



OPERATIONAL GUIDANCE NOTE

NORTH KOREA (DPRK)

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1. Introduction

- 1.1** This document provides UBKA case owners 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. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *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 case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet 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 Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

- 1.4** With effect from 3 March 2010 South Korea is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from a person *entitled to reside* in South Korea, made on or after 3 March 2010, is refused case owners must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant Foreign and Commonwealth Office (FCO) country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** 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://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in North Korea. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at

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

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. For guidance on credibility see paragraph 11 of the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights claims'. Caseowners 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 matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Political opponents of the regime

3.6.1 Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the North Korea authorities due to their being political opponents of the regime.

3.6.2 *Treatment.* The Democratic People's Republic of Korea (DPRK or North Korea) is a dictatorship under the absolute rule of Kim Jong-il, general secretary of the Korean Workers' Party (KWP) and chairman of the National Defence Commission (NDC), the "highest office of state.". Kim's father, the late Kim Il-sung, remains "eternal president" North Korean citizens do not have the right to change their government peacefully. The KWP and KPA dominate the political system. Elections were neither free nor fair. The government justified its dictatorship with nationalism and demanded near deification of both Kim Jong-il and Kim Il-Sung. All citizens remain subject to intensive political and ideological indoctrination, intended to ensure loyalty to the leadership and conformity to the state's ideology and authority.¹

3.6.3 The government considers critics of the regime to be political criminals. Reports from past years have described political offences as including sitting on newspapers bearing Kim Il Sung's or Kim Jong-il's picture, mentioning Kim Il Sung's limited formal education, or defacing photographs of the Kim's. The number of political prisoners and detainees remained unknown.²

3.6.4 While the total number of political prisoners and detainees remains unknown, a 2003 report by the US Committee for Human Rights in North Korea estimated 150,000 to 200,000 persons were believed to be held in a type of political prison camp. The internal security apparatus includes the Ministry of Public Security (MPS) and the State Security Department (SSD). The MPS, responsible for internal security, social control and basic police functions, is one of the most powerful organisations in the country. Corruption in the security forces is endemic. The security forces do not have adequate mechanisms to investigate possible security force abuses.³

3.6.5 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 length of their sentence. Collective punishment was practised with entire families, including children, being imprisoned when one member of the family was accused of a crime. Judicial review of detentions did not exist in law or in practice.⁴

¹ USSD 2009

² USSD 2009

³ USSD 2009

⁴ USSD 2009

3.6.6 Defector and refugee reports indicated that in some instances the government executed political prisoners, opponents of the regime, repatriated defectors and others accused of crimes with no judicial process. The law prescribes the death penalty for most serious crimes which included participation in a coup, plotting to overthrow the state and defection or handing over the state secrets. In the past border guards reportedly had orders to shoot and kill potential defectors and prison guards were under orders to shoot to kill those attempting to escape from political prison camps, but it was not possible to determine if this practice continued during 2009. The security forces announced that attempting to cross the border or aiding others in such an attempt was punishable by execution. The government was reportedly also responsible for cases of disappearance and in recent years defectors have claimed that state security officials often apprehend individuals suspected of political crimes and send them, without trial, to political prison camps. The penal code states that a prosecutor's approval is required to detain a suspect but the government ignored this law in practice.⁵

North Koreans in South Korea

3.6.7 The constitution of the Republic of Korea (RoK, also known as South Korea) defines its geographical area as the whole of the Korean peninsula and islands, and, therefore, includes both North and South Korea. RoK nationality is defined by the Nationality Act, first promulgated in 1948. Article 3 of the Nationality Act describes who is entitled to be a national of RoK and most North Koreans are entitled to citizenship in the south.⁶ The US State Department Country Report on Human Rights Practices, 2009, Republic of Korea observed that "The government continued its longstanding policy of accepting refugees from the DPRK, who are entitled to RoK citizenship. The government resettled 2,952 North Koreans during 2009."⁷

