Upper Tribunal
(Immigration and Asylum Chamber)

GP and others (South Korean citizenship) North Korea CG [2014] UKUT 00391 (IAC)

THE IMMIGRATION ACTS

Heard at Field House
On 8 April and 2 July 2013

Sent to parties on:

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Before

Mr C M G Ockelton, Vice President
Upper Tribunal Judge Gleeson

Between

GP
JJ
JP
MP

[ANONYMITY ORDERS MADE]

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For Appellants GP, JJ and JP:	Miss C Hulse, instructed by Duncan Moghal, solicitors
For Appellant MP:	Mr M Karnik, instructed by Jackson & Canter, solicitors
For the Respondent:	Mr K Norton, Senior Home Office Presenting Officer

(1) The Upper Tribunal's country guidance in KK and others (Nationality: North Korea) Korea CG [2011] UKUT 92 (IAC) stands, with the exception of paragraphs 2(d) and 2(e) thereof. Paragraphs (2), (3) and (4) of this guidance replace that given in paragraphs 2(d) and 2(e) respectively of KK.

(2) South Korean law makes limited provision for dual nationality under the Overseas Koreans Act and the Nationality Act (as amended).

(3) All North Korean citizens are also citizens of South Korea. While absence from the Korean Peninsula for more than 10 years may entail fuller enquiries as to whether a person has acquired another nationality or right of residence before a travel document is issued, upon return to South Korea all persons from the Korean Peninsula are treated as returning South Korean citizens.

(4) There is no evidence that North Koreans returned to South Korea are sent back to North Korea or anywhere else, even if they fail the 'protection' procedure, and however long they have been outside the Korean Peninsula.

(5) The process of returning North Koreans to South Korea is now set out in the United Kingdom-South Korea Readmission Agreement (the Readmission Agreement) entered into between the two countries on 10 December 2011. At present, the issue of emergency travel documents under the Readmission Agreement is confined to those for whom documents and/or fingerprint evidence establish that they are already known to South Korea as citizens, or who have registered as such with the South Korean Embassy in the United Kingdom.

(6) Applying MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289, North Koreans outside the Korean Peninsula who object to return to South Korea must cooperate with the United Kingdom authorities in seeking to establish whether they can avail themselves of the protection of another country, in particular South Korea. Unless they can demonstrate that in all of the countries where they are entitled to citizenship they have a well-founded fear of persecution for a Refugee Convention reason, they are not refugees.

(7) If they are not refugees, it remains open to such persons to seek to establish individual factors creating a risk for them in South Korea which would engage the United Kingdom's international obligations under the EU Qualification Directive or the ECHR.

(8) There is no risk of refoulement of any North Korean to North Korea from South Korea, whether directly or via China. South Korea does not return anyone to North Korea at all and it does not return North Koreans to China. In a small number of cases, Chinese nationals have been returned to China. A small number of persons identified by the South Korean authorities as North Korean intelligence agents have been prosecuted in South Korea. There is no evidence that they were subsequently required to leave South Korea.

(9) Once the 'protection' procedure has been completed, North Korean migrants have the same rights as other South Korean citizens save that they are not required to perform military service for South Korea. They have access to resettlement assistance, including housing, training and financial assistance. Former North Koreans may have difficulty in

adjusting to South Korea and there may be some discrimination in social integration, employment and housing, but not at a level which requires international protection.

DETERMINATION AND REASONS

1. In this appeal, the appellants, who are all citizens of the Democratic People's Republic of Korea, whom the respondent considers also to be citizens of the Republic of Korea, appeal against the First-tier Tribunal's dismissal of their appeals against the respondent's setting of removal directions to South Korea following her refusal to grant them refugee status, humanitarian protection or leave to remain on human rights grounds. In this decision, we refer to the Republic of Korea as South Korea and the Democratic People's Republic of Korea as North Korea.

2. The respondent accepts that if North Korea is the appellants' only citizenship, they are refugees and cannot be removed from the United Kingdom. She relies on their entitlement to the protection of South Korean citizenship.

3. In the case of MP, the respondent's removal directions were set in the alternative to either North Korea or South Korea. The respondent accepted at the hearing that none of the appellants can be returned to North Korea and it is clear from the refusal letter accompanying her removal directions that she did not then intend removal to North Korea. We approach these appeals on the basis that the only country to which removal is contemplated, for all of the appellants, is South Korea.

The appellants

4. The appellants in these proceedings all entered the United Kingdom unlawfully from China and have been here for less than 10 years. The husband and wife in the GP family arrived together on 11 November 2007, and have had two children while in the United Kingdom. The citizenship of those children is determined by that of their parents: they are not British citizens. MP, an unmarried man, arrived on 21 October 2008.

