

# OPERATIONAL GUIDANCE NOTE

## NORTH KOREA

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### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in North Korea and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service North and South Korea Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:  
[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

### Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

## **2. Country assessment**

- 2.1** The Democratic People's Republic of Korea (DPRK or North Korea) is a dictatorship under the absolute rule of Kim Jong-il, general secretary of the Korean Workers' Party (KWP) and chairman of the National Defense Commission, the "highest office of state." The country has an estimated population of 22.7 million. Kim's father, the late Kim Il-sung, remains "eternal president." Elections held in August 2003 reportedly were not free or fair.<sup>1</sup>
- 2.2** On 9 October 2006, North Korea announced that it had carried out a nuclear test. On 14 October 2006, the United Nations Security Council voted unanimously to impose sanctions on North Korea over the test. Resulting sanctions included a ban on the export to North Korea of nuclear and ballistic-missile goods and technologies, a ban on the export of arms to North Korea, a ban on technical assistance and advice related to all these items and a ban on the export by North Korea of proliferation-sensitive goods and technologies. The sanctions also provided for the freezing of assets of individuals and entities supporting North Korea's nuclear and ballistic-missile programmes and a travel ban on those individuals.<sup>2</sup>
- 2.3** In February 2007, North Korea agreed to take the first steps towards nuclear disarmament, as part of a deal reached during Six Party Talks in Beijing with China, the United States, Russia, South Korea, and Japan. In June 2007, International Atomic Energy Agency (IAEA) inspectors arrived in North Korea, the first time they have been allowed into the country since 2002. At further Six Party Talks in Beijing on 3 October 2007, North Korea agreed to disable its nuclear facilities at Yongbyon and give complete details of its nuclear programme by 31 December. On 11 October a team of nuclear experts arrived in North Korea to oversee the dismantling of reactors and other facilities, however, North Korea missed the year-end deadline for declaring its nuclear activities.<sup>3</sup>
- 2.4** In 2007, citizens of all age groups and occupations reportedly remained subject to intensive political and ideological indoctrination. The cult of personality of Kim Jong-il and his father remained an important ideological underpinning of the regime, at times seeming to resemble tenets of a state religion. The Government continued to emphasize a "military first" policy along with "juche" principles (often described as extreme self-reliance). Indoctrination was intended to ensure loyalty to the system and the leadership, as well as conformity to the state's ideology and authority.<sup>4</sup>
- 2.5** The constitution states that courts are independent and that judicial proceedings are to be carried out in strict accordance with the law; however, an independent judiciary does not exist. The constitution mandates that the central court is accountable to the Supreme People's Assembly, and the criminal code subjects judges to criminal liability for handing down "unjust judgments." Furthermore, individual rights are not acknowledged. The Public Security Ministry dispensed with trials in political cases and referred prisoners to the State Security Department for punishment. Little information was available on formal criminal justice procedures and practices, and outside access to the legal system has been limited to show trials for traffic violations and other minor offences. The constitution contains elaborate procedural protections, stating that cases should be heard in public, except under some circumstances stipulated by law. The constitution also states that the accused has the right to a defence, and when trials were held the Government reportedly assigned lawyers. Some reports noted a distinction between those accused of political crimes and common criminals and claimed that the Government offered trials and lawyers only to the

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<sup>1</sup> Home Office Country of Origin Information (COI) Key Documents: North Korea & U.S. Department of State Report on Human Rights Practices, 2007, Democratic People's Republic of Korea (USSD) (Introduction)

<sup>2</sup> COI Key Documents: North Korea, Foreign and Commonwealth Office (FCO) Country Profile: North Korea & British Broadcasting Corporation (BBC) News Timeline: North Korea

<sup>3</sup> COI Key Documents: North Korea, FCO Country Profile: North Korea, BBC News Timeline: North Korea & BBC News 'N Korea defiant on nuclear issue' dated 4 January 2008

<sup>4</sup> USSD 2007

latter. There was no indication that independent, non-governmental defence lawyers existed in 2007.<sup>5</sup>

