



OPERATIONAL GUIDANCE NOTE

NORTH KOREA (DPRK)

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment Actors of protection Internal relocation North Koreans in South Korea Country guidance caselaw	2.1 – 2 2.2 2.3 2.4 2.5
3. Main categories of claims Political opponents of the regime Food shortages, economic problems and corrupt local officials Christians Those who have left North Korea Illegally Prison Conditions	3.1 – 3.8 3.9 3.10 3.11 3.12 3.13
4. Minors claiming in their own right	4.1 – 4.4
5. Medical treatment	5.1 – 5.5
6. Returns	6.1 – 6.5

1. Introduction

- 1.1** This document provides Home Office caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of North Korea, 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 Instructions for further details of the policy on these areas.
- 1.2** Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant Country of Origin Information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the European Convention on Human Rights (ECHR) in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.
- 1.4** 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.

2. Country assessment

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

2.2 Actors of protection

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm. For example, operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** The internal security apparatus includes the Ministry of People's Security (MPS) and the State Security Department (SSD).¹ The MPS, responsible for internal security, social control, and basic police functions, is one of the most powerful organisations in the country and controls an estimated 180,000 public security personnel. The MPS maintains law and order, investigates common criminal cases, manages the prison system, controls traffic, monitors citizens' political attitudes, conducts background investigations, census, and civil registrations, controls individual travel,

¹ US State Department Country Reports on human rights Practices for 2012: Democratic People's Republic of North Korea: section 1d :

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

manages the government's classified documents, protects government and party officials, and patrols government buildings and some government and party construction activities. Border guards are the paramilitary force of the MPS and are primarily concerned with monitoring the border and with internal security.²

- 2.2.3** The security forces do not have adequate mechanisms to investigate possible security force abuses and there are no restrictions on the government's ability to detain and imprison persons at will or to hold them incommunicado. There was no evidence during 2012 that the government took action to reform the security forces.³ Family members and other concerned persons find it virtually impossible to obtain information on charges against detained persons or the lengths of their sentences. The formal public security structure is augmented by a huge and pervasive multi-level system of informants throughout society, in order to identify critics and potential trouble makers. Physical and electronic surveillance of citizens, including entire communities, is routine.⁴
- 2.2.4** Members of the security forces arrest and reportedly transport citizens suspected of committing political crimes to prison camps without trial. According to one South Korean non-government organization (NGO), beginning in 2008 the Peoples Safety Agency (PSA) was authorised to handle directly criminal cases without approval of prosecutors. Previously, once police officers arrested suspects, the pre-adjudication department examined facts and evidence of the case and passed the case to prosecutors. The court made an official decision on the case only after completion of the prosecutors' investigation. The change was made reportedly because of corruption among prosecutors. One NGO reported that investigators could detain an individual for the purpose of investigation for up to two months.⁵
- 2.2.5** 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.⁶ The constitution mandates that the central court is accountable to the Supreme People's Assembly and the criminal code obliges judges to accept criminal liability for handing down "unjust judgments." Some defectors testified that the SSD also conducts trials. For example, 'Witness to Transformation' reported that only 13 per cent of the 102 respondents interviewed by them, and who had been incarcerated in the country, received a trial. There were no indications that the presumption of innocence was respected in practice.⁷
- 2.2.6** There is a substantial body of evidence from defectors that the Democratic People's Republic of North Korea (DPRK) government routinely uses torture in the criminal

² GlobalSecurity.Org. 'Ministry of Public Security' DPRK accessed 2 May 2013
<http://www.globalsecurity.org/intell/world/dprk/mps.htm>

³ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1d :
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁴ GlobalSecurity.org: State Safety & Security Agency State Security Department: accessed 2 May 2013
<http://www.globalsecurity.org/intell/world/dprk/ssd.htm>

⁵ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1d:
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁶ US State Department, Country Reports on human rights Practices for 2012: Democratic People's Republic of North Korea: section 1d/e:
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁷ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1e:
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

justice system. The DPRK denies this, but the volume of testimonials claiming that the practice continues is significant.⁸ Corruption is rife, and there are various reports of payments made to those in positions of authority to circumvent the regulatory system, and of prison officials taking bribes. The juridical system is not independent. The constitutional changes made in April 2012 confirmed that its prime function is to protect the existing, socialist political system.⁹

2.2.7 Corruption is believed to be endemic at every level of the state and the economy. North Korea was ranked 182 out of 183 countries surveyed in Transparency International's 2011 Corruption Perceptions Index and 174th in 2012.¹⁰ A number of United Nations (UN) General Assembly resolutions adopted between 2006 and 2012 highlighted (amongst several systemic and widespread grave violations of human rights) extra-judicial and arbitrary detention; the absence of due process and the rule of law, including fair trial guarantees and an independent judiciary.¹¹

2.2.8 North Korea continues to face serious food insecurity. In November 2012, the World Food Programme (WFP) and Food and Agriculture Organisation (FAO) estimated that 2.8 million vulnerable people, equal to slightly more than 10 per cent of all North Koreans, face under-nutrition and a lack of vital protein and fat in their daily diet. Although production of basic carbohydrates such as rice and corn has increased, it is countered by diminishing production of proteins, fats and other dietary essentials.¹²

2.2.9 According to Human Rights Watch, the food situation is the result of several factors, including a dry spell that heavily impacted soya bean production in the first half of 2012; economic mismanagement; and the government's discriminatory food policies which favour the military and government officials.¹³ The DPRK has asked for international food aid, but has spent hundreds of millions of dollars on two satellite launches in April and December 2012. This situation follows years of previous food shortages, and in 2011 the WFP stated that North Korea was suffering the worst famine in a decade.¹⁴ All citizens are reportedly classified into one of 53 subgroups based on their overall security ratings. These are based on their family's perceived loyalty to the regime. This rating determines almost every facet of a person's life, including employment, educational opportunities and place of residence, access to medical facilities and access to food stores.¹⁵

2.2.10 In February 2013, the Special Rapporteur on human rights in North Korea, Marzuki Darusman, made a number of recommendations to the UN General Assembly