5. All the appellants challenge decisions by the respondent to set removal directions to South Korea on the basis that they are citizens of that country. None of them has approached the South Korean authorities in the United Kingdom in order to establish whether they would in fact be admitted to South Korea, or whether South Korea recognises them as its citizens. However, the respondent has established that MP's fingerprints are on the South Korean database.

6. The first three appellants are members of the same family and are referred to in this decision as 'GP' or 'the GP family' unless the context requires consideration of the individual members of that family; the fourth appellant, MP, has no

dependants. They all originally came from North Korea and assert that they have not lived in South Korea. The material facts in each appeal are as follows:

(1) GP and JP grew up in North Korea and their North Korean origin is not disputed. They left North Korea for China together for the first time in 2004, but were unable to find work in China: they returned to North Korea after less than a month. They were arrested on return, and were both detained and beaten by the North Korean authorities. When the husband developed diarrhoea and 'bad lungs', they were released from detention and given a show trial, which caused them to be shunned and abused in public. They then left North Korea for a second time, again via the Tuman River: the husband had been diagnosed with spinal tuberculosis. Their journey to the United Kingdom was paid for by their church pastor, in return for free work done for him by the husband. GP and JP entered the United Kingdom on false passports in November 2007. They now have two children, the third appellant who was born in the United Kingdom in 2008, and a younger daughter, born in 2010. The respondent proposes to remove the GP family to South Korea. She has never suggested that she would remove them to North Korea, where she accepts that they would be at risk of persecution or serious harm, or to China, where there is a risk of refoulement.

(2) MP left North Korea illegally to go to China, in 2006, travelling with his mother, who now lives in South Korea. MP came to the United Kingdom in 2008, travelling with a South Korean pastor on a false South Korean passport. It is the respondent's case that MP is already a citizen of South Korea and that he is not at risk of persecution or serious harm if returned there. His fingerprints have been found on the South Korean database and his account of having given them at Shenyang South Korean Consulate in China in 2006 as part of an unsuccessful attempt to apply for a South Korean visa there was rejected by the respondent.

On 8 September 2011, the respondent served removal directions in which she stated that she proposed to remove him either to North Korea or South Korea. In the accompanying letter of refusal, the respondent accepted that he has a well-founded fear of persecution in North Korea following his illegal exit and cannot be returned there. There therefore is not, and in practice never has been, any intention on the part of the respondent to return him to North Korea.

Existing country guidance

7. The Upper Tribunal last gave country guidance in relation to South Korea and North Korean migrants in *KK and others (Nationality: North Korea) Korea* CG [2011] UKUT 92 (IAC), which was promulgated in March 2011, as follows:

"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)."

Need for further country guidance

8. Since the publication of *KK*, there have been two relevant changes in relation to removal of North Korean migrants to South Korea.

    (i) In December 2011, the United Kingdom and the Republic of Korea entered into a bilateral Readmission Agreement intended to address the difficulties in documenting and returning North Korean migrants to South Korea.
    (ii) In July 2012, South Korea incorporated the Refugee Convention into its domestic law.

9. The appellants contend that *KK* should be re-examined because:

    (i) They consider that the Upper Tribunal's guidance in *KK* is erroneous as to the nationality of persons who have been outside the Korean Peninsula for less than 10 years, and that the Tribunal should find that such person fall within categories 1(a)(ii) and 1(a)(iii) of the *KK* guidance, that is, that they either are not yet South Korean citizens, but are entitled to acquire such citizenship (category 1(a)(ii)) or only *may* be so entitled (category 1(a)(iii)),

(ii) Alternatively, they argue that the Upper Tribunal's findings on the position of those who have been outside the Korean Peninsula for less than 10 years is not binding and the discussion of that point was *obiter dicta* in *KK,* in which all the appellants had been outside the Korean Peninsula for longer than 10 years;

(iii) South Korea will not grant them protection or travel documents to enter the 'protection' procedure in South Korea because they have sought asylum in the United Kingdom, thereby indicating that they do not really want to go to South Korea; and

(iv) South Korean nationality is not 'effective' nationality. In seeking to reopen the finding in *KK* at 1(c) in the guidance on this point, the appellants rely on the decision of the International Court of Justice in *Liechtenstein v Guatemala (Second Phase)* [1955] ICJ 4 ('the *Nottebohm* case').

In addition, the appellants consider that country guidance is required on:

(v) The risk of refoulement from China to North Korea, or from South Korea to North Korea via China, having regard to the Repatriation Agreement between China and North Korea which expressly disapplies UNHCR procedures for North Koreans in China; and

(vi) Whether the process applied by the South Korean authorities to returning North Korean migrants (the 'protection' procedure) breaches the Refugee Convention, alternatively their human rights, such that it is unlawful to return them to South Korea because of that procedure and/or offends against international norms in that it lacks judicial supervision and amounts to unlawful detention; or

(vii) Whether levels of societal, employment and housing discrimination for former North Koreans living in South Korea are such that they cannot be expected to go and live there.

