



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. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Korea Country of Origin Information at:
- 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 API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers 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

- 1.5** 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). It has an estimated population of 22.7 million. In 1998, the Supreme People's Assembly re-

confirmed Kim as chairman of the National Defence Commission (NDC) and designated that position the 'highest office of state.' Kim's father, the late Kim Il Sung, was declared 'eternal president.' The titular head of state is Kim Yong Nam, the president of the Presidium of the Supreme People's Assembly (SPA). Elections for the 687-member assembly, held every five years, were last held in August 2003. Only the KWP and two small satellite parties participated, and the elections were not free.¹

- 2.2** On the 9th October 2006 North Korea announced that it had carried out a nuclear test. On the 14 October 2006 the UN Security Council voted unanimously to impose sanctions on North Korea over the test. Resulting sanctions include a ban on the export to DPRK of nuclear and ballistic-missile goods and technologies, a ban on the export of arms to DPRK, a ban on technical assistance and advice related to all these items and a ban on the export by DPRK of proliferation-sensitive goods and technologies. The sanctions also provide for the freezing of assets of individuals and entities supporting DPRK's nuclear and ballistic-missile programmes and a travel ban on those individuals.²
- 2.3** Citizens of all age groups and occupations remained subject to intensive political and ideological indoctrination. The cult of personality of Kim Jong Il and his father remained important ideological underpinnings of the regime, at times seeming to resemble tenets of a state religion. Faced with famine and the succession process in the mid-1990s, Kim Jong Il's regime increasingly emphasized a "military first" policy to gradually replace *juche* (often described as extreme self-reliance) as the de facto ruling logic. However, *juche* still remained an important ideological concept. Indoctrination was intended to ensure loyalty to the system and the leadership, as well as conformity to the state's ideology and authority.³
- 2.4** 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 latter. There was no indication that independent, non-governmental defence lawyers existed.⁴
- 2.5** 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, lack of an independent judiciary and fair trials, denial of freedom of speech, press, assembly, and association, severe punishment of some repatriated refugees. The regime subjects citizens to rigid controls over many aspects of their lives.⁵
- 2.6** Defector and refugee reports over several years indicate that the regime executes political prisoners, opponents of the regime, some repatriated defectors, and others, including military officers suspected of espionage or of plotting against Kim Jong Il. In April 2004 the

¹ USSD 2005 (Section 1)

² BBC Timeline North Korea

³ USSD 2005 (Section 1)

⁴ USSD 2005 (Section 1)

⁵ USSD 2005 (Section 1) and FCO Annual Human Rights Report 2006

government enacted a new penal code by decree of the Supreme People's Assembly Presidium. The new code prescribes the death penalty for the most 'serious' or 'grave' cases of four 'anti-state' or 'anti-nation' crimes: 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; and, suppressing the people's movement for national liberation. In the past, prisoners have been sentenced to death for such ill-defined 'crimes' as 'ideological divergence,' 'opposing socialism,' and 'counter-revolutionary crimes.'⁶

- 2.7** Although a limited relaxation of controls has taken place in recent years due to the economic situation, treatment is harsh for those who transgress established norms. Information on these practices is anecdotal, coming mainly from defectors, and it is very difficult to accurately assess the numbers involved. But 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.⁷
- 2.8** Numerous reports exist of the use of torture and other cruel, inhuman or degrading forms of treatment or punishment being used.⁸ Methods of torture reportedly include 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 are 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 continue to report that many prisoners died from torture, disease, starvation, exposure, or a combination of these causes.⁹
- 2.9** No legal counsel is provided or allowed to criminal suspects, and many of them are tortured or mistreated during the interrogation process. All prisoners are subjected to forced labour and face cruel, inhuman, and degrading treatment; many die in prison because of mistreatment, malnutrition, and lack of medical care. Torture appears to be endemic. Under North Korea's penal code, premeditated murder and so-called anti-state crimes such as treason, sedition, and acts of terrorism are punishable by death. During the food crisis in the 1990s, North Korea began executing people accused of crimes related to economic difficulties, such as stealing grain from agricultural cooperatives. Numerous eyewitness accounts by North Korean escapees have detailed how executions are carried out publicly, often at crowded marketplaces, and in the presence of children.¹⁰
- 2.10** Beatings were reportedly common during interrogation. If prisoners were caught communicating, they were beaten with wooden sticks or iron bars. After the beating, cold water was reportedly poured over the prisoners' bodies, even in the middle of winter. Some prisoners were reportedly subjected to "water torture", where they were tied up and forced to drink large quantities of water.¹¹
- 2.11** Reports of public executions continued to be received in 2005, although fewer in number than in previous years. Executions were by firing squad or hanging. The UN Commission on Human Rights resolution on North Korea expressed concern at public executions and the imposition of the death penalty for political reasons. Reports also suggested that extrajudicial executions and secret executions took place in detention facilities.¹²