⁸ Foreign & Commonwealth Office: Human Rights and Democracy Report 2012 North Korea
<http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>

⁹ Foreign & Commonwealth Office: Human Rights and Democracy Report 2012 North Korea
<http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>

¹⁰ Transparency International: Report for 2012, accessed 5 April 2013
<http://cpi.transparency.org/cpi2012/results>

¹¹ United Nations General Assembly: Report of the Special Rapporteur on the situation of human rights in the DPRK Marzuki Darusman 1 February 2013
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.57_English.pdf

¹² Foreign & Commonwealth Office: Human Rights and Democracy Report 2012 North Korea
<http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>

¹³ Human Rights Watch: World Report 2013: North Korea 31 January 2013
<http://www.hrw.org/world-report/2013/country-chapters/north-korea>

¹⁴ Human Rights Watch: World Report 2012: North Korea January 2012
<http://www.hrw.org/world-report-2012/world-report-2012-north-korea>

¹⁵ Freedom-House: Freedom in the World: North Korea 2012:
<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

confirming the situation and conditions outlined above. He noted a widespread pattern of human rights violations in North Korea, including serious violations of the right to food, the endemic use of torture and other cruel, inhuman and degrading treatments and punishments including inhumane conditions of detention. He also reported multiple violations of the right to life, freedom of religion, freedoms of expression and association, severe restrictions on freedom of movement and widespread arbitrary detention.¹⁶

2.3 Internal relocation

- 2.3.1** Caseworkers must refer to the Asylum Instructions on [Internal Relocation](#) and in the case of a female applicant, [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.3.2** Very careful consideration must be given to whether internal relocation would be a viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.3** The law provides for the "freedom to reside in or travel to any place"; however, the government does not respect this right in practice. During the year (2012), the government continued to carefully control internal travel. The government continues to restrict the freedom to move within the country. Only members of a very small elite class and those with access to remittances from overseas have access to personal vehicles, and movement is 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. During 2012, the government did not cooperate with the Office of the UN High Commissioner for Refugees or other humanitarian organisations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons

¹⁶ United Nations General Assembly: Report of the Special Rapporteur on the situation of human rights in the DPRK Marzuki Darusman 1 February 2013
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.57_English.pdf

or other persons.¹⁷

- 2.3.4** The government strictly controls permission to reside in, or even to enter, Pyongyang, where food supplies, housing, health, and general living conditions are much better than in the rest of the country. The government also restricts foreign travel. The government limits issuance of exit visas for foreign travel to officials and trusted businessmen, artists, athletes, and academics. Short-term exit papers are available for some residents on the Chinese border to enable visits with relatives or to engage in small-scale trade.¹⁸ Freedom House reported that there is no freedom of movement in North Korea, and forced internal resettlement is routinely implemented. Access to Pyongyang is tightly restricted, partly due to visibly better food, housing and healthcare, but also to the semi-hereditary system of social discrimination that prevails.¹⁹
- 2.3.5** The government does not allow emigration, and there are reports that it has tightened security on the borders, dramatically reducing the flow of persons crossing into China without required permits. NGOs reported strict patrols and surveillance of residents of border areas and a crackdown on border guards who may have been aiding border crossers in return for bribes.²⁰ Many North Koreans have escaped to China or engaged in cross-border trade. Where these are forcibly returned to North Korea by the Chinese authorities, they are subject to torture, harsh imprisonment or execution.²¹
- 2.3.6** It is not known whether the laws prohibit forced exile; the government reportedly forces the internal exile of some citizens. In the past the government engaged in forced internal resettlement of tens of thousands of persons from Pyongyang to the countryside. Sometimes this occurred as punishment for offences, although there were reports that social engineering was also involved. For example, although disabled veterans were treated well, other persons with physical and mental disabilities, as well as those judged to be politically unreliable, were sent out of Pyongyang into internal exile.²² It is reported that people with physical or mental disabilities are seriously discriminated against, and are invariably sent away from the capital city. They may be detained in camps with harsh and subhuman conditions, particularly those with mental disabilities.²³
- 2.3.7** The law criminalises defection and attempted defection, including the attempt to

¹⁷ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

¹⁸ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

¹⁹ Freedom-House: Freedom in the World: North Korea 2012:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

²⁰ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

²¹ Freedom-House: Freedom in the World: North Korea 2012:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

²² US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

²³ UN General Assembly: Report of the Special Rapporteur on situation of human rights in the DPRK:1 February 2013:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.57_English.pdf

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 reportedly subject to a minimum of five years of "labour correction." In "serious" cases defectors or asylum seekers are subject to indefinite terms of imprisonment and forced labour, confiscation of property, or death. Many would-be refugees who were returned involuntarily were imprisoned under harsh conditions. Some sources indicated that the harshest treatment was reserved for those who had extensive contact with foreigners.²⁴ It has been reported that family members of defectors are at risk of severe punishment for up to three generations.²⁵

2.3.8 In the past, reports from defectors generally indicated that the government differentiated 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, including death). More recently, available evidence suggests that implementation of the law against illegally crossing the borders has become harsher.²⁶ ²⁷ The law stipulates a sentence of up to five years of "labour correction" for the crime of illegally crossing the border. The South Korean press report that the government of North Korea orders border guards to "shoot to kill" citizens attempting to make unauthorised border crossings. During the year the government reportedly continued to enforce the policy that all border crossers be sent to prison or re-education centres.²⁸

2.3.9 The Government harshly curtails and controls freedom of movement within North Korea, therefore internal relocation to another area of the country to escape a localised threat from the authorities is not possible.