3.6.8 The Act on the Protection and Settlement Support of Residents Escaping from North Korea, most recently amended in July 2007, provides for the protection and support of North Korean residents escaping North Korea to enable their adaptation "in all spheres of their lives, including political, economic, social and cultural spheres." At Article 9 the Act sets out categories of people who "may not be determined as persons subject to protection". The categories include criminals involved in serious non-political crimes and "persons who have earned their living for not less than ten years in their respective countries of sojourn." Protection can be sought at South Korean missions overseas. Article 27 of the Act lists the circumstances in which protection may be suspended subject to the deliberations of the South Korean Consultative Council.⁸

3.6.9 The UN Human Rights Council reported that the UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea (DPRK, also known as North Korea) carried out an official visit to the ROK in January 2010 to assess the impact of the human rights situation in the DPRK. The Special Rapporteur noted that some 18,000 North Koreans have been settled into South Korea in recent years, and the assistance given has expanded to include resident registration and housing support; financial subsidy; educational, employment, medical and minimum living support. On this matter, he paid a visit to the Hanawon Centre, a centre to assist newcomers adapt to ROK society. The centre has a range of excellent facilities and in recent years there has been an expansion of programmes to open up job opportunities, to offer more psychological support, and to build networks with local communities to help those who leave Hanawon upon completion of the programmes. The Hangeore Middle and High School, an exemplary open facility for adolescents from the DPRK adapts education to their special needs.⁹

⁵ USSD 2009

⁶ COI report North Korea: July 2009

⁷ USSD 2009

⁸ COI report North Korea: July 2009

⁹ Visit of the UN Special Rapporteur on the Situation of human Rights in the DPRK, Professor Vitit Muntarbhorn, to the ROK: 10-16 January 2010

- 3.6.10** South Korea is a party to the 1951 Refugee Convention. Its law provides for the granting of asylum or refugee status and the government has established a system for providing protection to refugees. The government routinely did not grant refugee status or asylum. In practice the government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion.¹⁰
- 3.6.11** Whilst there is some evidence of dissatisfaction by North Korean escapees to the South Korea, the UN Special Rapporteur on the human rights situation in North Korea, Vitit Muntarbhorn, welcomed the efforts the South Korean Government has made to assist people fleeing North Korea and praised the support given to over 10,000 defectors who had been accepted for settlement. Since there is no evidence of persecution of North Koreans in South Korea, a grant of asylum on this basis is unlikely, therefore, to be appropriate.¹¹
- 3.6.12 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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. 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 by 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.
- 3.6.13** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.6.14 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.6.15** The reach of the state authorities in North Korea extends to all parts of the country, and they are sufficiently systematic and organised to preclude a finding that a risk of ill treatment at the hands of, or with the connivance of state agents, could be sufficiently mitigated by internal relocation within North Korea.
- 3.6.16 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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. However, North Koreans are

¹⁰ USSD Republic of Korea 2009

¹¹ Country Of Origin Information Key Documents South Korea – September 2009

normally able to reside in South Korea and most are also entitled to South Korean citizenship

3.6.17 An application for asylum owing to a fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

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

3.7 Food shortages, economic problems and corrupt local officials

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

3.7.2 Treatment

3.7.3 According to the FCO Human Rights Annual Report 2009, North Korea prevented the UN Food and Agriculture organisation and the WFP from carrying out the crop and food assessment that was planned for October 2009. The international community therefore could not make an accurate assessment of food shortages or work with North Korea and international agencies to tackle them. Official North Korean statistics indicate a small increase in rice harvest but some external assessments suggest a decline. The WFP remains concerned that high rates of malnutrition continue especially among children and women and the situation is more acute during the winter as temperatures drop and energy needs become greater for the vulnerable. The international community, including South Korea and the US, has indicated that it will provide assistance if there is another major food crisis but in the past, North Korea has usually been reluctant to ask for assistance. The May 2009 nuclear test, donor fatigue and continued obstruction from North Korea may have affected the effectiveness of humanitarian projects by UN agencies. For example, because of restrictions on access, the WFP is now delivering food in only 62 counties and districts, down from 131 in 2008. The recent currency devaluation is likely to make it even harder for ordinary North Koreans to use local markets to supply the food that the state system fails to provide.¹²