- 2.6** North Korea is generally considered to have one of the worst human rights records in the world. There is no civilian control of the security forces and it is reported that the regime commits numerous serious abuses including extra-judicial killings, disappearances, and arbitrary detention, including many political prisoners, torture, denial of freedom of speech, press, assembly, and association, and the severe punishment of some repatriated refugees. The regime reportedly subjects citizens to rigid controls over many aspects of their lives.<sup>6</sup>
- 2.7** Defector and refugee reports indicated that in some instances the regime executed political prisoners, opponents of the regime, repatriated defectors, and others, including military officers suspected of espionage or of plotting against Kim Jong-il. The law prescribes the death penalty for the most "serious" or "grave" cases of "anti-state" or "anti-nation" crimes, including: active participation in a coup or plotting to overthrow the state; acts of terrorism for an anti-state purpose; treason, which includes defection or handing over state secrets; suppressing the people's movement for national liberation; cutting electric power lines or communication lines and illegal drug transactions.<sup>7</sup>
- 2.8** Although a limited relaxation of economic controls has taken place in recent years, punishment can be severe for those who transgress established norms, regulations and laws. Information of these practices is anecdotal, coming mainly from defectors, and it is very difficult to accurately assess the numbers involved. Still, it seems likely that a very large number of individuals have suffered and are suffering from practices that represent extremely serious violations of their human rights.<sup>8</sup>
- 2.9** Numerous reports exist of the use of torture and other cruel, inhuman or degrading forms of treatment or punishment being used. Methods of torture and other abuse reportedly included severe beatings, electric shock, prolonged periods of exposure, humiliations such as public nakedness, confinement for up to several weeks in small "punishment cells" in which prisoners were unable to stand upright or lie down, being forced to kneel or sit immobilized for long periods, being hung by one's wrists, being forced to stand up and sit down to the point of collapse, and forcing mothers recently repatriated from China to watch the infanticide of their newborn infants. During the year, defectors continued to report that many prisoners died from torture, disease, starvation, exposure, or a combination of these causes.<sup>9</sup>
- 2.10** Some North Koreans report that the treatment of "illegal" border crossers and other criminal suspects improved in 2007, citing less verbal and physical abuse. They also note that suspects occasionally have been visited by, though not defended in court by, state-appointed defence lawyers. It was not clear whether such changes were due to the discretion of regional state officials, or a reflection of a new central government policy. However, many prisoners are still routinely subjected to inhuman and degrading treatment. Lack of food and medicine in detention facilities lead to illness and sometimes death. There are still reports of public executions, although not as frequently as in the 1990s. The death penalty appears to apply to treason, sedition, and acts of terrorism, as well as to lesser crimes such as selling illegal substances or stealing state property (everything from electrical cables to coal is deemed state property).<sup>10</sup>

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<sup>5</sup> USSD 2007

<sup>6</sup> COI Key Documents: North Korea, USSD 2007, FCO Country Profile: North Korea, FCO Human Rights Annual Report 2007, Human Rights Watch (HRW) World Report 2007: North Korea & Amnesty International (AI) Report 2007: North Korea

<sup>7</sup> USSD 2007

<sup>8</sup> FCO Country Profile: North Korea

<sup>9</sup> FCO Country Profile: North Korea, FCO Human Rights Annual Report 2007 & USSD 2007

<sup>10</sup> HRW World Report 2008: North Korea

- 2.11** The Government does not allow any independent domestic organisation to monitor human rights conditions. Requests for visits by international human rights organisations have been largely ignored. One visit by Amnesty International was allowed in 1996. The resulting report was regarded as hostile and Amnesty has not been able to visit again.<sup>11</sup>
- 2.12** In 2006, there were reports of executions of political opponents in political prisons and of people charged with economic crimes, such as stealing food. Executions were by hanging or firing-squad.<sup>12</sup>

#### South Korea

- 2.13** The constitution of the Republic of Korea (RoK, also known as South Korea) defines its geographical area as the whole of the Korean peninsula and islands, and, therefore, includes both North and South Korea.<sup>13</sup> RoK nationality is defined by the Nationality Act, first promulgated in 1948. Article 3 of the Nationality Act describes who is entitled to be a national of RoK and most North Koreans are entitled to citizenship in the south.<sup>14</sup> The US State Department Country Report on Human Rights Practices, 2007, Republic of Korea (USSD Report 2007) observed that "The government continued its longstanding policy of accepting refugees from the DPRK, who are entitled to RoK citizenship. The government resettled 1,990 North Koreans from January to October, resulting in a total of approximately 11,700 North Koreans resettled in the country."<sup>15</sup>
- 2.14** The Act on the Protection and Settlement Support of Residents Escaping from North Korea most recently amended in July 2007 provides for the protection and support for North Korean residents escaping North Korea to enable their adaptation in all spheres of their lives, including political, economic, social and cultural spheres. Some North Koreans, such as criminals who have committed serious non-political crimes, are excluded from protection under article 9 of the Act. Protection can be sought at South Korean missions overseas, though North Koreans who have been resident in a country other than either North or South Korea for more than 10 years do not qualify for protection and assistance. Article 27 of the Act lists the circumstances in which protection may be suspended subject to the deliberations of the South Korean Consultative Council.<sup>16</sup>
- 2.15** A *New York Times* article dated 25 June 2006 reported that after arriving in South Korea, North Korean defectors spend a month in the custody of the National Intelligence Service before being taken to the Government's main resettlement centre, Hanawon, 50 miles south of Seoul. There the North Koreans receive "a three-month crash course on life south of the demilitarized zone." Those who complete the resettlement course receive a "[US] \$20,000 stipend and are provided with low-cost public housing. They are also entitled to welfare benefits in case of unemployment and cash incentives for job training". The article noted that North Koreans "...have started carving out a space for themselves in this society, though often as second-class citizens" and "Out in the real world, many defectors who have come here with unrealistically high expectations find out that they are prepared for only the most menial of jobs. Many move from one part-time job to another." The article also reported that North Koreans acknowledged that often the discrimination they faced is unintentional, such as South Koreans offering "...copious amounts of food on the assumption they must be hungry or ask[ing] them whether they have ever tried a basic food."<sup>17</sup>
- 2.16** The UN News Service reported on 25 January 2008 that the UN Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea (DPRK - North Korea),