2.4 North Koreans in South Korea

2.4.1 The constitution of the Republic of Korea (ROK, also known as South Korea) affirms that South Korea consists of the entire Korean Peninsula and, as such, that North Koreans are citizens of South Korea. The RoK accepts North Koreans as its citizens under its constitution that defines the entire Korean Peninsula as South Korean territory. North Korean refugees, though not officially recognised as such by the South Korean government, therefore have a right to be resettled to South Korea.²⁹

2.4.2 An official from the Embassy of the Republic of Korea (South Korea) in Ottawa stated in a 20 May 2008 interview with the Research Directorate of the Immigration & Refugee Board of Canada (IRBC) that it is the policy of the South Korean

²⁴ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

²⁵ The Global Post: 3 March 2012: 'North Korea defectors grim fate'

<http://www.globalpost.com/dispatch/news/regions/asia-pacific/south-korea/120229/north-korea-defectors-seoul-activism>

²⁶ New York Times: 'Crackdowns make fleeing North Korea harder' 4 January 2013

<http://www.nytimes.com/2013/01/05/world/asia/crackdowns-make-fleeing-north-korea-harder.html?amp>

²⁷ Amnesty International: North Korea: 14 February 2012: China urged to avoid forced repatriation of 21 North Koreans

<http://www.amnesty.org/en/news/china-urged-avoid-forced-repatriation-21-north-koreans-2012-02-14>

²⁸ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

²⁹ See Caselaw: [KK and Ors \(Nationality: North Korea\) Korea CG \[2011\] UKUT 00092](#)

government to offer protection and support to 'dislocated' North Koreans. The Embassy Official referred the IRBC Research Directorate to the South Korean Ministry of Unification's '2005 Unification White Paper' which states the following:

“ In the case of North Korean refugees residing in a third country who file an application for protection, the South Korean government will provide temporary protection through its consulate in the third country and assist them in entering South Korea. Upon entry into South Korea, the government will decide on his/her protection based on the results of a joint investigation by relevant government agencies”.³⁰

- 2.4.3** After obtaining South Korean citizenship, North Korean defectors are issued the regular South Korean citizen identity card. Naturalised defectors are considered to be Korean and so there is no legal distinction between them and other South Koreans. This view has been corroborated by the Executive Director of HanVoice, a Canadian advocacy organisation for North Korean human rights.³¹
- 2.4.4** The RoK has had a “longstanding policy” of accepting North Korean defectors, and providing them with protection and assistance. The policy of providing protection is underpinned by law: the Act on the Protection and Settlement Support of Residents Escaping from North Korea (the Special Act) which legislates on the social and financial assistance given to North Korean defectors/settlers, and was most recently amended in July 2007.³² Due to a combination of factors, including long-term malnutrition, cultural and educational deficiencies, and psychological trauma, many North Koreans struggle to cope with life in South Korea, but there is an increasing level of help and support there.³³
- 2.4.5** South Korea's Unification Ministry has stated that the number of North Koreans defecting to South Korea has surged in recent years because of economic suffering in the North, with more than 10,000 defections during the three years from the end of 2007 to the end of 2010. The overall total at the end of 2010 stood at 20,050. Ministry official Han Dong-ki said the rise in defections reflects North Korea's worsening economy. North Korea has relied on outside food aid since natural disasters and mismanagement wrecked its economy in the mid-1990s, when an estimated 2 million people died of famine. South Korea runs a resettlement centre where North Korean refugees take an intensive course that teaches them work skills and such everyday tasks as how to use ATMs and shop in supermarkets.³⁴ More recently, there are indications that the number of defections has decreased, due to increased border controls and security on the Chinese and North Korean borders.³⁵

³⁰ Immigration & Refugee Board of Canada: Documentation of North Korean Defectors 29 February 2012
<http://www.unhcr.org/refworld/docid/503501f22.html>

³¹ Immigration & Refugee Board of Canada: 'Whether North Korean defectors to South Korea are issued government documents that indicate they are genuine defectors' 29 February 2012
<http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=printdoc&docid=503501f22>

³² Immigration & Refugee Board of Canada: Documentation of North Korean Defectors 29 February 2012
<http://www.unhcr.org/refworld/docid/503501f22.html>

³³ The New York Times: 'Young North Korean Defectors' 12 July 2012:
http://www.nytimes.com/2012/07/13/world/asia/young-north-korean-defectors-struggle-in-the-south.html?_r=3&ref=northkorea&

³⁴ CNS News, Number of North Korean Defectors to South Korea Tops 20,000, 15 November 2010
<http://cnsnews.com/news/article/number-north-korean-defectors-south-korea-tops-20000>

³⁵ Wall Street Journal (ASIA) January 2 2013:
<http://blogs.wsj.com/korearealtime/2013/01/02/north-korean-defector-arrivals-plunge-in-south-in-2012>

2.5 Country guidance caselaw

[RT \(Zimbabwe\) & Ors v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#)

The Supreme Court ruled that the rationale of the decision in [HJ \(Iran\) v Secretary of State for the Home Department \(Rev 1\) \[2010\] UKSC 31 \(07 July 2010\)](#)

applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

[KK and Ors \(Nationality: North Korea\) Korea CG \[2011\] UKUT 00092](#)

In this country guidance case the Tribunal found:

1. Law

- (a) For the purposes of determining whether a person is “of” or “has” a nationality within the meaning of Article 1A (2) of the Refugee Convention, it is convenient to distinguish between cases where a person (i) is (already) of that nationality; (ii) is not of that nationality but is entitled to acquire it; and (iii) is not of that nationality but may be able to acquire it.
- (b) Cases within (i) and (ii) are cases where the person is “of” or “has” the nationality in question; cases within (iii) are not.
- (c) For these purposes there is no separate concept of “effective” nationality; the issue is the availability of protection in the country in question.
- (d) Nationality of any State is a matter for that State’s law, constitution and (to a limited extent) practice, proof of any of which is by evidence, the assessment of which is for the court deciding the protection claim.
- (e) As eligibility for Refugee Convention protection is not a matter of choice, evidence going to a person’s status within cases (i) and (ii) has to be on “best efforts” basis, and evidence of the attitude of the State in question to a person who seeks reasons for not being removed to that State may be of very limited relevance.

2. Korea

- (a) The law and the constitution of South Korea (ROK) do not recognise North Korea (DPRK) as a separate State.
- (b) Under South Korean law, most nationals of North Korea are nationals of South Korea as well, because they acquire that nationality at birth by descent from a (North) Korean parent, and fall therefore within category (i) in 1(a) above.