3. Main categories of claims

⁶ USSD 2005 (Section 1)

⁷ FCO Country Profile December 2005

⁸ FCO Country Profile December 2005 & FCO Annual Human Rights Report 2006

⁹ USSD 2005 (Section 1)

¹⁰ HRW 2005

¹¹ AI 2005

¹² AI 2005

- 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 API 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 persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, 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 claimant 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:
<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Political opponents of the regime**
- 3.6.1** Some claimants 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 omnipresent internal security apparatus includes the Ministry of Public Security (MPS) and the State Security Department. Members of security forces committed numerous and serious human rights abuses during 2005 including arresting and transporting political prisoners to prison camps without trial and participating in torture and other cruel and unusual punishment of prisoners.¹³
- 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 been reportedly imprisoned when one member of the family was accused of a crime.¹⁴
- 3.6.4** The government considered critics of the regime to be political criminals. Reports from past years described political offences as including sitting on newspapers bearing Kim Il Sung's

¹³ USSD 2005 (Section 1)

¹⁴ USSD 2005 (Section 1)

picture, mentioning Kim Il Sung's limited formal education, or defacing photographs of the Kim's.¹⁵

3.6.5 It was reported that the regime executed political prisoners, opponents of the regime, some repatriated defectors, and others, including military officers suspected of espionage or of plotting against Kim Jong Il.¹⁶ The government was also responsible for cases of disappearance. In recent years defectors have claimed that individuals suspected of political crimes often were taken from their homes by state security officials and sent directly, without trial, to camps for political prisoners. There are no restrictions on the ability of the government to detain and imprison persons at will and to hold them incommunicado.¹⁷

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.* As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.

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 are likely to qualify for a grant of asylum.

3.7 Food shortages, economic problems and corrupt local officials

3.7.1 Some claimants 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 hampered by very severe food shortages since the mid-1990s, mainly due to natural disasters and mis-management on the part of the authorities. Traditionally, the people of North Korea were accustomed to a public distribution system (PDS) of food being handed out by the State as part of social welfare. However, this collapsed in the 1990s, and in 2002 the rations started to be suspended due to the new Economic Management Improvement Measures policy of the authorities. The new policy presumed that the people would have to buy food for themselves directly on the basis of higher wages and a move towards a market system whereby agricultural and other produce would be traded. However, this led to very substantial rise in prices, particularly with negative impact on many members of the urban population who were/are unable to fend for themselves. In recent years, the country has had to depend upon food and other humanitarian aid provided by multilateral and bilateral donors.¹⁸

3.7.3 However, 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 regime stated that beginning in 2006 it would accept only "development" aid, to be administered by North Korean nationals. Expatriate staff would be allowed to visit only two to three times a year. 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 end of 2005 the WFP ended its large-scale food distribution programme but retained a skeleton staff in Pyongyang and was in discussions with the regime about a follow-on development assistance programme.¹⁹

¹⁵ USSD 2005 (Section 1)

¹⁶ USSD 2005 (Section 1)

¹⁷ USSD 2005 (Section 1)

¹⁸ UNCHR 2006

¹⁹ USSD 2005 (Section 3)

- 3.7.4** A national nutrition survey conducted by the government, the WFP and the UN Children's Fund (UNICEF) was published in March 2005. It found that 7 per cent of children were severely malnourished; 37 per cent were chronically malnourished; 23.4 per cent were underweight; and one in three mothers was malnourished and anaemic. The study found that the plight of the most vulnerable had been aggravated by an economic adjustment process initiated in mid-2002 that led to steep increases in the market prices of basic foods, and sharply lower incomes for millions of factory workers made redundant or employed part-time.²⁰
- 3.7.5** In May 2006, the WFP resumed its programmes in the DPRK on a much reduced scale but concerns remain that not enough food is reaching the vulnerable groups, including small children and the elderly.²¹
- 3.7.6** There were reports of diversion of food aid to the military and regime officials during 2005 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.²² However, reports in September 2005 suggested that up to half of bilateral food aid supplied by China and South Korea did not reach the intended recipients.²³
- 3.7.7** Class background and family connections may be as important as professional competence in deciding who received particular jobs, and foreign companies that have established joint ventures continued to report in 2005 that all their employees must be hired from registers screened by the authorities. No data was 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 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.²⁴
- 3.7.8** **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, an independent judiciary does not exist. There was no indication that independent, non-governmental defence lawyers existed.²⁵ Members of security forces committed numerous and serious human rights abuses during 2005 including arresting and transporting political prisoners to prison camps without trial and participating in torture and other cruel and unusual punishment of prisoners.²⁶ The high levels of corruption within North Korea, the power of the state and the lack of an independent judiciary or police force 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.
- 3.7.9** **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 2005 the regime continued to attempt to control internal travel. However, internal travel rules were relaxed to allow citizens to search for food, conduct local market activities, or engage in enterprise-to-enterprise business activities. Only members of a very small elite and those with access to remittances from overseas had access to personal vehicles, and movement was 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