The appellants also asserted (but the evidence before us did not establish) that on the completion of the 'protection' procedure, persons who had been outside the Korean Peninsula for more than 10 years would not be given any financial support or settlement assistance by the South Korean authorities. This point was not directly engaged in these appeals, since none of these appellants has been outside the Korean Peninsula for more than 10 years.

10. The respondent also seeks to reopen the country guidance in *KK,* contending that the Upper Tribunal erred in fact and in law in finding that persons who had been outside the Korean Peninsula for more than 10 years would have lost their right to South Korean nationality by reason of the length of such absence. She made that challenge in the Court of Appeal in *Secretary of State for the Home Department v SP (North Korea) & Ors* [2012] EWCA Civ 114, in which, while concurring with the decision to dismiss the appeals of the particular appellants, the Court of Appeal expressed some concerns as to the Upper Tribunal's reasoning on this point (see, in particular, paragraphs [36]-[28] in the concurring judgment of Lord Justice Davis).

Refoulement to North Korea

11. The appellants argued that those who failed to establish entitlement to South Korean citizenship during the 'protection' procedure were at real risk of refoulement by the South Korean authorities to North Korea either directly, or via China. On the evidence before us, both representatives accepted that this argument was not made out and that South Korea does not return North Koreans either to North Korea or to China.

12. The question of refoulement from China to North Korea is outside the scope of this determination, since the respondent has not set removal directions to China for any of these appellants. We note, however, that the latest in a series of Bilateral Repatriation Agreements was signed between China and North Korea in 1986 whereby, as recorded by the European Parliament in Resolution 2012/2655 (RSP), UNHCR asylum procedures are not available to North Korean refugees in China and each country is required to prevent 'illegal border crossings of residents' from the other country. The European Parliament's Resolution recorded that the Chinese authorities return several thousand North Koreans to China each year.

13. The evidence before us establishes that South Korean embassies and Consulates in China are unwilling to accept and process a 'protection' visa applications to South Korea for North Koreans within China. North Koreans who cross the border into China and then wish to apply for a 'protection' visa to enter South Korea must do so from a third country, making a further journey after reaching China.

Procedural history of these appeals

14. These appeals were originally listed to be heard and determined on 8 April 2013. The appellants produced most of their country evidence late at that hearing, in particular the second expert report of Professor Bluth relating to the GP family, an expert report from Professor Guy Goodwin-Gill and certain other items of country evidence. Professor Bluth had attended the hearing and was ready to give his evidence.

15. On behalf of MP, Mr Karnik sought an adjournment to enable him to adduce the evidence of a recently-identified witness, Dr Pillkyu Hwang, a South Korean lawyer with some experience of the operation of the 'protection' procedure and of both *habeas corpus* and compensation litigation before the South Korean courts arising out of that procedure. We accepted Mr Karnik's submission that such evidence was likely to be of considerable assistance to the Upper Tribunal in determining the country point in these appeals and that at least part of the hearing should be adjourned to enable the evidence to be put before the Upper Tribunal.

16. For the respondent, Mr Norton stated that at such short notice he could not deal adequately with the expert report of Professor Guy Goodwin-Gill and other items

of country evidence. In relation to Professor Bluth's report on the GP family, the parties agreed after discussion that his report was substantially the same as his report in relation to MP, which had been prepared and served in good time, and on which Mr Norton had prepared cross-examination. We adjourned for a short time to enable Mr Norton to prepare his cross-examination on the GP family report and then proceeded with Professor Bluth's oral evidence in the afternoon. At the end of Professor Bluth's evidence, Mr Norton confirmed to us that did not consider that he had been disadvantaged in his cross-examination by not being granted an adjournment in relation to the GP family report.

17. The hearing was then adjourned to 2 July 2013. In the event, there was no further oral evidence and we proceeded on the basis of written and oral submissions, with the additional assistance of Dr Hwang's report and all of the other evidence produced at the April hearing. We have considered all of the oral and written evidence and arguments placed before us during the hearings of these appeals. We have had regard also to MP's Key Passages Index, which refers only to the Upper Tribunal's previous decision in *KK* and the ICG report. We reserved our determination, to which we have both contributed.

Evidence before the Upper Tribunal

18. The documents before us are listed at Appendix A. At Appendix B, we summarise the material provisions of the South Korean constitution, the 1948 Nationality Act (as amended), the 1997 Protection and Settlement Act, the Overseas Koreans Act (passed in 2000, last amended in 2013), the 2003 Military Service Act (as amended in 2006), and the 2012 Refugee Act, which brought the Refugee Convention into the law of South Korea.