- (c) South Korea will make rigorous enquiries to ensure that only those who are its nationals are recognised as such but the evidence does not show that it has a practice of refusing to recognise its nationals who genuinely seek to exercise the rights of South Korean nationals.
- (d) South Korean law does not generally permit dual nationality (North Korean nationality being ignored for this purpose).
- (e) South Korean practice appears to presume that those who have been absent from the Korean Peninsula for more than 10 years have acquired another nationality displacing their South Korean nationality; such persons therefore move from category (i), in 1(a) above, to category (iii).

On appeal, the case of SP was heard by the Court of Appeal on 18 January 2012. The Court dismissed the Home Office appeal, and upheld the earlier CG case of KK and Ors in the determination below linked below.

[SP \(North Korea\) & Ors v Secretary of State for the Home Department \[2012\] EWCA Civ 114](#)

3. Main categories of claims

3.1 This section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in North Korea. 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 Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

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, for instance, due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment 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 '[Considering the asylum claim and assessing credibility](#)').

3.3 For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters: Change for Children](#)' sets out the key principles to take into account in all Home Office activities.

- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. 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 Instruction on [Discretionary Leave](#)).

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country, for example, absence of water, food or basic shelter, are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, you must take into account an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

Credibility

- 3.8** 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 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#)'. Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated before the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.9 Political opponents of the regime

- 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 the North Korea authorities due to their being political opponents of the regime.
- 3.9.2 Treatment:** The Democratic People's Republic of Korea is an authoritarian state led by the Kim family for more than 60 years. On July 17, 2012, Kim Jong Un became a marshal of the DPRK and Supreme Commander of the Korean People's Army, amongst other titles. His grandfather, the late Kim Il Sung, remains 'eternal president'. The most recent national elections, held in March 2009, were neither free nor fair. Security forces report to Kim Jong Un and to the civilians and military officers that form the National Defence Commission, the supreme ruling body of the state.³⁶
- 3.9.3** Citizens do not have the right to change their government. During 2009, there was no attempt to carry out the transition of power to Kim Jong Un by democratic means.³⁷ The Korean Workers Party and the Korean People's Army, with Kim Jong-Un in control, dominate the political system. Elections of local representatives to the Supreme People's Assembly were held in July 2011. These were neither free nor fair, with the outcome virtually identical to previous elections. One NGO reported that citizens were ordered to participate in the July elections; another NGO reported that the government openly monitored voting, resulting in almost 100 per cent participation and 100 per cent approval. The government regularly criticises the concept of free elections and competition between political parties as an "artefact of capitalist decay".³⁸ The Supreme People's Assembly (SPA) meets only to rubber-stamp resolutions and legislation presented by the party leadership.³⁹
- 3.9.4** The government subjects citizens to rigid controls over many aspects of their lives, including denial of the freedoms of speech, press, assembly, association, religion, movement and workers rights. Reports continue of a vast network of political prison camps where conditions are often harsh and life-threatening.⁴⁰ While the total number of political prisoners and detainees remained unknown, a 2011 report by the North Korea database estimated that 138,000 people were being held in detention centres; 130,500 of these were held in five political prisons.⁴¹ (The estimated numbers of prisoners and detainees varies according to the particular

³⁶ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: Executive Summary:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

³⁷ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 3:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

³⁸ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 3:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

³⁹ Freedom House: Freedom in the World: North Korea: 2012:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

⁴⁰ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: Executive Summary:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁴¹ US State Department Country Reports on Human Rights Practices for 2012: Democratic Peoples Republic of North Korea: section 1e:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

organisation and their specific inclusion criteria, for instance, political and/or religious detainees, and other categories).

- 3.9.5** The FCO report that evidence of widespread and systematic human rights abuses continued during 2012, including the use of the death penalty and arbitrary manipulation of the judicial system. Fundamental freedoms, including freedom of speech, remain severely curtailed. The continued use of political prison camps remains of particular concern; it is estimated that 150,000 – 200,000 people are held in prison camps in the DPRK. There is little evidence of freedom of movement or assembly; the general population is required to attend political gatherings in support of the DPRK leadership at regular intervals. Executions are carried out for dissent, but the full extent of human rights abuses in DPRK is unknown.⁴²
- 3.9.6** The DPRK has signed four key international human rights treaties and includes rights protections in its constitution. In practice, the government does not permit any organised political opposition, free media, or any functioning civil society.⁴³ According to the international NGO, Amnesty International, North Korea has no independent domestic media, and no known independent opposition political parties. Only a select few have internet access, which is mostly through a closely monitored intranet network. The use of mobile phones is heavily restricted.⁴⁴

See also: [Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.5 above)

- 3.9.7 Conclusion:** The Supreme Court held in RT (Zimbabwe) that the rationale of the decision in **HJ (Iran)** extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.
- 3.9.8** Individuals who have come to the attention of the North Korean authorities for opposition or perceived opposition to the current regime are likely to face ill treatment amounting to persecution in North Korea. In such circumstances, a grant of refugee status is likely to be the appropriate outcome if return to North Korea is proposed.
- 3.9.9** However, the position as set out in the country guidance case of KK and confirmed by the Court of Appeal in SP is that 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 and certification as being clearly unfounded, since 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

⁴² Foreign & Commonwealth Office Human Rights & Democracy Report 2012: April 2013:
<http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>

⁴³ Human Rights Watch World Report 2012: North Korea:
<http://www.hrw.org/world-report-2012/world-report-2012-north-korea>

⁴⁴ Amnesty International Annual Report 2012:
<http://www.amnesty.org/en/region/north-korea/report-2012>

- (ii) The applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (para 339J (iv))

3.9.10 Where political opponents of the North Korean regime can demonstrate that they are not entitled to South Korean citizenship or cannot acquire it, then they should be granted asylum.

3.10 Food shortages, economic problems and corrupt local officials

3.10.1 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.