²⁰ AI 2005

²¹ FCO Annual Human Rights report 2006

²² USSD 2005 (Section 3)

²³ AI 2005

²⁴ USSD 2005 (Section 6)

²⁵ USSD 2005 (Section 1)

²⁶ USSD 2005 (Section 1)

on Sundays was severely restricted. 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.²⁷ The government severely curtailed and controlled freedom of movement within North Korea and internal relocation to another area of the country to escape a localised threat is not possible.

3.7.10 Conclusion. The government controls the distribution of food and access to employment in North Korea and corruption amongst state officials is a serious problem, however, general country conditions, including the scarcity of food and difficulty obtaining employment will not amount to persecution for a Convention reason and a grant of asylum is not appropriate. Generally poverty and lack of resources will not amount to a breach of article 3 ECHR, however each case should be considered on its individual merits taking into account factors including the age and state of health of the claimant. Where the conditions on return will be so extreme that they may amount to inhuman treatment, taking into account the claimants individual characteristics, the claimant may be eligible for a grant of Discretionary Leave. All such cases should be referred to a Senior Caseworker.

3.8 Christians

3.8.1 Some claimants 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 during 2005 the government severely restricted religious freedom, including organised religious activity, except that which was 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.'²⁸

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 regarded as opposition to the national interest and continued to result in severe punishment.²⁹

3.8.4 According to a South Korean press report, in 2002 the chairman of the Association of North Korean Catholics stated that the Catholic community in the North had no priests but held weekly prayer services at the Changchung Catholic church in Pyongyang. Some reports indicated that some worship centres were tolerated as long as they did not openly proselytize or have contact with foreign missionaries.

3.8.5 Several schools for religious education existed in the country, including three-year religious colleges for training Protestant and Buddhist clergy. A religious studies programme also was taught at Kim Il Sung University. In 2000 a Protestant seminary was reopened with assistance from foreign missionary groups. In 2003, construction reportedly was completed on the Pyongyang Theological Academy, a graduate institution for pastors and evangelists.³⁰

3.8.6 Members of government-controlled religious groups did not appear to suffer discrimination and there were reports that the non-religious children of religious believers were employed at mid-levels of the government. In the past, such individuals had suffered broad discrimination and sometimes imprisonment.³¹

²⁷ USSD 2005 (Section 2)

²⁸ USSD 2005 (Section 2)

²⁹ USSD 2005 (Section 2)

³⁰ USSD 2005 (Section 2)

³¹ USSD 2005 (Section 2)

- 3.8.7** However, according to some defectors, the regime has increased repression of unauthorised religious groups in recent years. Reports indicated that those engaging in religious proselytizing, those with ties to overseas evangelical groups operating across the border in China, and specifically, persons repatriated and found to have contacted Christian missionaries outside the country have been arrested and subjected to harsh punishment.³²
- 3.8.8** Religious and human rights groups outside the country continued to provide numerous unconfirmed reports that members of underground churches have been beaten, arrested, detained in prison camps, tortured, or killed because of their religious beliefs. Members of underground churches connected to border missionary activity were regarded as subversive elements.³³
- 3.8.9** During 2005 media reports from South Korea, asserted that North Koreans who received help from churches inside China were considered political criminals and received harsher treatment including imprisonment, prolonged detention without charge, torture, and execution. According to defector reports, the government was concerned that faith-based South Korean relief and refugee assistance efforts along the northeast border of China had both humanitarian and political goals, including overthrow of the regime.³⁴
- 3.8.10** *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.
- 3.8.11** *Internal relocation.* As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.8.12** *Conclusion.* While members of government controlled Christian religious organisations were generally tolerated and did not suffer discrimination from the authorities, those associated or perceived to be associated with underground or foreign Christian religious organisations are likely to be perceived as a threat to the regime and are likely to face ill-treatment amounting to persecution at the hands of the North Korean authorities. Therefore individuals who have come to the attention of the authorities due to their association or perceived association with underground or foreign Christian religious organisations are likely to qualify for a grant of asylum.
- 3.9** **Those who have left North Korea illegally**
- 3.9.1** Some claimants 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 subjected to indefinite terms of imprisonment and forced labour, confiscation of property, or death. Many would-be refugees who were returned involuntarily have been imprisoned under harsh conditions.³⁵
- 3.9.3** Some sources indicated that the harshest treatment was reserved for those who had extensive contact with foreigners. In October 2005 the South Korean press reported that seven North Korean refugees who tried to cross the border from China into Russia in 2000