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<sup>11</sup> FCO Country Profile: North Korea

<sup>12</sup> AI Report 2007: North Korea

<sup>13</sup> The website of the Constitutional Court of Korea

<sup>14</sup> USSD 2007: South Korea (Section 2) & Republic of Korea Nationality Act, 1976

<sup>15</sup> COI South Korea Key Documents 2008 (3.36)

<sup>16</sup> Act on the Protection and Settlement of Residents Escaping from North Korea (amended 23.07.07)

<sup>17</sup> COI South Korea Key Documents 2008 (3.40)

Vitit Muntarbhorn, “welcomed” the efforts of the South Korean Government has made to assist people fleeing North Korea. Mr Muntarbhorn praised the support given to <sup>18</sup>

“... over 10,000 nationals from the DPRK [the Government] has accepted for settlement while inviting ‘longer-term facilities to help them adapt to their new lives, and social, educational, employment and psychological back-up, with family and community based networks; more family reunion possibilities; more protection to be afforded to those who do not receive the protection of other countries; and a more active information campaign using success stories of those who have settled in the Republic of Korea to ensure a positive image and nurture a sense of empathy for those who exit from the DPRK in search of refuge elsewhere.’” <sup>19</sup>

**2.17** The article continued that Mr Muntarbhorn “...praised increased support for these persons, such as through longer term protection periods, the provision of pensions, and employment and other opportunities. He also hailed a new law allowing DPRK nationals to file for divorce from a spouse in their home country if the location of that person cannot be identified.” In addition he was “encouraged by educational and training programmes for the young generation from the DPRK, complemented by caring neighbours who help them adapt to society.” However Mr Muntarbhorn also highlighted the need for longer-term care for torture victims and older North Koreans who had escaped. And he called for more attention to be given to mixed marriages, where a North Korean has a relationship and child with a national of a “second” country (i.e. neither North nor South Korea) on the way to South Korea, but the child is left in the third country <sup>20</sup>

**2.18** South Korea signed the UN Refugee Convention in 1992. The USSD Report 2007 observed that “The laws provide for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. However, the government did not routinely grant refugee status or asylum. In practice the government generally provided protection against refoulement, the return of persons to a country where there is reason to believe they feared persecution. Government guidelines provide for offering temporary refuge in the case of a mass influx of asylum seekers and an alternative form of protection, a renewable, short-term permit, to those who met a broader definition of ‘refugee.’ Between July 1994, when the government first accepted applications, and December 2007, the government received approximately 1,500 asylum applications (not including those from the DPRK); of those, the government recognized 64 applicants as refugees. During the year the government received 403 refugee applications (not including those from the DPRK). The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers. The government continued to work with the UNHCR to bring its refugee processing up to international standards; however, a complex procedure and long delays in refugee status decision making continued to be problems.” <sup>21</sup>

### **3. Main categories of claims**

**3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in North Korea. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on

<sup>18</sup> COI South Korea Key Documents 2008

<sup>19</sup> COI South Korea Key Documents 2008

<sup>20</sup> COI South Korea Key Documents 2008

<sup>21</sup> COI South Korea Key Documents 2008 (3.35)

persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'. Case owners should also refer to the Asylum Instruction on Nationality.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Political opponents of the regime**
- 3.6.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the North Korea authorities due to their being political opponents of the regime.
- 3.6.2** **Treatment.** The internal security apparatus includes the Ministry of Public Security (MPS) and the State Security Department. Reports of diversion of food aid to the military and regime officials and of official quid-pro-quo bribery were indicative of corruption in the security forces.<sup>21</sup>
- 3.6.3** There were no restrictions on the Government's ability to detain and imprison persons at will or to hold them incommunicado. Family members and other concerned persons reportedly found it virtually impossible to obtain information on charges against detained persons or the lengths of their sentences. Judicial review of detentions did not exist in law or in practice. Entire families, including children, have reportedly been imprisoned when one member of the family was accused of a crime.<sup>22</sup>
- 3.6.4** The Government considers critics of the regime to be political criminals. Reports from past years have described political offences as including sitting on newspapers bearing Kim Il Sung's picture, mentioning Kim Il Sung's limited formal education, or defacing photographs of the Kim's. The number of political prisoners and detainees remained unknown.<sup>23</sup>
- 3.6.5** Defector and refugee reports indicated that in some instances the regime executed political prisoners, opponents of the regime, repatriated defectors, and others, including military officers suspected of espionage or of plotting against Kim Jong-il. The Government was reportedly also responsible for cases of disappearance and in recent years defectors have claimed that state security officials often apprehend individuals suspected of political crimes

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<sup>21</sup> USSD 2007

<sup>22</sup> USSD 2007

<sup>23</sup> USSD 2007

and send them, without trial, to political prison camps. There are no restrictions on the ability of the Government to detain and imprison persons at will and to hold them incommunicado.<sup>24</sup>

**3.6.6 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

**3.6.7 Internal relocation.** The principle of internal relocation is not excluded where the persecution feared in one part of the country emanates from the state. All must depend on a fair assessment of the relevant facts. However, the reach of the state authorities in North Korea extends to all parts of the country, and they are sufficiently systematic and organised to preclude a finding that a risk of ill treatment at the hands of, or with the connivance of state agents, could be sufficiently mitigated by internal relocation within North Korea.