19. At Appendix C, we summarise the evidence of Professor Christoph Bluth, Professor Guy Goodwin-Gill, Dr Pillkyu Hwang, and Dr Young-hae Chi, so far as relevant to our decision. At Appendix D we summarise the relevant material for this decision from the other country documents listed in Appendix A.

The 'protection' procedure

20. The Protection and Settlement Act contains a scheme for support and reintegration for North Koreans, consisting of an initial investigation phase by the JIC, following which individuals receive social adaptation training in *Hanawon* (a government resettlement centre) and thereafter, access to further training, recognition of existing qualifications, accommodation, and other financial support. Protection may be suspended or terminated for a number of reasons, including attempting to return to North Korea.

21. South Korean law now incorporates the provisions of the Refugee Convention. Its Refugee Act 11298/2012 incorporated the Convention into South Korean law with effect from July 2013. By passing the Refugee Act, South Korea recognised its non-refoulement obligation under Article 33 of the Refugee Convention. However, the evidence before us was clear: the South Korean authorities and

courts do not consider the Refugee Act to be relevant to the status of North Korean migrants, who are considered to be South Korean by birth and are therefore not 'outside the country of their nationality'.

The Readmission Agreement

22. The United Kingdom-South Korea Readmission Agreement was entered into on 20 December 2011, following the Upper Tribunal's country guidance in *KK*. It lists the primary and secondary documents which are required to support a request by either the United Kingdom or South Korea for the other to accept the return of a citizen, with appropriate travel documents and without difficulty (a readmission request). A consular interview may be required, particularly if only secondary documents are available. Where individuals are being returned to South Korea, a fingerprint check is undertaken to see whether the applicant is already on the South Korean database, indicating that they have lived in South Korea and been recognised as South Korean citizens. Personal particulars to be disclosed during the removal process are exhaustively defined at Article 6 of the Readmission Agreement. If the request is successful, an emergency travel document (ETD) will be provided to enable the person to return to South Korea.

23. At our request, the respondent provided details of the operation in practice of that agreement from December 2011 to July 2013. During that period, the United Kingdom requested ETDs from the South Korean authorities for a total of 20 applicants purporting to come from North Korea. In 14 cases, the applicants were fingerprint-matched to the South Korean database and were, therefore, already known to the South Korean authorities and accepted as its citizens. The respondent indicated that she would now arrange for them to be interviewed at the South Korean Embassy in London and returned to South Korea. Four individuals were rejected as not known to the South Korean authorities. During the first year, three ETDs had been issued and two persons had actually been returned.

Country expert evidence

24. **Professor Christoph Bluth** is Professor of International Studies at the Faculty of International Studies and Politics of Leeds University. He has assisted the Upper Tribunal in previous cases concerning Korea, in particular *KK*. He has considerable knowledge of the practice of the South Korean government in relation to North Korean migrants and nationality issues. His focus on South Korea began in 2004 and has included a period in 2005 when he lived in South Korea as a visiting Professor at Yonsei University, Seoul, and a visiting Research Fellow at the South Korean Ministry of National Defence's Institute for Defence Analysis. He provided reports for all of the appellants: his report on MP incorporates all of the material and opinion in his report for the GP family and we have therefore begun our consideration with the MP report.

25. Professor Bluth does not read Korean, and his spoken Korean is basic, but he can depend on help from his students where he has difficulty in understanding the

English version of the various legislative materials. Professor Bluth's summary of those materials accords with our understanding, set out above and in Appendix B. In preparing his reports, Professor Bluth consulted individual experts known to him at Kookmin University, the International Crisis Group in Seoul, the North Korean refugee community in West Yorkshire, and officials in the Unification Ministry in Seoul as well as in the South Korean Embassy in London.

26. Professor Bluth's evidence, summarised at Appendix C, does not take account of the Readmission Agreement and the provisions for readmission thereunder. The parts of his reports which deal with the return procedures are not therefore of assistance to us, since South Korea has committed itself now to the readmission of individuals who can meet the documentary provisions of the Readmission Agreement and demonstrate that they previously lived on the Korean Peninsula or are the children of parents who were Korean citizens.

27. Professor Bluth confirmed that he was aware that staff at South Korean embassies and Consulates in China were reluctant to deal with North Koreans applying for a 'protection' visa to enter South Korea. In his oral evidence, Professor Bluth stated that the issue of defectors from North Korea seeking to enter South Korea was a serious irritant in North-South Korean relations, since South Korea was trying to improve relations with the North. Professor Bluth had never heard of anyone's fingerprints being taken in China by a South Korean Embassy or Consulate which had refused to entertain an application from a North Korean for a 'protection' visa to enter South Korea. The question of surveillance by the Chinese authorities of South Korean Embassies and Consulates was politically sensitive, but he was aware of at least some instances where such surveillance had occurred.