3.7.4 The economy remains both centrally planned and grossly mismanaged, with the military claiming over a third of the state budget. Development is also hindered by a lack of infrastructure, a scarcity of energy and raw materials, and an inability to borrow on world markets or from multilateral banks because of sanctions, lingering foreign debt, and ideological isolationism. The growth of the black market in recent years gave many North Koreans a field of activity that was largely free from government control, but the currency reforms of late 2009 threatened to restrict such trading and the small measure of wealth it had produced.¹³

3.7.5 In November 2009 the government announced a major revaluation of its currency and restricted the amount of old notes that individuals could exchange, effectively wiping out many citizen's cash savings. The move, part of a bid to crack down on private trading and boost state controls on the economy, reportedly led to small protests and other disturbances. In the face of public anger and confusion, the authorities later raised the limit on the amount of old currency in state banks, but that carried the risk of being investigated for illegal trading. With the crippled black market unable to meet demand, prices rose

¹² FCO Human Rights Annual Report 2009 North Korea

¹³ Freedom House North Korea 2010

sharply. The government caused further economic disruption at the end of 2009 by banning the use of foreign currency.¹⁴

- 3.7.6** Reports of diversion of food to the military and government officials and bribery were indicative of corruption in the government and security forces. The government continued to deny any diversion of food, although it hinted that it was combating internal corruption.¹⁵
- 3.7.7** Class background and family connections may be as important as professional competence in deciding who receives particular jobs, and foreign companies that have established joint ventures continued to report that all their employees must be hired from registers screened by the authorities. There was no reliable data available on the minimum wage in state-owned industries. However, reports indicated that the average daily wage was not sufficient to provide a decent standard of living for a worker and family. Since the 2002 economic reforms, compensation underwent significant change, as citizens sought to earn hard currency to support themselves and their families. Workers often had to pay for services, such as housing rental and transportation that previously had been provided either free or at highly subsidised rates by the state. While education and medical care technically remained free, educational materials and medicines appeared available only for purchase in markets. Foreign observers who visited the country reported that many factory workers regularly failed to go to work, paying a bribe to managers to list them as present, so they could engage in various trading and entrepreneurial activities instead. The same source stated that many government factories were not operating, primarily due to electricity shortages.¹⁶
- 3.7.8 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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. 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 by 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.
- 3.7.9** The government continued to commit numerous serious abuses and subjected citizens to rigid controls over many aspects of their lives. There continued to be reports of extrajudicial killings, disappearances, arbitrary detention, arrests of political prisoners, harsh and life threatening prison conditions, and torture.¹⁷ The abuses committed by the government, the security forces, the high levels of police corruption, the power of the state and the lack of an independent judiciary limit the effectiveness of any protection that the authorities are able or willing to offer to those that fear local officials. For claims based on food shortages and economic problems alone sufficiency of protection is not relevant.
- 3.7.10 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part

¹⁴ Freedom House North Korea 2010

¹⁵ USSD 2009

¹⁶ USSD 2009

¹⁷ USSD 2009

of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.7.11 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 2009, the Government continued to attempt to control internal travel. Only members of a very small elite and those with access to remittances from overseas have access to personal vehicles, and movement was hampered by the absence of an effective transport network and by military and police checkpoints on main roads at the entry to and exit from every town. Use of personal vehicles at night and on Sundays was restricted during 2009. 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.¹⁸ The Government curtails and controls freedom of movement within North Korea and internal relocation to another area of the country to escape a localised threat is not possible.

3.7.12 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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 3.6.7 – 3.6.11 above). An application for asylum owing to a fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

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

3.8 Christians

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

3.8.2 Treatment. The constitution provides for freedom of religious belief; however, in practice the government severely restricts religious 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." Genuine religious freedom does not exist. However, the government did allow foreigners to attend government-sponsored religious services.¹⁹

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.²⁰

¹⁸ USSD 2009

¹⁹ U.S. Department of State International Religious Freedom Report (USIRFR) 2009 (Introduction & Section II) & USSD 2009