**3.6.8 Conclusion.** Individuals who have come to the attention of the authorities for opposition or perceived opposition to the current regime are likely to face ill treatment amounting to persecution at the hands of the North Korean authorities and a grant of refugee status is likely to be the appropriate outcome if return to North Korea is proposed. However, as stated in paragraphs 2.13 – 2.16 above, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship. An application for asylum owing to a fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

- (i) such refusal will not result in the applicant being required to go to a country in breach of the Refugee Convention (Para 334(v) Immigration Rules); and
- (ii) the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (Para 339J(iv))

**3.6.9** Whilst there is some evidence of dissatisfaction by North Korean escapees to the south (see paras 2.15 – 2.18 above), the UN Special Rapporteur on the human rights situation in North Korea, Vitit Muntarbhorn, "welcomed" the efforts the South Korean Government has made to assist people fleeing North Korea and praised the support given to over 10,000 defectors who had been accepted for settlement. Since there is no evidence of persecution of North Koreans in South Korea, a grant of asylum on this basis is unlikely, therefore, to be appropriate.<sup>25</sup>

### **3.7 Food shortages, economic problems and corrupt local officials**

**3.7.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution due to them being denied employment or food due to corruption or disagreements with local officials.

**3.7.2 Treatment** North Korea has been suffering from a severe food shortage since the 1990s. That shortage was reportedly caused by both natural disasters and mismanagement on the part of the authorities, aggravated by the overemphasis on militarization and failure to generate food security due to unsustainable agricultural development. In the 1990s, North Korea started to accept food aid from outside the country, particularly through the World Food Programme (WFP). In 2002, the authorities moved away from the age-old Public Distribution System whereby the State provided rations to the people, to a more market-oriented experiment whereby people were to be paid higher wages and were expected to fend for themselves by accessing food through the market system. This led to major disparities due to a substantial rise in food prices, with various vulnerable groups marginalised in the process. However, in 2005, the authorities started to clamp down on the

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<sup>24</sup> USSD 2007

<sup>25</sup> COI South Korea Key Documents

various markets by banning cereal trading for fear of losing a grip on the population and have since reimposed the Public Distribution System.<sup>26</sup>

- 3.7.3** In August 2005, the Government asked the UN to end all humanitarian aid programmes by the end of the year. It also asked all resident international staff of NGOs providing humanitarian assistance to leave the country. The move to terminate humanitarian aid has raised numerous concerns, including doubts that the food emergency has truly ended and that, without World Food Programme (WFP) monitoring, donated food will get to the most vulnerable populations. At the end of 2005, the WFP ended its large-scale food distribution programme and in 2006, five of the WFP's regional offices were closed.<sup>27</sup>
- 3.7.4** The WFP resumed its programmes in North Korea in May 2006, but on a much reduced scale and concerns remain that not enough food is reaching vulnerable groups, including small children and the elderly. For example, the WFP's Protracted Relief and Recovery Operation, which went into effect in June 2006, aspired to provide 150,000 metric tonnes of grain to 1.9 million persons through targeted feeding programmes in schools, hospitals, and orphanages, but by October 2006 the WFP had reportedly received only 8 per cent of the US\$102 million required.<sup>28</sup>
- 3.7.5** There were also reports of diversion of food aid to the military and regime and there were further reports of official *quid pro quo* bribery. The Government continued to deny any diversion of food aid, although it did hint that it was combating internal corruption. The UN Special Rapporteur on the right to food announced in October 2006 that 12 per cent of the population still suffered from severe hunger. Agricultural output was also expected to be substantially lower than the previous year following floods.<sup>29</sup>
- 3.7.6** Class background and family connections may be as important as professional competence in deciding who receives particular jobs, and foreign companies that have established joint ventures continued to report that all their employees must be hired from registers screened by the authorities. There was no data available on the minimum wage in state-owned industries. Since the 2002 economic reforms, wages have become the primary form of compensation, and factory managers have had more latitude to set wages and provide incentives. Workers were reportedly expected to use some of their increased income to pay for services that had previously been provided either free or at highly subsidised rates by the state, such as rent for housing and fees for transportation. While education and medical care technically remained free, educational materials and medicines appeared available only for purchase in markets.<sup>30</sup>
- 3.7.7** ***Sufficiency of protection.*** The constitution states that courts are independent and that judicial proceedings are to be carried out in strict accordance with the law. However, the U.S. State Department reported that an independent judiciary did not exist and there was also no indication that independent, non-governmental defence lawyers existed. Members of the security forces reportedly committed serious human rights abuses in 2007, including arresting and transporting citizens to prison camps without trial and participating in torture and other cruel punishment of prisoners. According to reports, there were no restrictions on the Government's ability to detain and imprison persons at will or to hold them incommunicado and judicial review of detentions did not exist in law or in practice.<sup>31</sup> The abuses committed by the security forces, the high levels of police corruption, the power of the state and the lack of an independent judiciary limit the effectiveness of any protection that the authorities are able or willing to offer to those that fear local officials. For claims based on food shortages and economic problems alone sufficiency of protection is not relevant.