3.10.2 Treatment: The country is susceptible to food crises because of political and economic isolation, and climate change. During 2010, widespread flooding in the country's main rice producing region resulted in a poor harvest. An outbreak of foot-and-mouth disease, which affected the cattle used to harvest crops, also exacerbated shortages.⁴⁵ Many families have only two meals a day and their diet lacks the variety needed for good nutrition, with very little meat or fat. Stunting rates among young children are as high as 40 per cent in rural areas and 20 per cent in urban ones.⁴⁶ To date, the DPRK has refused to reform its food production and distribution system, meaning it is unable to adequately feed its own people and chronic malnutrition is widespread. There is evidence that children have been forced to participate in military drills and are used for child labour. Given the level of malnutrition and poor healthcare facilities, many children do not have the basic necessities to enjoy their economic and social rights.⁴⁷

3.10.3 Large-scale military spending, combined with years of under-investment in industry and agriculture, has caused chronic food shortages, exacerbated further by weather-related crop failures and lack of arable land. Widespread starvation has been avoided since the famine in 1995, but large parts of the population are dependent on international food aid. The population suffers from prolonged malnutrition and poor living conditions.⁴⁸ Since the mid nineteen nineties, aid agencies estimate that up to two million people have died due to severe food shortages.⁴⁹

3.10.4 Reports of deaths from starvation surfaced in the months following North Korea's ineptly managed monetary devaluation scheme, which effectively demonetised savings in the old currency in November 2009.⁵⁰ However, many North Koreans had died of starvation in the years before monetary devaluation. North Korea abolished its old bank notes with virtually no advance notice and only allowed North

⁴⁵ UNICEF: Report by UN agencies highlights food crisis in Democratic People's Republic of Korea 7 April 2011 http://www.unicef.org/nutrition/korea_58239.html

⁴⁶ UNICEF: Report by UN agencies highlights food crisis in Democratic People's Republic of Korea 7 April 2011 http://www.unicef.org/nutrition/korea_58239.html

⁴⁷ Foreign & Commonwealth Office Human Rights & Democracy Report 2012: April 2013: <http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf>

⁴⁸ The CIA World Fact Book: North Korea 29 April 2013 https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate_kn.html

⁴⁹ BBC News: North Korea Country Profile 18 April 2013: <http://www.bbc.co.uk/news/world-asia-pacific-15256929>

⁵⁰ The CIA World Fact Book: North Korea 29 April 2013 https://www.cia.gov/library/publications/the-world-factbook/geos/countrytemplate_kn.html

Koreans to exchange up to 100,000 won (approximately £15 to £18 according to the then-market exchange rate) of the old currency for the new bills. Authorities also banned the use of foreign currencies and closed markets. It later lifted those bans. Many people saw their entire private savings wiped out overnight, while prices for food and other basic commodities skyrocketed as merchants stopped selling goods in expectation of further price hikes.⁵¹ More recently, the growth of the black market has provided many North Koreans with a field of activity that is largely free from government control. In 2011, the government announced new policies to attract greater foreign investment, and there have been growing indications of a rising middle class in Pyongyang, including the opening of new shopping and entertainment venues.⁵²

3.10.5 In February 2011, a group of five NGOs from the United States (US) found that North Korean citizens had insufficient access to food and suffered chronic malnutrition. This was later confirmed by an assessment carried out by the World Food Programme.⁵³ In March 2011 a joint UN survey estimated that more than six million vulnerable persons in North Korea required international food aid to avoid famine. The World Food Programme referred to this as the worst famine for a decade, and South Korea-based NGOs and media with informants inside North Korea reported deaths due to hunger. The government operates blatantly discriminatory food policies that favour the military, government officials and other loyal groups.⁵⁴ Corruption within the security forces is endemic, and there are reports of bribery, and diversion of food to military and government officials.⁵⁵

3.10.6 Corruption is believed to be endemic at all levels of the state and the economy. North Korea was ranked at 182 out of 183 countries surveyed in Transparency International's 2011 Corruption Perceptions Index⁵⁶, and 179 by the 2012 Index of Economic Freedom.⁵⁷ In June 2010, the New York Times reported that in the wake of the currency revaluation, individuals with political connections avoided having their savings confiscated while market traders were severely limited in the amount of money they were permitted to exchange into new won.

3.10.7 Foreign media reported that the government launched a formal corruption investigation in 2008 specifically targeting the National Economic Cooperation Federation and the North Korean People's Council for National Reconciliation. The federation reportedly accepted bribes to label Chinese-made goods as "Made in North Korea," allowing them to be exported to South Korea duty free. There were no new developments in this case during the year. It was not known whether public officials are subject to financial disclosure laws and whether a government agency

⁵¹ Human Rights Watch World report 2011: North Korea

<http://www.hrw.org/en/world-report-2011/north-korea>

⁵² Freedom House: Freedom in the World: North Korea: 2012:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

⁵³ Freedom House: Freedom in the World: North Korea: 2012:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

⁵⁴ Human Rights Watch: World Report 2012 - North Korea

<http://www.hrw.org/world-report-2012/world-report-2012-north-korea>

⁵⁵ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 4:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁵⁶ Freedom House: Freedom in the World: North Korea: 2012:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

⁵⁷ Index of Economic Freedom: North Korea 2013

<http://www.heritage.org/index/country/northkorea>

is responsible for combating corruption. The government seeks to control virtually all information. Citizens can be publicly executed for stealing state property, hoarding food, and other “anti-socialist” crimes.⁵⁸

See also: [Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.5 above)

3.10.8 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 indicate that a grant of asylum is likely to be appropriate, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 3.4.12 – 3.4.15 above). An application for asylum owing to a fear of persecution in North Korea is, therefore, likely to fall for refusal and certification as being clearly unfounded, 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]).

3.10.9 Where North Korean applicants are able to demonstrate that they are not entitled to South Korean citizenship or cannot acquire it, the case should be decided on the basis of their North Korean nationality.

3.11 Christians

3.11.1 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 Korean authorities due to their being Christians and/or being associated with foreign Christian organisations.