²⁰ USSD 2009

- 3.8.4** There are 4 state-controlled Christian churches in Pyongyang: two Protestant churches (Bongsu and Chilgol Churches) the Changchung Roman Catholic Church, and the Holy Trinity Russian Orthodox Church. The Chilgol Church is dedicated to the memory of former leader Kim Il-sung's mother, Kang Pan-sok, who was a Presbyterian deaconess. The number of worshippers frequently attending these churches is unknown.
- 3.8.5** According to the US Department of State International Religious Freedom Report 2009, in July 2002 the U.N. Human Rights Committee reported that the country acknowledged the existence of 500 family worship centres but defectors interviewed were unaware of any such centres and observers suggest that the family worship centres may be part of the state-controlled Korean Christian Federation. An unknown number of underground churches operate apart from the Federation and were not recognised by the government. Defector testimonies referred to the existence of these underground churches but this was hard to verify. According to reports in July 2009 an estimated 30,000 Christians were in North Korea, while some non-governmental organisations (NGOs) and academics estimate there may be up to several hundred thousand underground Christians in the country. Others question the existence of a large-scale underground church or conclude that it is impossible to estimate accurately the number of underground religious believers. Individual underground congregations are reportedly very small and typically confined to private homes. At the same time, some NGOs reported that the individual churches are connected to each other through well-established networks. The regime has not allowed outsiders the access necessary to confirm such claims.²¹
- 3.8.6** Little is known about the day-to-day life of religious persons in the country. Members of government-controlled religious groups did not appear to suffer discrimination. Some reports claimed, and circumstantial evidence suggested, that many if not most of these groups have been organised by the regime for propaganda and political purposes, including meeting with foreign religious visitors. There have also been reports that funds and goods that are donated to government-approved churches are then channelled through the Korean Workers Party (the only political party in the country). Members of underground churches or those connected to border missionary activity were reportedly regarded as subversive elements.²²
- 3.8.7** The government deals harshly with all opponents, including those who engage in religious practices deemed unacceptable by the regime. Religious and human rights groups outside of the country provided numerous reports in previous years that members of underground churches had been arrested, beaten, tortured, or killed because of their religious beliefs. An estimated 150,000 to 200,000 persons were believed to be held in political prison camps in remote areas, some for religious reasons. Prison conditions were harsh, and refugees and defectors who had been in prison stated that prisoners held on the basis of their religious beliefs were treated worse than other inmates.
- 3.8.8** NGOs, defectors, and refugees have reported that the government executed opponents of the regime in recent years. Executed individuals reportedly included some targeted for religious activities such as proselytism and contact with foreigners, South Korean humanitarian or religious groups, or missionaries while in China. Defector reports indicated that the regime increased its investigation, repression, and persecution of unauthorised religious groups in recent years, but access to information on current conditions was limited. Despite these restrictions, reports indicated that contacts with religious personnel both inside the country and across the border in China appeared to be increasing; however, there was not enough data to determine the size and scope of religious activity. Reports from NGOs, refugees, defectors, and missionaries indicated that, of the many persons engaging in proselytizing, those who had ties to overseas evangelical groups operating across the border in China, and, specifically those repatriated and found to have contacted

²¹ USIRFR 2009 (Section I) & USSD 2009

²² USIRFR 2009 (Section II) & USSD 2009

foreigners, including Christian missionaries, outside the country have been arrested and subjected to harsh punishment.²³

3.8.9 *Actors of protection.* Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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. 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 by 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.

3.8.10 As this category of applicants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.8.11 *Internal relocation.* Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.8.12 The reach of the state authorities in North Korea extends to all parts of the country, and they are sufficiently systematic and organised to preclude a finding that a risk of ill treatment at the hands of, or with the connivance of state agents, could be sufficiently mitigated by internal relocation within North Korea.

3.8.13 *Conclusion.* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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. However, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 3.6.7 – 3.6.11). An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:

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

3.9 Those who have left North Korea illegally

²³ USIRFR 2009 (Section II) & USSD 2009

- 3.9.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of North Korea authorities due to their having left North Korea illegally either as economic migrants or as defectors.
- 3.9.2 *Treatment.*** The law criminalises defection and attempted defection, including the attempt to gain entry to a foreign diplomatic facility for the purpose of seeking political asylum. Individuals who cross the border with the purpose of defecting or seeking asylum in a third country are subject to a minimum of five years of labour correction. In serious cases, defectors or asylum seekers are reportedly subjected to indefinite terms of imprisonment and forced labour, confiscation of property, or death. Many would-be refugees who were returned involuntarily in 2009 were imprisoned under harsh conditions, with some sources indicating that the harshest treatment was reserved for those who had extensive contact with foreigners. In the past, reports from defectors indicated that the regime 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 the person who crossed repeatedly or for political purposes, who were sometimes sentenced to heavy punishments. The law stipulates a sentence of up to two years of labour correction for the crime of illegally crossing the border. During 2009 the government reportedly continued to enforce the policy that all border crossers be sent to prison or re-education centres.²⁴
- 3.9.3** In 2009, the government restricted foreign travel and the limited issuance of exit visas for foreign travel to officials and trusted businessmen, artists, athletes, academics, and religious figures. Short-term exit papers were available for some residents on the Chinese border to enable visits with relatives or to engage in small-scale trade..²⁵
- 3.9.4** According to Vitat Muntarbhorn, the Special Rapporteur to North Korea in his report of 2008, states that there have been reports of greater leniency of treatment on some fronts. For example, in the case where those who exit the country because of hunger are returned to the country, they would tend to be questioned by the authorities rather than imprisoned. However, other cases, such as those who repeatedly exit the country without permission, those with political affiliations seen as hostile to the authorities or those who seek the help of missionaries in neighbouring countries are subjected to punishment, ranging from re-education to forced labour and incarceration. The government began 2008 by tightened security of both sides of the border and NGO's reported strict patrols and surveillance of residents of border areas and a crackdown on border guards who may have been aiding border crossers.²⁶
- 3.9.5** National security agents are particularly interested to learn if the border crossers have had contact with foreign journalists, Christian groups, South Koreans or other foreigners, particularly US citizens, or if they have attempted to defect to a third country. There is some evidence that contact with the 'wrong' people results in harsher treatment or sentencing. Those caught at a Chinese border area with a third country, for example, Mongolia or Vietnam, invariably undergo a more intense and extended interrogation process, and risk harsher penalties. Either instance could result in incarceration in a political prisoner camp, where it is widely accepted that prisoners are subjected to torture, or possible execution in 'serious' cases.²⁷
- 3.9.6** Substantial numbers of North Koreans have crossed the border into China over the years, and NGO estimates of those that lived there during 2009 ranged from tens of thousands to hundreds of thousands. According to reports, some settled semi permanently in north-eastern China, others travelled back and forth across the border, and still others sought asylum and permanent resettlement in third countries. A few thousand citizens gained asylum in third countries during 2009.²⁸

²⁴ USSD 2009

²⁵ USSD 2009

²⁶ COI report North Korea: July 2009 and USSD 2009

²⁷ COI report North Korea: July 2009

²⁸ USSD 2009

- 3.9.7 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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. 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 by 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.
- 3.9.8** As this category of applicants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.9.9 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.9.10** As this category of applicants fear is of ill treatment/persecution by the state authorities on return, relocation to a different area of North Korea is not relevant.
- 3.9.11 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Those who leave North Korea illegally may face criminal sanction if returned to North Korea. However, the severity of this punishment is likely to differ significantly depending upon whether the applicant left North Korea for economic or political reasons. Although some of those who have left North Korea to seek work or food in China may face imprisonment on return, there is some evidence that punishments may be less severe than previously. However, those who have left North Korea for political reasons including those who have claimed asylum abroad are likely to face a minimum of five years labour correction if returned to North Korea. In some cases 'defectors' or those who have sought asylum may face harsher prison sentences or may be executed.
- 3.9.12** Claiming asylum abroad is viewed as a political offence by the North Korean authorities and attracts a harsh punishment which will amount to persecution. A grant of refugee status is, therefore, likely to be appropriate if return to North Korea is proposed. However, North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 3.6.7 - 3.6.11). An application for asylum due to fear of persecution in North Korea is, therefore, likely to fall for refusal as there is reason to believe that the applicant will be admitted to South Korea on the basis that:
- (i) such refusal will not result in the applicant being required to go to a country in breach of the Refugee Convention (Para 334(v) Immigration Rules) and
 - (ii) the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship (Para 339J(iv))