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<sup>26</sup> UNHCR 2006

<sup>27</sup> USSD 2005 (Section 3), AI Report 2005

<sup>28</sup> FCO Human Rights Annual Report 2006

<sup>29</sup> USSD 2005

<sup>30</sup> USSD 2005

<sup>31</sup> USSD 2005



**3.7.8 Internal relocation.** The law provides for the "freedom to reside in or travel to any place"; however, the Government did not respect these rights in practice. During 2007, the Government reportedly continued to attempt to control internal travel. Only members of a very small elite and those with access to remittances from overseas have access to personal vehicles, and movement was reportedly hampered by the absence of an effective transport network and by military and police checkpoints on main roads at the entry to and exit from every town. Use of personal vehicles at night and on Sundays was also restricted during the year. The Government strictly controlled permission to reside in, or even to enter, Pyongyang, where food supplies, housing, health, and general living conditions were much better than in the rest of the country.<sup>32</sup> The Government curtails and controls freedom of movement within North Korea and internal relocation to another area of the country to escape a localised threat is not possible.

**3.7.9 Conclusion.** The Government controls the distribution of food and access to employment in North Korea and corruption amongst state officials is a serious problem but general country conditions do not in themselves constitute persecution under the Refugee Convention. If, however, additional factors (see 3.9 below) indicate that a grant of asylum is likely to be appropriate, caseowners should consider the guidance in paragraphs 2.13 – 2.16 above; North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship. An application for asylum owing to a fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

- (iii) such refusal will not result in the applicant being required to go to a country in breach of the Refugee Convention (Para 334(v) Immigration Rules) and
- (iv) the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (Para 339J(iv))

**3.7.10** Whilst there is some evidence of dissatisfaction by North Korean escapees to the south (see paras 2.15 – 2.18 above), the UN Special Rapporteur on the human rights situation in the North Korea, Vitit Muntarbhorn, "welcomed" the efforts the South Korean Government has made to assist people fleeing North Korea and praised the support given to over 10,000 defectors, nationals from the DPRK, who had been accepted for settlement. Since there is no evidence of persecution of North Koreans in South Korea, a grant of asylum on this basis is unlikely, therefore, to be appropriate.<sup>33</sup>

## **3.8 Christians**

**3.8.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the North Korea authorities due to their being Christians and/or being associated with foreign Christian organisations.

**3.8.2 Treatment.** The constitution provides for "freedom of religious belief;" however, in practice the Government severely restricts religious freedom, including organised religious activity, except that which is supervised by officially recognised groups linked to the Government. The law also stipulates that religion "should not be used for purposes of dragging in foreign powers or endangering public security." Genuine religious freedom does not exist.<sup>34</sup>

**3.8.3** The personality cult of Kim Il-Sung and Kim Jong-Il remained a virtual civil religion that provided a spiritual underpinning for the regime. Refusal on religious or other grounds to accept the leader as the supreme authority exemplifying the state and society's needs was

<sup>32</sup> USSD 2005

<sup>33</sup> COI South Korea Key Documents 2008

<sup>34</sup> U.S. Department of State International Religious Freedom Report (USIRFR) 2007 (Introduction & Section II) & USSD 2007

regarded as opposition to the national interest and continued to result in severe punishment.<sup>35</sup>

- 3.8.4** In 2007, there were reportedly 3 state-controlled Christian churches in Pyongyang: 2 Protestant churches under lay leadership and the Changchung Roman Catholic Church. In addition, in its 2002 report to the UN Commission on Human Rights, the Government reported the existence of 500 "family worship centers," although the existence of such centres has not been independently confirmed. Some NGOs and academics estimate there may be up to several hundred thousand underground Christians in the country. Others question the existence of a large-scale underground church or conclude that no reliable estimate of the number of underground religious believers exists. Unconfirmed reports have indicated that in 2006 such worship centres were tolerated as long as they did not openly proselytize or have contact with foreign missionaries.<sup>36</sup>
- 3.8.5** In 2007, several schools for religious education existed in the country, including 3-year colleges for training Protestant and Buddhist clergy. A religious studies programme also was established at Kim Il-sung University in 1989; its graduates usually worked in the foreign trade sector. In 2000, a Protestant seminary was reopened with assistance from foreign missionary groups. In September 2003, construction reportedly was completed of the Pyongyang Theological Academy, a graduate institution that trains pastors affiliated with the Korean Christian Federation.<sup>37</sup>
- 3.8.6** Little is known about the day-to-day life of religious persons in North Korea, but in 2006 and 2007 members of government-controlled religious groups did not appear to suffer discrimination. There were reports in 2006 and 2007 that funds and goods donated to government-approved churches were channelled through the Korean Workers Party (KWP). In 2006 and 2007, there were also unconfirmed reports that nonreligious children of religious believers may have been employed in mid-level positions in the Government. In the past, such individuals suffered broad discrimination with sometimes severe penalties or even imprisonment.<sup>38</sup>
- 3.8.7** However, members of underground churches are reportedly regarded as subversive elements and according to some defectors, the Government has increased repression and persecution of unauthorized religious groups in recent years. Reports from Non-governmental organisations (NGOs), refugees, defectors and missionaries in 2006 and 2007 indicated that persons engaging in religious proselytizing, persons with ties to overseas evangelical groups, and repatriated persons who contacted foreigners, including Christian missionaries, outside the country were beaten, arrested and subjected to harsh punishment in detention. During 2006 and 2007 it was reported that North Koreans who received help from foreign churches were considered political criminals and received harsher treatment, including imprisonment, prolonged detention without charge, torture, or execution.<sup>39</sup>
- 3.8.8** **Sufficiency of protection.** As this category of applicants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.8.9** **Internal relocation.** As this category of applicants fear is of ill treatment/persecution by the state authorities relocation to a different area of North Korea to escape this threat is not feasible.
- 3.8.10** **Conclusion.** While members of government controlled Christian religious organisations are generally tolerated and do not suffer discrimination from the authorities, those associated or perceived to be associated with underground or foreign Christian religious organisations