28. Professor Bluth explained that there had been a change in the type of North Korean applicant for protection in South Korea. Early defectors had been high-status individuals, bringing both intelligence and propaganda value, but now North Korean migrants were not high-status individuals and the increasing numbers of such migrants had led to a tougher approach by the South Korean government. The South Korean authorities would make their own decisions about nationality: a status or nationality determination by a third country was of no relevance in this respect.

29. There was a perception in South Korea that should large numbers of North Koreans be admitted, they would be a security risk, since they might be North Korean intelligence agents, or intelligence targets. Also, there was resentment among native South Koreans of the cost to the public purse in providing for North Korean migrants; they were a financial burden on the South Korean state, albeit an affordable one. Poor integration of former North Koreans into South Korean society was perceived as threatening social cohesion.

30. Professor Bluth had been told by a previous South Korean ambassador to the United Kingdom that he believed most of those claiming to be North Koreans

were Chinese Koreans, that is to say, Chinese citizens of Korean descent. Chinese Koreans could be, and were, deported from South Korea to China. Professor Bluth's opinion was that there was a risk that despite their Chinese citizenship, Chinese Koreans removed to China might be refouled to North Korea and put at risk. He did not identify any source documents for that opinion.

31. Professor Bluth set out his understanding of the 'protection' procedure. North Korean migrants were initially taken to the JIC at Sindaebang in South Seoul, a South Korean government facility run by the Institute of National Intelligence. Professor Bluth's understanding was that everyone would be detained for 120 days. Professor Bluth was aware of one individual who had been detained for over three years. Shorter periods of JIC investigation applied before 2010, when two North Korean intelligence agents were identified who had infiltrated the 'protection' procedure with the intention of assassinating North Korea's most prominent defector, Hwang Jang-hyŏp, a former Secretary of the North Korean Workers' Party and Chairman of the North Korean Supreme People's Assembly.

32. On 21 April 2010, the South Korean government announced an increase in the period of detention from 90-120 days, to give more time for them to identify and filter out North Korean spies. On completion of the JIC phase, Professor Bluth stated that North Korean migrants were debriefed by the Ministry of Unification and then provided with three months' residential integration classes at a *Hanawon* centre in Anseong. The *Hanawon* training was compulsory; it was intended to prepare them for life in capitalist South Korea.

33. At the end of about seven months of debriefing and reintegration training, North Korean migrants were offered a document to sign, applying formally for recognition as South Korean citizens. Professor Bluth stated that all North Korean migrants were required to take an oath of loyalty to South Korea after completing the 'protection' procedure; native South Koreans were not required to do that. He considered that it would be difficult for a former North Korean to take the South Korean loyalty oath, which they would consider a renunciation of North Korean citizenship, although no such renunciation was formally required of them.

34. New South Koreans of North Korean origin receive full South Korean citizenship, indistinguishable in law and rights from that of other South Koreans. They are given 'settlement money' of about £5650: they usually owed that amount of money, or slightly less (about $6000) to the brokers who had organised their departure from North Korea. New South Koreans are allocated housing, often outside Seoul for a short time; thereafter they were required to find their own accommodation. A further £5650 was available for a deposit on a flat if required. Monthly support of about £113 a month was available for vocational training and a further £1150 was paid at the end of a six- or twelve-month course. Another grant of £1150 was available when they were appointed to an employment position.

35. Professor Bluth's evidence was that new South Koreans from communist North Korea struggled to adapt to capitalism and to fit in socially in South Korea. They experienced significant language and social difficulties. South Korea as a whole was a dynamic, prosperous economy with high earnings and very low unemployment, but figures from January 2011 suggested that only 50% of North Korean migrants had found employment, mostly in manual labour because they tended to be manual workers or farmers with poor educational backgrounds. Only just over half of those surveyed had finished high school and, in contrast with the migrants of the 1990s, only 1% had been to university. 80% of those who defected now were women, often with children. Their children were teased at school and their marital prospects poor. They were on low incomes, about ¼ of the national average. Nevertheless, it was Professor Bluth's opinion that new South Koreans from North Korea were considerably better off than they would be in either China or North Korea: however, they were much worse off than if they would be if they could settle in the United Kingdom.

36. **Professor Guy Goodwin-Gill** is Professor of International Refugee Law at Oxford University and a former Professor of Law at Amsterdam University, as well as a Senior Research Fellow at All Souls' College Oxford. Professor Goodwin-Gill is the joint author with Jane McAdam of 'The Refugee in International Law' (Oxford University Press, 3rd edition, 2007). His expert evidence has assisted the Upper Tribunal on many occasions.

37. Professor Goodwin-Gill's report concerned the international legality of the Readmission Agreement, together with an examination of recent interpretations of the Refugee Convention in United Kingdom law. His evidence is not, therefore, country evidence, properly understood, but offers assistance to the Tribunal in legal interpretation.