³² USSD 2005 (Section 2)

³³ USSD 2005 (Section 2)

³⁴ USSD 2005 (Section 2)

³⁵ USSD 2005 (Section 2)

and were subsequently deported to the DPRK were imprisoned in a camp, where several died.³⁶

- 3.9.4** North Koreans forcibly repatriated from China in 2005 were detained and interrogated in detention centres or police stations operated by the National Security Agency (NSA) or the People's Safety Agency (PSA). In September 2004 Chang Gyung-chul and Chang Gyung-soo were each sentenced to 10 years' imprisonment, apparently because of their unauthorised departure from North Korea. The unusually harsh sentence was attributed to the fact that their mother, Shin Jong-ai, who is now a South Korean citizen, was earlier imprisoned on similar charges.³⁷
- 3.9.5** The regime only issued exit visas for foreign travel to officials and trusted businessmen, artists, athletes, academics, and religious figures. Short-term exit papers were available for some individuals seeking to engage in small-scale trade and residents on the Chinese border to enable visits with relatives in bordering regions of China.³⁸
- 3.9.6** Reports from defectors indicated that as recently as 2003 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, and persons who crossed repeatedly or for political purposes, who were sometimes sentenced to heavy punishments. 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 to the DPRK with the promise of a pardon under the 2004 penal code. Other NGO reports indicated that North Koreans returning from China were often able to bribe North Korean border guards into letting them freely pass across the border. Several NGOs operating in the region confirmed that punishments seemed to be less severe than in the past.³⁹
- 3.9.7** Substantial numbers of North Koreans crossed the border into China over the years, and tens of thousands were estimated to live there during 2005. Some settled semi-permanently in North-eastern China, others travelled back and forth across the border, and still others seek asylum and permanent resettlement in third countries. Approximately 1,300 North Koreans were permanently resettled in South Korea after transiting through other Asian countries during the year.⁴⁰
- 3.9.8** In February 2005, there were unconfirmed reports that about 70 North Korean defectors had been executed in public in January 2005 after being forcibly repatriated from China. Hundreds of North Koreans forcibly returned from China faced detention, torture or ill-treatment, and up to three years' imprisonment in appalling conditions.⁴¹
- 3.9.9** *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.
- 3.9.10** *Internal relocation.* As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.9.11** *Conclusion.* Those who leave North Korea illegally may face criminal sanction if returned to North Korea. However, the severity of this punishment will differ significantly depending upon whether the claimant 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 the majority are likely be pardoned under the 2004 penal code. However, those who have left North Korea for political reasons including those who have

³⁶ USSD 2005 (Section 2)

³⁷ AI 2005

³⁸ USSD 2005 (Section 2)

³⁹ USSD 2005 (Section 2)

⁴⁰ USSD 2005 (Section 2)

⁴¹ AI 2005

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.

3.9.12 Prison conditions (see section 3.10) in North Korea are so severe as to breach Article 3 of the ECHR and if it is accepted that an individual will be imprisoned if returned to North Korea then a grant of Humanitarian Protection will be appropriate. 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. If it appears from the individual facts and circumstances of a case that if a claimant were returned then the North Korean authorities would be aware that the claimant is a failed asylum seeker then a grant of asylum will be appropriate.

3.10 Prison conditions

3.10.1 Claimants 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.* An estimated 150,000 to 200,000 persons were believed to be held in detention camps in 2005. NGO, refugee, and press reports indicated that there were several types of camps, and separate camps reportedly existed for political prisoners.⁴²

3.10.4 Some defectors claim that the camps covered areas as large as 200 square miles and contained mass graves, barracks, work sites, and other prison facilities. The government continued to deny the existence of political prison camps. In recent years the government reportedly reduced the total number of prison camps from as many as 20 to fewer than 10, but the prison population appeared to have been consolidated rather than reduced. In the camps, prisoners received little food and no medical care and reports indicated that conditions in the camps for political prisoners were extremely harsh and many prisoners were not expected to survive.⁴³