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<sup>35</sup> USSD 2007

<sup>36</sup> USIRFR 2007 (Section I) & USSD 2007

<sup>37</sup> USIRFR 2007 (Section I)

<sup>38</sup> USIRFR 2007 (Section II) & USSD 2007

<sup>39</sup> USIRFR 2007 (Section II) & USSD 2007

are likely to face ill treatment amounting to persecution at the hands of the North Korean authorities and a grant of refugee status is likely to be the appropriate outcome if return to North Korea is proposed. However, as stated in paragraphs 2.13 – 2.16 above, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship. An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

- (v) such refusal will not result in the applicant being required to go to a country in breach of the Refugee Convention (Para 334(v) Immigration Rules) and
- (vi) the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (Para 339J(iv))

**3.8.11** Whilst there is some evidence of dissatisfaction by North Korean escapees to the south (see paras 2.15 – 2.18 above), the UN News Service reported on 25 January 2008 that the UN Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea (DPRK - North Korea), Vitit Muntarbhorn, "welcomed" the efforts the South Korean Government has made to assist people fleeing North Korea and praised the support given to over 10,000 defectors who had been accepted for settlement. Since there is no evidence of persecution of North Koreans in South Korea, a grant of asylum on this basis is unlikely, therefore, to be appropriate.<sup>40</sup>

### **3.9 Those who have left North Korea illegally**

**3.9.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of North Korea authorities due to their having left North Korea illegally either as economic migrants or as defectors.

**3.9.2 *Treatment.*** The law criminalises defection and attempted defection, including the attempt to gain entry to a foreign diplomatic facility for the purpose of seeking political asylum. Individuals who cross the border with the purpose of defecting or seeking asylum in a third country are subject to a minimum of five years of 'labour correction.' In 'serious' cases, defectors or asylum seekers are reportedly subjected to indefinite terms of imprisonment and forced labour, confiscation of property, or death. Many would-be refugees who were returned involuntarily in 2007 were reportedly imprisoned under harsh conditions, with some sources indicating that the harshest treatment was reserved for those who had extensive contact with foreigners.<sup>41</sup>

**3.9.3** In 2007, the regime limited issuance of exit visas for foreign travel to officials and trusted businessmen, artists, athletes, academics, and religious figures. Short-term exit papers were available for some residents on the Chinese border to enable visits with relatives or to engage in small-scale trade. During the year press reports claimed that the North Korean Government and China had ended their visa waiver programme for short-term visitors.<sup>42</sup>

**3.9.4** Reports from defectors in the past indicated that the regime was differentiating between persons who crossed the border in search of food, who might be sentenced only to a few months of forced labour or in some cases merely issued a warning, and persons who crossed repeatedly or for political purposes, who were sometimes sentenced to heavy punishments. The law stipulates a sentence of up to two years of "labour correction" for the crime of illegally crossing the border. According to the UN special rapporteur's August 2005 report, there was a new policy to enable persons leaving the country for non-political reasons to return with the promise of a pardon under the penal code. Other NGO reports had indicated that North Koreans returning from China were often able to bribe North

<sup>40</sup> COI South Korea Key Documents

<sup>41</sup> USSD 2007

<sup>42</sup> USSD 2007

Korean border guards into letting them freely pass across the border. Several NGOs operating in the region also confirmed that punishments seemed to be less severe than in the past.<sup>43</sup> During 2007 Human Rights Watch reported that the government had reversed a policy in place since 2000, under which punishment imposed on border-crossers had been relatively lenient. Several recent border-crossers reported in 2006 that they were punished with longer sentences in more abusive prisons. Under the new policy, the government warned that everyone would be sent to prison and this trend continued throughout 2007.<sup>44</sup>