3.10 Prison conditions

- 3.10.1** Applicants may claim that they cannot return to North Korea due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in North Korea are so poor as to amount to torture or inhuman treatment or punishment.
- 3.10.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.10.3 *Consideration.*** NGO, refugee, and press reports indicated that there were several types of detention centres and camps, including forced labour camps; separate camps reportedly existed for political prisoners. Defectors claimed the camps covered areas as large as 200 square miles. The camps appeared to contain mass graves, barracks, work sites, and other prison facilities. Those sentenced to prison for non-political crimes were typically sent to re-education prisons where prisoners were subjected to intense forced labour. Those who were considered hostile to the regime or who committed political crimes, such as defection, were sent to political prison camps indefinitely. Many prisoners in political prison camps were not expected to survive. The government continued to deny the existence of political prison camps.²⁹
- 3.10.4** Reports indicated that conditions in the political prison camps were harsh. Systematic and severe human rights abuses occurred throughout the prison and detention system. Detainees and prisoners consistently reported violence and torture. According to refugees, in some places of detention, prisoners received little or no food and were denied medical care. Sanitation was poor, and former labour camp inmates reported they had no changes of clothing during their incarceration, were rarely able to bathe or wash their clothing and were forced to sleep on top of each other.³⁰
- 3.10.5** The government did not permit inspection of prisons or detention camps by human rights monitors. In his report of February 2008, Vitat Muntarbhorn, Special Rapporteur to North Korea observed that an overhaul of the prison system is long overdue and the harsh conditions imposed by the criminal justice system and related detention gave rise to plethora of abuses, including torture and other cruel, inhuman and degrading treatment. The transgressions are often multiple and repeated, including not only torture committed against people in detention, but also malnutrition with starvation.³¹
- 3.10.6 *Conclusion.*** Conditions in prisons and detention facilities in North Korea are severe, and are likely to reach the Article 3 threshold. Where case owners believe that an individual is likely to face imprisonment on return to the North Korea they should also consider whether the applicant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a senior caseworker for further guidance. Where individual applicants are able to demonstrate a real risk of imprisonment on return to North Korea and exclusion is not justified, a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent

²⁹ USSD 2009 (Section 1)

³⁰ USSD 2009

³¹ COI Report North Korea: July 2009

family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to North Korea the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.3.2 North Koreans are normally able to reside in South Korea and most are also entitled to South Korean citizenship (see 3.6.7 – 3.6.11). The RoK Ministry of Health and Welfare (MoHW) manages the provision of welfare and protection services to children. The MoHW Annual Report for 2006 stated that, as of the end of 2005, there were a total of 282 facilities for children, of which 242 were long-term residential, 4 provided vocational training and 36 facilities provided other services. These facilities catered for a total of 19,151 children. The government extends financial support to children in welfare facilities and to adoptive and foster families. Government policy is to promote domestic rather than foreign adoption and 1,461 orphans were adopted by families in South Korea in 2005.³²

4.4 Medical treatment

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

4.4.2 North Korea has an extensive, free medical care system. Medical personnel retain core primary healthcare skills but the quality of care and availability of resources has deteriorated markedly with the economic decline in the 1990s. Because of this, and persistent, chronic malnutrition, life expectancy has fallen sharply.³³

4.4.3 For decades, medical facilities in North Korea have reportedly suffered from a lack of resources and electricity, as well as inadequate and often outdated skills among the medical staff. Hospitals in Pyongyang can perform basic examinations and lifesaving measures but functioning x-ray facilities are not generally available. According to the World Health Organisation Health Statistics 2010 there were 74,597 physicians in North Korea and 93,414 nurses and midwives.³⁴

4.4.4 During a visit to North Korea in April 2010 the Director-General of the WHO acknowledged the government's notable public health achievements such as good immunisation coverage, effective implementation of maternal, newborn and child health interventions and successfully reducing malaria cases. She also stated that North Korea has no shortage of

³² Ministry of Health and Welfare, ROK: Annual Report for 2006 (Chapter 7, section 04-2, pages 61-62) http://download.mw.go.kr/front/modules/download.jsp?BOARD_ID=1003&CONT_SEQ=41204&FILE_SEQ=20206&FILE_NAME=%BA%B9%C1%F6%BA%CE%BF%B5%B9%AE%B9%E9%BC%AD%B3%BB%BF%E B.pdf.