3.11.2 Treatment: The DPRK is one of the world’s most repressive regimes, with a deplorable record on human rights and religious freedom. Reports of severe abuses of religious freedom have continued during the past year (2012), including discrimination and harassment of both authorised and unauthorised religious activity, the arrest, torture and possible execution of those conducting clandestine religious activity, and the mistreatment and imprisonment of asylum-seekers repatriated from China, particularly those suspected of engaging in religious activities, having religious affiliations or possessing religious literature. Based on such ‘severe, egregious (outstandingly bad), and ongoing violations’, the US Commission on International Religious Freedom (USCIRF) report again recommends in 2013 that DPRK be designated as a “country of particular concern

⁵⁸ Human Rights Watch: World Report 2012 - North Korea
<http://www.hrw.org/world-report-2012/world-report-2012-north-korea>

(CPC)⁵⁹. It has been designated by the US State Department as a CPC since 2001.⁵⁹

- 3.11.3** The DPRK is officially an atheist state, whose goal is to ensure that no religious group or belief can challenge the cult of personality surrounding the ruling Kim family. All religious activity is either tightly controlled or actively suppressed. The 1992 constitution provides (in Article 68) freedom of religious belief and guarantees the right to construct buildings for religious use and religious ceremonies. However, there is no guarantee to manifest or practice religion, a core element of the universal right to freedom of thought, conscience and religion or belief. The constitution states that “no one may use religion as a means by which to drag in foreign powers or to destroy the state or social order”. Accordingly, all private religious activity, particularly that occurring outside of government control, is seen as a potential security threat.⁶⁰
- 3.11.4** In Pyongyang there are four state-controlled Christian churches: two Protestant churches (Bongsu and Chilgol Churches), the Changchun Roman Catholic Church, and the Holy Trinity Russian Orthodox Church. The number of congregants that regularly worship at these churches is unknown.⁶¹ There are three Catholic dioceses in North Korea: Pyongyang, Hamhung and Chunchon, but the Vatican has declared them to be vacant sees, under the administration of the South Korean diocesan bishops appointed by Rome. In 2012, the Vatican continues to list Father Francis Hong Yong-ho as Bishop of Pyongyang, but notes that he has been missing since March 1962. It is reported that since the communist regime took power in 1953, approximately 300,000 Christians have disappeared.⁶² The NGO ‘Open Doors’ have reported that at least 25 per cent of North Korean Christians are currently imprisoned in labour camps, and stated that North Korea is the most repressive and hostile country in the world, in which to be a Christian.⁶³
- 3.11.5** North Korean refugees assert that the above churches are heavily monitored and that the sites exist primarily as showpieces for foreign visitors. According to those who have visited, North Korean citizens attending services in the churches are not allowed to interact with foreign visitors, no children are present at services, and the North Korean worshippers arrive and leave together on tour buses. There is no Catholic clergy in North Korea, but visiting priests occasionally provide mass at the Jangchoong Cathedral. According to a Russian religious leader who visited the country, the Orthodox Church is run by a North Korean priest who studied in Russia. The purported aim of the church was to provide pastoral care for Russians in the country.⁶⁴
- 3.11.6** Little is known about the day-to-day life of religious persons in the country. There are credible reports of private Christian religious activity in North Korea, but the scope of it is difficult to verify due to lack of objective information. Refugee reports

⁵⁹ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscifr.gov/images/North%20Korea%202013%20AR.pdf>

⁶⁰ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscifr.gov/images/North%20Korea%202013%20AR.pdf>

⁶¹ US State Department International Religious Freedom Report: North Korea 2011 <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192635>

⁶² Aid to the Church in Need: North Korea Country Profile May 2012 <http://www.acnuk.org/countries.php/26/north-korea>

⁶³ Open Doors USA: [World Watch List: North Korea 2012](#)

⁶⁴ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscifr.gov/images/North%20Korea%202013%20AR.pdf>

continue to confirm that unapproved religious materials are available, and secret religious meetings occur, encouraged by cross-border contact with individuals and groups in China.⁶⁵ The authorities claim that there are 500 officially approved 'house churches' in the country. There are credible reports from South Korean academics that the participants in these gatherings are individuals whose families were Christians prior to 1950 and as such, are allowed to gather for worship, albeit without religious leaders or religious materials. Most of these house churches are in urban areas, and the families attending them are often segregated in separate housing units.⁶⁶

3.11.7 The North Korean government views religious activity in the border regions as illegal, and a threat to national security. It sees any new religious growth as spurred by South Korean humanitarian and missionary groups based in China. Police and border security units are trained to halt the spread of religious ideas and root out clandestine activity. It is reported that anyone caught in possession of religious materials, holding unapproved religious gatherings, or having ongoing contact with overseas religious groups is subject to severe punishment ranging from labour camp imprisonment to execution. Imprisoning religious believers remains a common practice, according to numerous reports of former North Korean refugees.⁶⁷

3.11.8 The North Korean government controls almost every aspect of its citizen's daily lives, including religious activity. All unapproved religious activity is prohibited, and approved activities are tightly controlled. Anyone discovered engaging in clandestine religious activity is subject to discrimination, arrest, arbitrary detention, disappearance, torture and public execution; refugees forcibly repatriated from China are reportedly particularly vulnerable to persecution. There is evidence from eye witnesses that the authorities interrogate asylum seekers repatriated from China about their religious belief and affiliations, and mistreats and imprisons those suspected of distributing religious literature, or having ongoing connections with South Korean religious groups.⁶⁸

3.11.9 Imprisoning religious believers remains a common practice, according to numerous reports of former North Korean refugees. The US Commission on International Religious Freedom estimated in its 2013 Annual Report that 150,000 to 200,000 prisoners may currently be held in North Korea's network of political prison camps, some for religious reasons. North Korea experts in South Korea, using testimony from refugees, estimate that there may be 6,000 Christians incarcerated in "Prison No. 15" in the northern part of the country. Former North Korean prison inmates and prison guards allege that religious prisoners are typically treated worse than other inmates. They are generally given the most dangerous tasks in the labour camps and are victims of constant abuse to force them to renounce their faith.⁶⁹

See also: [Actors of protection](#) (section 2.3 above)

⁶⁵ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscirf.gov/images/North%20Korea%202013%20AR.pdf>

⁶⁶ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscirf.gov/images/North%20Korea%202013%20AR.pdf>

⁶⁷ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscirf.gov/images/North%20Korea%202013%20AR.pdf>

⁶⁸ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscirf.gov/images/North%20Korea%202013%20AR.pdf>

⁶⁹ United States Commission on International Religious Freedom: Annual Report 2013: North Korea: <http://www.uscirf.gov/images/North%20Korea%202013%20AR.pdf>

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.11.10 Conclusion: While members of government controlled Christian religious organisations are generally tolerated and do not suffer discrimination from the North Korean authorities, those associated or perceived to be associated with underground or foreign Christian religious organisations are likely to face ill treatment amounting to persecution in North Korea.