- 3.9.5** In August 2007, the FCO stated that recent research confirmed that the North Korean authorities draw a distinction between those driven to cross the border for economic, as opposed to political reasons, and that punishments seemed to be less severe than in the past. There is little evidence of pardoning, although cases are known where individuals have been able to bribe their way free or buy a more lenient sentence.<sup>45</sup> Some North Koreans report that the treatment of “illegal” border crossers and other criminal suspects improved in 2007, citing less verbal and physical abuse.<sup>46</sup>
- 3.9.6** National security agents are particularly interested to learn if the border crossers have had contact with foreign journalists, Christian groups, South Koreans or other foreigners, particularly US citizens, or if they have attempted to defect to a third country. There is some evidence that contact with the ‘wrong’ people results in harsher treatment or sentencing. Those caught at a Chinese border area with a third country, for example, Mongolia or Vietnam, invariably undergo a more intense and extended interrogation process, and risk harsher penalties. Either instance could result in incarceration in a political prisoner camp, where it is widely accepted that prisoners are subjected to torture, or possible execution in ‘serious’ cases.<sup>47</sup>
- 3.9.7** Substantial numbers of North Koreans have crossed the border into China over the years, and NGO estimates of those that lived there during 2006 ranged from tens of thousands to hundreds of thousands. According to reports, some settled semi permanently in north-eastern China, others travelled back and forth across the border, and still others sought asylum and permanent resettlement in third countries. There was evidence that the number of North Koreans crossing into China levelled off during 2006, after declining in 2005. Amnesty International further reported that during 2006 an estimated 150-300 North Koreans were forcibly repatriated from China every week. A few thousand North Koreans were able to gain asylum in third countries during the year.<sup>48</sup>
- 3.9.8** **Sufficiency of protection.** As this category of applicants’ fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.9.9** **Internal relocation.** As this category of applicants fear is of ill treatment/persecution by the state authorities relocation to a different area of North Korea to escape this threat is not feasible.
- 3.9.10** **Conclusion.** Those who leave North Korea illegally may face criminal sanction if returned to North Korea. However, the severity of this punishment is likely to differ significantly depending upon whether the applicant left North Korea for economic or political reasons. Although some of those who have left North Korea to seek work or food in China may face imprisonment on return, there is some evidence that punishments may be less severe than previously. However, those who have left North Korea for political reasons including those who have claimed asylum abroad are likely to face a minimum of five years labour correction if returned to North Korea. In some cases ‘defectors’ or those who have sought asylum may face harsher prison sentences or may be executed.

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<sup>43</sup> USSD 2007

<sup>44</sup> USSD 2007

<sup>45</sup> FCO letter 2 August 2007

<sup>46</sup> Human Rights Watch Report 2008

<sup>47</sup> FCO letter 2 August 2007

<sup>48</sup> AI Report 2007: North Korea & USSD 2006 (Section 2)

**3.9.11** Prison conditions (see section 3.10) in North Korea are so severe as to breach Article 3 of the ECHR. In addition, claiming asylum abroad is viewed as a political offence by the North Korean authorities and attracts a harsh punishment which will amount to persecution. A grant of refugee status is, therefore, likely to be appropriate if return to North Korea is proposed. However, as stated in paragraphs 2.13 – 2.16 above, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship. An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

- (i) such refusal will not result in the applicant being required to go to a country in breach of the Refugee Convention (Para 334(v) Immigration Rules) and
- (ii) the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (Para 339J(iv))

**3.9.12** Whilst there is some evidence of dissatisfaction by North Korean escapees to the South (see paras 2.15 – 2.18 above), the UN Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea (DPRK - North Korea), Vitit Muntarbhorn, "welcomed" the efforts the South Korean Government has made to assist people fleeing North Korea and praised the support given to over 10,000 defectors who had been accepted for settlement. As there is no evidence of persecution of North Koreans in South Korea, a grant of asylum on this basis is unlikely, therefore, to be appropriate.<sup>49</sup>

### **3.10 Prison conditions**

**3.10.1** Applicants may claim that they cannot return to North Korea due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in North Korea are so poor as to amount to torture or inhuman treatment or punishment.

**3.10.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

**3.10.3 *Consideration.*** NGO, refugee, and press reports indicated that there were several types of detention centres and camps, including forced labour camps; separate camps reportedly existed for political prisoners. Using commercial satellite imagery to bolster their assertions about the existence of the camps and point out their main features, some defectors claimed in 2007 that the camps covered areas as large as 200 square miles. The camps appeared to contain mass graves, barracks, work sites, and other prison facilities. Those sentenced to prison for non-political crimes were typically sent to re-education prisons where prisoners were subjected to intense forced labour. Those who were considered hostile to the regime or who committed political crimes, such as defection, were sent to political prison camps indefinitely. Many prisoners in political prison camps were not expected to survive. In 2007 the government continued to deny the existence of political prison camps..<sup>50</sup>

**3.10.4** Reports indicated that conditions in the political prison camps were harsh. Systematic and severe human rights abuses occurred throughout the prison and detention system. Detainees and prisoners consistently reported violence and torture. According to refugees, in some places of detention, prisoners received little or no food and were denied medical

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<sup>49</sup> COI South Korea Key Documents

