Bivolaru: refugee status should be granted to a person accused of common crimes, when it can be presumed that his or her religious opinion or teachings motivated the prosecution, that charges were trumped up, and that because of religious prejudice a fair trial could not be expected

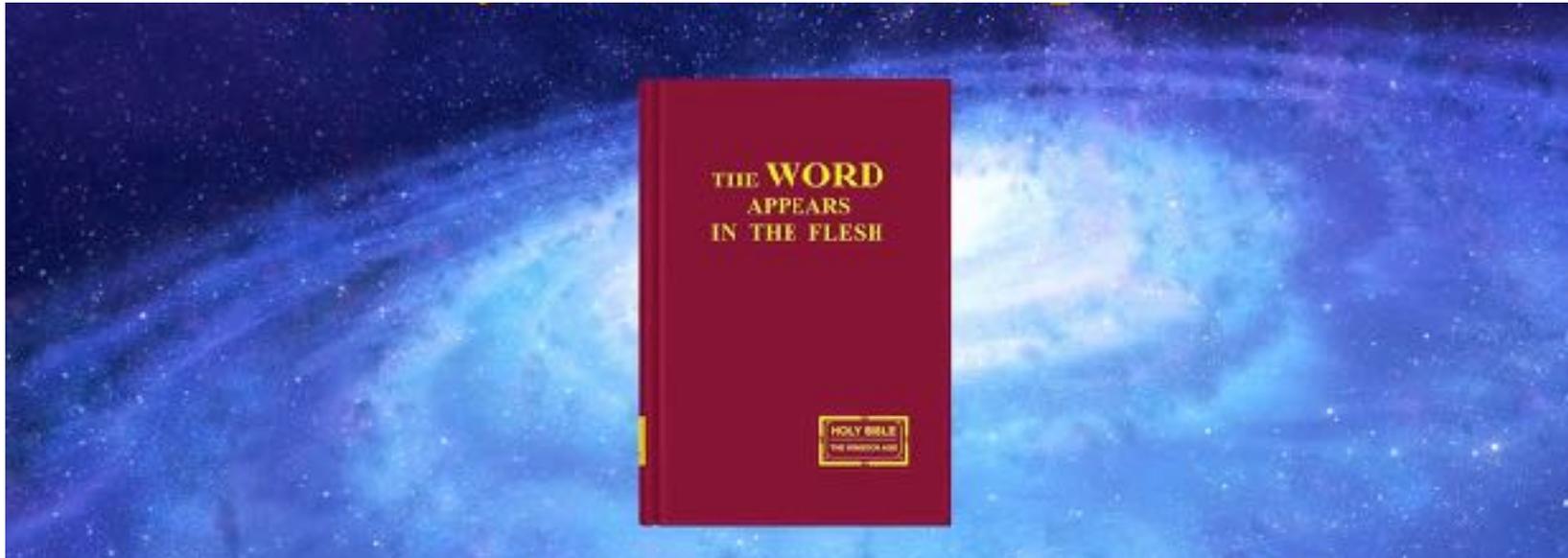




Church of Almighty God (CAG) Refugees in Korea

- ▶ The 5 principles of interpretation of the Convention and Protocol are binding for Korea. The following are *recommendations* on how to apply them to CAG refugees in Korea (and elsewhere)

1. All Beliefs Are Protected



- ▶ 1. Beliefs *about* religion are eligible for protection. Value judgements about a religion (“false religion,” “pseudo-religion”) are irrelevant. Beliefs and practices of CAG clearly constitute a religion under Convention and Protocol

2. The Individual Believers

- ▶ 2. It is not necessary that individual believers prove that they are very fervent or particularly knowledgeable in the religion. **Being members of a persecuted religion is enough.** Korea should recognize that being a member of CAG is enough for refugee status - being a *very active* member of CAG is not required



3. Assessing Credibility



- ▶ 3. Credibility is important but tests cannot be excessively burdensome. It should be enough to prove that the asylum seeker is really a member of CAG and is not simply an economic immigrant *pretending* to be a CAG member

4. Persecution

- ▶ 4. Korea seems to adopt a restrictive interpretation of “persecution.” It is not necessary to prove that the asylum seeker has been personally persecuted. Being a member of a persecuted group is enough. Of course, that CAG is a persecuted group in China is obvious

After the Afflictions,
I Have a Firmer Love for God
by Zhang Rui (from Jiangxi Province, China)



Since I'm walking a bright and righteous way,
I should have faith to walk along it.
Even if I have just one breath left, I'll hold out to the end!
God's word, with life force, gave me the faith and courage
to continue fighting against the devils,
and gradually I recovered some strength.

5. Common Crimes



- ▶ 5. As the Bivolaru case demonstrates, when leaders or members of “cults” or “xie jiao” are accused of common crimes (kidnappings, violence, etc.) but, because of the official hostility to “cults,” it can be seriously suspected that charges are trumped up, and they cannot expect a fair trial, then asylum should be granted
- ▶ This seems to obviously apply to members and leaders of CAG

Unpopular Refugees



- ▶ In many countries, politicians and public opinion are concerned that economic immigrants might falsely pretend they seek asylum because of persecution. **This concern is understandable.** However, members of groups that are really persecuted because of their religion have an **absolute right to refugee status** according to international conventions