38. Professor Goodwin-Gill was concerned about the effect of the Readmission Agreement on individuals making a readmission request who lacked any documentary evidence of their birth or previous residence in the Korean Peninsula. He argued that the effect of the Readmission Agreement in such cases was that even if a South Korean travel document were issued following a readmission request, an individual's presumptive South Korean citizenship would not be finally established until after the person had been returned to South Korea and the 'protection' procedure completed.

39. His concern was that in such a case, the Readmission Agreement would allow for the involuntary return to South Korea of North Korean citizens, who had a well-founded fear of persecution in North Korea, but who might be found not to be entitled to South Korean citizenship or protection, by operation of certain statutory and Presidential exceptions to the recognition of South Korean citizenship. There would then be no legal obstacle to their return to North Korea from South Korea. Professor Goodwin-Gill considered that the Tribunal should not derive any reassurance from Article 10 of the Readmission Agreement, which expressly states that its provisions are in addition to the international obligations

of the Contracting States, both of whom are signatories to the Refugee Convention.

40. Professor Goodwin-Gill in his report compared the Readmission Agreement between the United Kingdom and South Korea with another similar agreement entered into between the United Kingdom and Algeria in 2006, the operation of which was expressly limited to the return of Algerian citizens and had no effect on citizens of other states. In contrast, the Readmission Agreement entered into between the United Kingdom and South Korea was not confined to South Korean citizens and he observed that it contained no guarantee as to the treatment of returnees in South Korea. He considered that the 'protection' procedure was a process of 'investigation, interrogation and detention' which was potentially incompatible with the United Kingdom's international obligations in respect of liberty and security of the person.

41. **Dr Pillkyu Hwang** is a human rights lawyer at the Gonggam Human Rights Law Foundation in South Korea. He has worked with a number of international NGOs and human rights organisations in South Korea and is currently Chair of the Asia Pacific Refugee Rights Network and the Asian Consortium for Human Rights-based Access to Justice. He is a former President of the Korean Society of International Law, a co-author of the first Korean refugee law book 'The meaning of a Refugee and its Recognition Protection' (Seoul University Press, 2010), and he was the principal author of the South Korean Refugee Act 2011.

42. In his report, Dr Hwang explained the 'protection' procedure and stated that any North Korean worldwide could make an application for recognition as a South Korean citizen under that procedure, unless they were a North Korean spy or an undesirable person, as set out from time to time by Presidential decree as unfit for protection, currently as follows:

> "1. Persons who are expected to bring about serious political and diplomatic difficulties to the Republic of Korea if it is decided that they are subject to protection;
> 2. Persons who, during the provisional protection period, used violence and destroyed facilities such that there is concern that they will cause serious harm to other people's personal security; or
> 3. Persons who obtained the legal right to reside in a third country after escaping from North Korea."

43. Dr Hwang stated that no constitutional provision existed in South Korean law which excluded from the 'protection' procedure a person who had been outside the Korean Peninsula for more than 10 years. Article 9(1)(4) of the Protection and Settlement Act provided that South Korean 'protection' was not available to 'persons who have earned their living for not less than 10 years in their respective countries of sojourn': however, in discussion with successive Deputy Directors of the Settlement Support Division of the South Korean Ministry of Unification, Dr Hwang had been told that no North Korean migrant who applied for South Korean protection and completed the 'protection' procedure successfully would

be refused and that in principle, the period of such a person's stay outside the Korean Peninsula would not affect such protection. The Presidential Decree also disapplied the 10-year restriction where the individual had been detained or in hiding during all or part of that period in the third country, and in 'other similar circumstances acknowledged by the Ministry of Unification'.

44. Dealing with the JIC phase, Dr Hwang recognised that there was a legal basis and that it was not formally a detention, but his evidence was that in practice North Koreans were held in custody during the JIC investigation, to enable the South Korean authorities to determine whether they were North Korean, and if so, whether they were North Korean spies. The 'protection' procedure was administrative and lacking in due process: there was no right to counsel during the procedure. There was no public information about the 'protection' procedure; Dr Hwang had tried to obtain information and been rebuffed in 2010, and a journalist and member of the National Assembly had both been equally unsuccessful in 2013.

45. Dr Hwang confirmed that the *Hanawon* part of the process took place after the JIC phase was complete: both phases were required of all members of an applicant family, even children. He had not heard of any case where one family member had been rejected and the others accepted.

46. New South Koreans who had completed the 'protection' procedure could be asked to participate in anti-North Korean publicity and he considered it likely that some had been asked to work for the South Korean National Intelligence Service (NIS) as informants. Once accepted as a South Korean citizen, if a person then left South Korea they could return without difficulty, unless they had travelled to North Korea or met a North Korean who had not gone through the 'protection' procedure, in which case, on return, they might be prosecuted under national security provisions.