3.11.11 However, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 3.4.12 – 3.4.15). An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal and certification as being clearly unfounded 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))

3.11.12 Where Korean Christians can demonstrate that they are not entitled to South Korean citizenship or cannot acquire it, then the case should be decided on the basis of their North Korean nationality.

3.12 Those that have left North Korea illegally

3.12.1 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.

3.12.2 Treatment: The government does not allow emigration, and reports indicate that tight security continues on the border, dramatically limiting the flow of persons crossing into China without required permits. A number of NGOs reported strict patrols and surveillance of residents of border areas, and a crackdown on border guards who may have been aiding border crossers in return for bribes. The South Korean press reported that the North Korean government has issued orders for guards to shoot to kill those attempting to leave without official sanction. NGOs also report that Kim Jong Un has called for stricter punishments for those suspected of illegal border crossing.⁷⁰

3.12.3 The law criminalizes 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 intending to defect or to seek 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

⁷⁰ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

refugees who were returned from China involuntarily are imprisoned. Some sources indicate that particularly harsh treatment is reserved for those who have had extensive contact with westerners and other foreigners, including those with family members resettled in the ROK.⁷¹

3.12.4 Previously, reports from defectors indicated that the government distinguished 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, including death). The law stipulates a sentence of up to two years of “labour correction” for the crime of illegally crossing the border. Repatriated refugees are subjected to harsh punishments, including imprisonment, forced labour or execution. During 2012, the government reportedly continued to enforce the policy that all border crossers be sent to prison or to re-education centres. One NGO reported that families of resettled defectors in South Korea were treated harshly, imprisoned, and forcibly relocated to areas away from the border.⁷²

3.12.5 North Korea does not allow its citizens to travel abroad without state permission, and leaving the country is considered a “crime of treachery against the nation” under North Korean law. The NGO ‘International Coalition to Stop Crimes against Humanity in North Korea’ (ICNK) states that all North Koreans in China qualify for refugee status because of the genuine risk of imprisonment, torture and sometimes execution if they are returned. The Chinese authorities currently forcibly return undocumented North Koreans as economic migrants.⁷³

3.12.6 Amnesty International reported that thousands of North Koreans who fled to China in search of food and employment were often forcibly repatriated to North Korea by the Chinese authorities. They were routinely beaten and detained upon return; those suspected of being in touch with South Korean NGOs or attempting to escape to South Korea were more severely punished. In July 2011, reports suggested that the North Korean authorities had ordered a crackdown on people leaving the country without permission. In October 2011, 20 North Koreans forcibly repatriated by China were detained at a National Security Agency facility in North Hamkyung province.⁷⁴

3.12.7 During 2012, North Korea is reported to have forced a drastic reduction in defections, coinciding with the rise of the new leader, Kim Jong Un. Up to 20,000 extra soldiers have been dispatched to the Chinese border, according to Seoul’s ‘Open Radio for North Korea’, which has a network of contacts in DPRK. These soldiers, threatened by punishments themselves, have become less willing to take bribes from would-be defectors. Evidence suggests that since Kim Jong Un came to power, the policies to prevent defectors have been implemented steadily more

⁷¹ US State Department Country Reports on Human Rights Practices for 2012: Democratic People’s Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁷² US State Department Country Reports on Human Rights Practices for 2012: Democratic People’s Republic of North Korea: section 2d:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁷³ International Coalition to Stop Crimes against Humanity in North Korea: ICNK Condemns China’s Expulsion of North Korean Refugees: 14 March 2012:

<http://www.hrw.org/print/news/2012/03/14/international-coalition-stop-crimes-against-humanity-north-korea-condemns-china-s-ex>

⁷⁴ Amnesty International: Annual Report 2012 North Korea 24 May 2012

<http://www.amnesty.org/en/region/north-korea/report-2012>

harshly and punitively.⁷⁵

See also: [Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.5 above)

3.12.8 Conclusion: Those who leave North Korea illegally are likely to face criminal sanctions if returned to North Korea. However, the severity of this punishment may differ depending upon whether the applicant left North Korea for economic or political reasons. Those who have left North Korea for political reasons (particularly those who have claimed asylum abroad) are likely to face a minimum of five years hard labour if returned to North Korea. Generally, ‘defectors’ or those who have sought asylum may face harsher prison sentences or may be executed. 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 likely to be appropriate if return to North Korea is proposed.

3.12.9 However, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see para 3.4.12 – 3.4.15). An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal and certification as being clearly unfounded 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))

3.12.10 Where North Korean applicants are able to demonstrate that they are not entitled to South Korean citizenship or cannot acquire it, the case should be decided on the basis of their North Korean nationality.

3.13 Prison and Detention Centre Conditions

3.13.1 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.