³³ FCO Country Profile: North Korea 25 June 2009

³⁴ U.S. Department of State Bureau of Consular Affairs – Country Specific Information: North Korea & World Health Organisation (WHO): North Korea and World Health Organisation Statistics 2010

doctors and nurses and this allowed North Korea to provide comprehensive healthcare. However, her comments were reported to be inconsistent with other reports and mark a significant change from the assessment of her predecessor, Gro Harlem Brundtland, who said in 2001 that North Korea's health system was near collapse.³⁵

- 4.4.5** In April 2010 North Korea formally launched a medical videoconference network aimed at giving smaller, rural hospitals access to specialist in the capital Pyongyang with the help of WHO. WHO has been providing cameras, computers and other equipment to North Korea to help the reclusive, impoverished country connect a main hospital in Pyongyang with medical facilities in 10 provinces. The system is designed to allow doctors to talk to each other to provide additional services to rural patients.³⁶
- 4.4.6** Other developments in medical treatment as reported by WHO are a joint North-South Korean Health Project which is aimed at improving health conditions for millions of North Korean women and children. The project was launched four years ago and South Korea is providing \$36 million for the Health Project and is also working to upgrade infrastructure, rehabilitating hospitals and providing modern surgical and medical equipment. The joint North-South Korean Health Project has been implemented in 80 counties of North Korea and hopes to reach the rest in the coming years.³⁷
- 4.4.7** North Korea has a mental health policy based on advocacy, promotion, prevention, treatment and rehabilitation. Mental health is part of the primary health care system and actual treatment of severe mental disorders is available at community care facilities. Therapeutic drugs are also generally available at the primary health care level of the country.³⁸
- 4.4.8** The UN Committee on the Rights of the Child repeatedly has expressed concern over de facto discrimination against children with disabilities and the insufficient measures taken by the state to ensure these children had effective access to health, education and social services. It was not known whether boys and girls had equal access to state provided medical care as access to healthcare was largely dependent upon loyalty to the government.³⁹
- 4.4.9** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** 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 United Kingdom. However, in dealing with individual North Korean cases consideration must always be given to the information in sections 3.6 on South Korea and 3.9 on illegal exit. In deciding the most appropriate removal destination, case owners should make clear findings as to the applicant's former

³⁵ World Health Organisation: North Korea has plenty of doctors – May 2010
<http://www.nkeconwatch.com/2010/05/04/north-korea-has-plenty-of-doctors-who/>

³⁶ World Health Organisation – North Korea Teams Up with WHO to launch Telemedicine Network – 26 April 2010
http://www.mercurynews.com/breaking-news/ci_14966039

³⁷ World Health Organisation – Health Project in North Korea Makes Impressive Gains – March 2010
<http://www1.voanews.com/english/news/asia/Health-Project-In-North-Korea-Makes-Impressive-Gains-86362212.html>

³⁸ COI Report North Korea: July 2009

³⁹ USSD 2009

place of residence/nationality. In particular, case owners should ascertain whether the applicant has previously been granted citizenship in South Korea.

- 5.2 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, 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.
- 5.3 Case owners should also be aware that there is some evidence of Chinese nationals of Korean ethnicity claiming to be North Korean citizens and making asylum claims on this basis. In such cases, removal to China should be considered. The information available indicates that there are two main categories of Koreans in China. The first category comprises those who have been living legally in China for many years and were included in the 2000 census. It appears that this group is treated differently from those in the second category, who fled North Korea to China and have remained there illegally.⁴⁰
- 5.4 Where the claim includes dependent family members their situation on return should be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.5 North Korean nationals may return voluntarily to any region of North or South Korea at any time by 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. The AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in North or South Korea The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. North Korean nationals wishing to avail themselves of this opportunity for assisted return to North or South Korea should be put in contact with the IOM offices in London 0800 783 2332 or www.iomlondon.org.

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⁴⁰ COI China Country Report December 2007 (22.05 and 33.03)

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