47. Dr Hwang's experience of the 'protection' procedure in his professional practice was limited to two high-profile cases, the 'compensation case' which he handled between 1999-2002, concerning a one-month period of detention in 1999, and another, a *habeas corpus* case in 2010 which was still pending before the South Korean courts. Both of his clients alleged illegal detentions, beatings, and other degrading treatment in the JIC phase. In the compensation case, Dr Hwang's client was a North Korean man who had arrived in South Korea with a 'protection' visa to enter South Korea, obtained in Vietnam. The man had left North Korea via China and was accompanied by a woman who claimed to be North Korean, but then admitted that she was Chinese. The compensation case failed before the South Korean courts for lack of evidence. It had been appealed right up to the South Korean Supreme Court. Dr Hwang could not say whether the Chinese woman had been deported or was still in South Korea.

48. The *habeas corpus* case concerned a female Chinese citizen who had posed as a North Korean migrant but admitted her nationality, two weeks into the JIC phase.

Her brother was in South Korea, having passed the 'protection' procedure: she had been asked to confirm that he also was a Chinese citizen. Following that evidence, her brother was arrested and prosecuted. The *habeas corpus* case had attracted much publicity, and the press had revealed that where the Chinese woman was detained. The Chinese woman's family asked Dr Hwang to apply for her release into South Korea despite her Chinese citizenship. The application failed for lack of evidence and she appealed. After three years, in 2013 the *habeas corpus* case was still pending before the South Korean courts and she was still in South Korea.

49. Dr Hwang's evidence was that in South Korea, it was general knowledge that the Chinese authorities monitored South Korean Embassies and Consulates and that such Embassies and Consulates were therefore reluctant openly to receive North Koreans wishing to make an application for a 'protection' visa to enter South Korea. Dr Hwang had no knowledge of any practice of fingerprints being taken in China by South Korean embassies which had refused to entertain an application for such a visa.

50. Dr Hwang stated that he knew of no evidence that South Korea had sent anyone at all from the Korean Peninsula to China without their consent and that of the Chinese authorities. North Korean spies, when discovered, were prosecuted under the South Korean National Security Act but were not returned to North Korea. There was no public information regarding anyone being refused protection at the end of the 'protection' procedure.

51. **Dr Young-hae Chi** is a university instructor at the Department of Korean Studies at Oxford University. On 2 July 2008, in the context of the First-tier Tribunal proceedings, he provided expert evidence on GP's origin. His opinion, which is fully set out in his report, was that GP was born, brought up and lived in North Korea before his final escape, and that he was not a native Chinese or a member of the Korean diaspora (the *Joseonjok*) who live in the Yenben Korean Autonomous District in Jirin Province, China, near the Chinese-Korean border, and who are descendants of Koreans who migrated to China in the early 20th century, long before the division of China. Dr Young-hae Chi's report was based on an interview lasting seven and a half hours. His assessment takes full account of both linguistic evidence and the appellant's knowledge of the region in North Korea where he lived.

Other country materials

52. The other country evidence before us is summarised in Appendix D, so far as it is relevant in the consideration of the issues in these appeals. The following are the principal points in the various source documents.

53. **European Parliament.** In its 'Resolution on the situation of North Korean refugees' (Resolution 2012/2655 (RSP)), adopted on 24 May 2012, the European Parliament recorded its acceptance of the following relevant facts and matters: in 1986, China entered into a Repatriation Agreement with North Korea whereby

UNHCR asylum procedures were not available to North Korean citizens in China; most North Korean refugees in China were women, who were at risk of trafficking, forced marriage, or being forced into the sex industry; and that children of North Korean migrants living illegally in China were stateless and were either abandoned or suffered their mothers' fate.

54. The European Parliament took into account the following documents: a Report by the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, presented on 21 February 2011; Human Rights Council Resolution A/HRC/19/L.29, adopted on 19 March 2012; UN General Assembly Resolution A/RES/66/174, adopted on 29 March 2012; the May 2012 report by the South Korean National Human Rights Commission; a North Korean Ministry of Public Security decree in 2010 making defection a crime of 'treachery against the nation'; and a December 2011 statement by the North Korean authorities that they would 'annihilate' up to three generations of a family in which any member fled North Korea during the 100-day mourning period for Kim Jong-il.