3.13.2 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 asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.13.3 Consideration: Reports from various sources indicate that there are several types of prisons, detention centres and camps, including forced labour camps and

⁷⁵ The Washington Post: “ With crackdown, North Korea puts a hold on defectors” 20 July 2012
http://articles.washingtonpost.com/2012-07-20/world/35488398_1_kim-jong-eun-defectors-north-koreans

separate camps for political prisoners. Primarily, there are political penal-labour camps, correctional or re-education centres, collection centres for low-level criminals, and labour training centres. Political labour camps are administered by the Ministry of State Security (MSS). One political penal-labour camp (Camp 22) is estimated to be 31 miles long and 25 miles wide, and to hold 50,000 inmates.⁷⁶ Defectors claim that these camps contain unmarked graves, barracks, worksites and other prison facilities. Reports indicate there are between 5,000 and 50,000 prisoners per political prison camp. Amnesty International published satellite photographs which show that the camps have grown in size and number since satellite photographs were first published in 2001.⁷⁷

3.13.4 Freedom House referred to reports from South Korea, which suggested that up to 154,000 political prisoners are held in six detention camps, but this number, and the number of actual prisons is estimated and differs from the estimates given by other non-government organisations. Inmates face brutal conditions, and it is common practice to punish whole families for suspected dissent by an individual.⁷⁸ Those sentenced to prison for non-political crimes are typically sent to re-education prisons where prisoners are subjected to intense forced labour. Those considered hostile to the regime or who have committed political crimes are sent to political prison camps indefinitely. The government continues to deny the existence of political prison camps.⁷⁹

3.13.5 Reports indicate that conditions in the political prison camps are harsh and life-threatening, and that systematic and severe human rights abuses occur throughout the prison and detention system. Political prisoners and other detainees frequently are not expected to survive incarceration.⁸⁰ Detainees and prisoners consistently report violence and torture, including rape, and beatings with iron rods.⁸¹ Press reports of defector accounts describe public executions in political prison camps. According to refugees, in some places of detention, prisoners receive little or no food and are denied medical care. Sanitation is 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.⁸²

3.13.6 Many defector accounts and NGO reports released during 2012 described the use of torture by authorities in detention facilities. Methods of torture and other abuses reportedly included severe beatings; electric shock; prolonged exposure to the elements; public nakedness and other humiliations; confinement for up to several weeks in small 'punishment cells' in which prisoners are unable to stand upright or

⁷⁶ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁷⁷ BBC News: Amnesty International reports from North Korea: 3 May 2011

<http://www.bbc.co.uk/news/world-asia-pacific-13272198>

⁷⁸ Freedom House: Freedom in the World 2012 North Korea:

<http://www.freedomhouse.org/report/freedom-world/2012/north-korea>

⁷⁹ US State Department, Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁸⁰ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁸¹ Human Rights Watch: World Report 2012 North Korea:

<http://www.hrw.org/world-report-2012/world-report-2012-north-korea>

⁸² US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

lie down; being forced to kneel or sit immobilised for long periods; being hung by the wrists or forced to stand up and sit down to the point of collapse, and forcing female prisoners to watch the infanticide of their newborn infants.⁸³

3.13.7 On 3 April 2012, the International Coalition to Stop Crimes against Humanity in North Korea submitted a petition to the special procedures of the UN Human Rights Council, calling for the UN to assist in shutting down North Korea's vast system of gulags. They reported that inmates, including women and children, are forced to do back-breaking and/or dangerous labour for twelve or more hours a day, and are given only starvation level food rations. They are routinely denied medical care and treatment, and forced to work while sick. They also reported that those who are too ill to work are sent to sanatoriums to await death. Prisoners are said to face torture, rape and extra-judicial killing.⁸⁴

3.13.8 Information on the number of women and juvenile prisoners is not available, although there are indications that in some prisons, women are kept in separate units from men. One NGO reported that political prisoners sent to punishment facilities are subject to torture without consideration of their gender. The authorities frequently detain juveniles along with their families, where they are subject to torture and abuse with their parents.⁸⁵

3.13.9 It is not known whether prisoners and detainees have reasonable access to visitors. In previous years, defectors have reported that Christian inmates were subjected to harsher punishment if their faith was made public. No information is available on whether inmates can submit complaints to judicial authorities without censorship or request investigation of inhumane conditions. There is no information available on whether the government investigates or monitors prison and detention centre conditions. Neither the UN Special Rapporteur on the human rights situation in the DPRK nor the UN Special Rapporteur on Torture has been allowed to independently assess conditions inside the country.⁸⁶

3.13.10 The government does not permit inspection of prisons or detention camps by human rights monitors. There is no information on whether ombudsmen can serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate inhumane overcrowding; addressing the status and circumstances of confinement of juvenile offenders; and improving pre-trial detention, bail, and recordkeeping procedures to ensure prisoners do not serve beyond the maximum sentence for the charged offence.⁸⁷

3.13.11 Conclusion: Conditions in prisons and detention facilities in North Korea are severe, life-threatening, and likely to reach the Article 3 threshold. Where

⁸³ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁸⁴ International Federation for Human Rights: petition to UN HRC re North Korean Gulag System April 2012: <http://www.fidh.org/The-International-Coalition-to>

⁸⁵ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁸⁶ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

⁸⁷ US State Department Country Reports on Human Rights Practices for 2012: Democratic People's Republic of North Korea: section 1c:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204210>

caseworkers believe that an individual is likely to face imprisonment on return to 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 caseworkers consider that this may be the case they should contact a senior caseworker for further guidance.

3.13.12 North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 3.4.12 – 3.4.15). An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal and certification as being clearly unfounded 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))

3.3.13 Where North Korean applicants are able to demonstrate that they are not entitled to South Korean citizenship or cannot acquire it, the case should be decided on the basis of their North Korean nationality.

4. Minors claiming in their own right

4.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.

4.2 At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in North Korea. Those who cannot be returned should be considered for leave as Unaccompanied Asylum Seeking Children (UASC).

4.3 Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety. Information on the infrastructure within North Korea, which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the Country of Origin Information Service.

4.4 Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).

5. Medical treatment

5.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to

access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COIS.

- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, and the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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 before a grant of Discretionary Leave. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

6. Returns

- 6.1** There is no policy which precludes the enforced return to North Korea of failed asylum seekers who have no legal basis of stay in the UK.
- 6.2** 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. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them

and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).

- 6.4** Korean nationals may return voluntarily to any region of Korea at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 6.5** The AVR scheme is implemented on behalf of the Home Office by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in 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 Korea should be put in contact with Refugee Action details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

Country Specific Litigation Team
Operational Policy & Rules Unit
Operational Systems Management
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