3.10.5 Re-education through labour was a common punishment, consisting of forced labour, such as logging, mining, or tending crops under harsh conditions. Re-education involving memorising speeches by Kim Jong Il and forced self-criticism sessions focused on work performance. In the past, visitors to the country observed prisoners being marched in leg irons, metal collars, or shackles. According to refugees, in some places of detention prisoners were given little or no food and were denied medical care. Sanitation was poor, and those who escaped from labour camps continued to report that they were rarely able to bathe or wash their clothing, nor were they given changes of clothing during months of incarceration.⁴⁴

3.10.6 The FCO reported that conditions in these Labour camps are extremely harsh and the mortality rate high. A further type of camp is focused on 'rehabilitation' and conditions are consequently less harsh, but still represent severe punishment by Western standards.⁴⁵

⁴² USSD 2005 (Section 1)

⁴³ USSD 2005 (Section 1)

⁴⁴ USSD 2005 (Section 1)

⁴⁵ FCO Country Profile December 2005

- 3.10.7** There were numerous reports of the use of torture and other cruel, inhuman or degrading forms of treatment or punishment in 2005.⁴⁶ 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.⁴⁷
- 3.10.8** Beatings were reportedly common during interrogation. If prisoners were caught communicating, they were beaten with wooden sticks or iron bars. After the beating, cold water was reportedly poured over the prisoners’ bodies, even in the middle of winter. Some prisoners were reportedly subjected to “water torture”, where they were tied up and forced to drink large quantities of water.⁴⁸
- 3.10.9** Conditions in detention centres and prisons (which were severely overcrowded) worsened in 2005, partly as a result of the lack of food. Food shortages also reportedly resulted in deaths from malnutrition in political penal labour colonies or “control and management places”. Prisoners charged with breaking prison rules had their food cut even further.⁴⁹ The government did not permit inspection of prisons or detention camps by human rights monitors.⁵⁰
- 3.10.10 *Conclusion.*** Prison conditions in North Korea are severe and taking into account the lack of food, medical care and abuse by the authorities, conditions in prisons and detention facilities in North Korea are likely to reach the Article 3 threshold. Where caseworkers believe that an individual is likely to face imprisonment on return to the North Korea they should also consider whether the claimant’s actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseworkers consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants 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 API 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 API 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 API on Discretionary Leave and the API 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

⁴⁶ FCO Country Profile December 2005

⁴⁷ USSD 2005 (Section 1)

⁴⁸ AI 2005

⁴⁹ AI 2005

⁵⁰ USSD 2005 (Section 1)

support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

- 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 of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

- 4.4.1** Claimants 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 but the quality of care is very low and seems to have deteriorated as a result of the economic decline in the 1990s. Because of this, and increasing levels of malnutrition, life expectancy has fallen sharply.⁵¹
- 4.4.3** Hospitals in Pyongyang and other cities often lack heat, medicine, and basic medical supplies, including anaesthesia, and suffer from frequent power outages and outbreaks of infection. Hospitals generally do not provide food for patients. Methods for diagnosing infectious diseases such as tuberculosis are generally unavailable.⁵²
- 4.4.4** 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 caseworker considers that the circumstances of the individual claimant 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** Generally 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 section 3.7. Where the claim includes dependent family members their situation on return should however 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.
- 5.2** 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 run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in North Korea. The programme was established in 2001, 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 020 7233 0001 or www.iomlondon.org.

6. List of source documents

United States State Department (USSD) 2005 published 8 March 2006
<http://www.state.gov/g/drl/rls/hrrpt/2005/61612.htm>

⁵¹ FCO Country Profile December 2005

⁵² USSD consular note August 2005

Human Rights Watch (HRW) report north Korea 2005 published Jan 2006
<http://hrw.org/english/docs/2006/01/18/nkorea12255.htm>

United States State Department Consular Information sheet
http://travel.state.gov/travel/cis_pa_tw/cis/cis_988.html

Amnesty International (AI) Annual report 2005 (published 23 May 2006)
<http://web.amnesty.org/report2006/prk-summary-eng>

UN Commission on Human Rights (UNCHR) "Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn 23 January 2006 http://www.ecoi.net/pub/henk1_ecn4-2006-35.doc

Foreign & Commonwealth Office (FCO) Country Profile - Democratic Peoples Republic of Korea. (December 2005)
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019041562185>

Foreign and Commonwealth Office (FCO) Annual Report on Human Rights
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1159199103169>

British Broadcasting Corporation (BBC) Timeline: North Korea nuclear stand-off
<http://news.bbc.co.uk/1/hi/world/asia-pacific/2604437.stm>

**Asylum and Appeals Policy Directorate
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