<sup>50</sup> USSD 2007 (Section 1)

care. Sanitation was poor, and former labour camp inmates reported they had no changes of clothing during their incarceration and were rarely able to bathe or wash their clothing..<sup>51</sup>

- 3.10.5** The Foreign and Commonwealth Office (FCO) has also reported that conditions in these labour camps are extremely harsh and the mortality rate high. The FCO has also highlighted the focus on 'rehabilitation' in some labour camps, where conditions are less harsh, but still represent severe punishment by Western standards.<sup>52</sup>
- 3.10.6** There are reports that prisoners in political prison camps are regularly subjected to beatings and sometimes more systematic torture. In 2007, methods of torture reportedly included severe beatings, electric shock, prolonged periods of exposure, humiliations such as public nakedness, confinement for up to several weeks in small 'punishment cells' in which prisoners were unable to stand upright or lie down, being forced to kneel or sit immobilized for long periods, being hung by one's wrists, being forced to stand up and sit down to the point of collapse, and forcing mothers recently repatriated from China to watch the infanticide of their newborn infants. Defectors continued to report that many prisoners died from torture, disease, starvation, exposure, or a combination of these causes.<sup>53</sup>
- 3.10.7 *Conclusion.*** Conditions in prisons and detention facilities in North Korea are severe, and are likely to reach the Article 3 threshold. Where case owners believe that an individual is likely to face imprisonment on return to the North Korea they should also consider whether the applicant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual applicants are able to demonstrate a real risk of imprisonment on return to North Korea and exclusion is not justified, a grant of Humanitarian Protection will be appropriate.

#### **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to North Korea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 **Minors claiming in their own right****
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment there is insufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in North Korea. However North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 2.13 – 2.18). The RoK Ministry of Health and Welfare (MoHW) states that under the Child Welfare Act, child welfare services are provided to children below 18. The MoHW website states that there are a total of 277 facilities for children, 5 providing vocational training and 33 facilities providing 'other' services. These facilities catered for a total of 18,676 children with 17,342

<sup>51</sup> USSD 2007 (Section 1)

<sup>52</sup> FCO Country Profile: North Korea

<sup>53</sup> USSD 2007 (Section 1)

children in welfare facilities. The government extends financial support to children in welfare facilities, and supports personnel expenses of the special trainers at the institutions. In accordance with government policy placing more emphasis on domestic adoption than foreign, 1,694 orphans were adopted by foster parents in Korea in 2002.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to North Korea due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** North Korea has an extensive, free medical care system. Medical personnel retain core primary healthcare skills but the quality of care and availability of resources has deteriorated markedly with the economic decline in the 1990s. Because of this, and persistent, chronic malnutrition, life expectancy has fallen sharply.<sup>54</sup>

**4.4.3** For decades, medical facilities in North Korea have reportedly suffered from a lack of resources and electricity, as well as inadequate and often outdated skills among the medical staff. Hospitals in Pyongyang can perform basic examinations and lifesaving measures but functioning x-ray facilities are not generally available. According to the World Health Organisation (WHO), public and private health expenditure in 2005 was 3.5 per cent of gross domestic product. WHO also reported that in 2003 there were 74,597 physicians in North Korea and more than 87,000 nurses.<sup>55</sup>

**4.4.4** North Korea has a mental health policy based on advocacy, promotion, prevention, treatment and rehabilitation. Mental health is part of the primary health care system and actual treatment of severe mental disorders is available at community care facilities. Therapeutic drugs are also generally available at the primary health care level of the country. There are 13,000 people estimated to be HIV positive in North Korea and the HIV prevalence rate for adults aged between 15 and 49 is less than 0.1 per cent.<sup>56</sup>

**4.4.5** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

#### **5. Returns**

**5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. However, in dealing with individual North Korean cases consideration must always be given to the information in sections 2.13 – 2.18 on South Korea and 3.9 on illegal exit.

**5.2** In deciding the most appropriate removal destination, case owners should make clear findings as to the applicant's former place of residence/nationality. In particular, case

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<sup>54</sup> FCO Country Profile: North Korea

<sup>55</sup> U.S. Department of State Bureau of Consular Affairs – Country Specific Information: North Korea & World Health Organisation (WHO): North Korea

<sup>56</sup> WHO Mental Health Atlas 2005: North Korea & UNAIDS: North Korea

owners should ascertain whether the applicant has previously been granted citizenship in South Korea.

- 5.3** Caseowners should also be aware that there is some evidence of Chinese nationals of Korean ethnicity claiming to be North Korean citizens and making asylum claims on this basis. In such cases, removal to China should be considered. The information available indicates that there are two main categories of Koreans in China. The first category comprises those who have been living legally in China for many years and were included in the 2000 census. It appears that this group is treated differently from those in the second category, who fled North Korea to China and have remained there illegally.<sup>57</sup>
- 5.4** Where the claim includes dependent family members their situation on return should be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.5** North Korean nationals may return voluntarily to any region of North Korea at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in North Korea. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. North Korean nationals wishing to avail themselves of this opportunity for assisted return to North Korea should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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