55. The recitals to the Parliament's Resolution acknowledged the grave situation in North Korea:

> "A. Whereas the aforementioned UN Human Rights Council resolution deplores the grave, widespread and systematic human rights abuses in North Korea, in particular the use of torture and labour camps against political prisoners and repatriated citizens of the DPRK; whereas the state authorities systematically carry out and enable extrajudicial killings, arbitrary detention and enforced disappearances;
> B. Whereas large parts of the population are suffering from starvation, and whereas the World Food Programme reported in September 2009 that a third of North Korean women and children were malnourished;
> C. Whereas, as a direct result of the policies of the DPRK Government and despite the dangers, it is estimated that over the years up to 400 000 North Koreans have fled the country, many of whom are living in neighbouring China as 'illegal migrants';
> D. Whereas most refugees from the DPRK have no intention of staying in China, but have to pass through the country in order to make their way to South Korea or to other parts of the world;
> E. Whereas, on the basis of its 1986 repatriation agreement with North Korea, China prevents North Korean citizens from accessing UNHCR asylum procedures, in violation of the 1951 UN Convention on Refugees and the 1967 Protocol thereto, to which the People's Republic of China (PRC) has acceded; whereas, according to NGO estimates, the PRC arrests and forcibly returns up to 5 000 North Korean refugees to the DPRK every year;
> F. Whereas a large number of the North Korean refugees in China are women, many of whom are victims of human trafficking, sex slavery and forced marriage, and whereas children conceived through such violations are considered stateless in China and are abandoned or left to the same fate as their mothers;
> G. Whereas on 29 March 2012 Kim Young-hwan and three other activists from the Seoul-based Network for North Korean Democracy and Human Rights were

arrested in the Chinese city of Dalian (Liaoning Province) and are facing allegations of being 'a threat to China's national security', while reportedly trying to help North Korean defectors;

H. Whereas, according to eye-witness reports, refugees who are forcibly returned to North Korea are systematically subjected to torture, imprisoned in concentration camps and may even be executed, pregnant women are allegedly forced to abort, and babies of Chinese fathers are at risk of being killed; whereas the state practice of guilt by association results in entire families being imprisoned, including children and grandparents;

I. Whereas satellite images and various accounts from North Korean defectors substantiate allegations that the DPRK operates at least six concentration camps and numerous 're-education' camps, possibly housing up to 200 000 prisoners, most of them political;"

56. The Resolution called on North Korea to 'put an immediate end to the ongoing grave, widespread and systematic human rights violations perpetrated against its own people, which are causing North Koreans to flee their country' and to allow the inspection of detention facilities by independent international experts. It also urged greater cooperation by member states in providing international protection for North Korean migrants, and in particular, called on China to grant South Korea full consular access, to release four detained North Korean activists facing the death penalty for being a 'threat to national security', to honour its obligations under international law, in particular the Refugee Convention and the Convention against Torture, and to stop deporting North Koreans back to North Korea. Articles 6-8 of the Resolution are of particular interest:

"*The European Parliament …*

6. Urges the PRC, therefore, to end the 1986 agreement with North Korea on the repatriation of refugees, and welcomes recent reports that China may intend a policy shift; recalls that North Korean citizens are considered to be full citizens of the Republic of Korea, and calls on the PRC to grant them safe passage to South Korea or other third countries;

7. Appeals to the Chinese authorities to treat North Korean defectors as refugees 'sur place', to allow the UNHCR access in order to determine their status and assist their safe resettlement, to release all such defectors who are currently being detained, to decriminalise those who try to help refugees on humanitarian grounds, and to grant North Korean women married to Chinese citizens legal resident status;

8. Also calls on China to stop cooperating with North Korean security agents in tracing North Korean refugees with the aim of arresting them; urges the PRC instead to allow NGOs and community service providers humanitarian access to North Korean refugees and asylum-seekers in China, including for the provision of food, medical treatment, education and legal and other services; …"

57. **Home Office materials.** The UKBA Country of Origin service has not produced a report on South Korea since a Key Documents report of 3 September 2009. The passage concerning North Koreans is set out at [3.36]-[3.40] in the Key Documents report and is in line with the evidence we heard from the experts. In relation to the *Hanawon* resettlement training, at paragraph 3.37 it states:

"3.37 The website of the Republic of Korea, Ministry of Unification, accessed on 31 July 2009, advised as follows:

> "The South Korean government operates support facilities called *Hanawon* for newcomers from North Korea to help them resettle in South Korean society. *Hanawon* was established under the Act on the Protection and Settlement Support of Residents Escaping from North Korea of 1997. *Hanawon* includes a main center and one branch facility that together can accommodate 400 people simultaneously and 2,400 in one year ... The resettlement program at *Hanawon* is an eight-week course for social adjustment in the South. The ultimate objective of the course is to instill confidence in the newcomers, narrow the cultural gap, and motivate them to achieve sustainable livelihoods in a new environment … Furthermore, the government provides them with a variety of financial and non-financial support to assist them with resettlement. The newcomers receive, for example, an initial cash payment, incentives related to employment and education, medical support, and favorable terms for leasing apartments. The government also creates a new family registry as they are South Korean citizens with all rights and privileges under the Constitution."

The Ministry of Unification website sets out a flow chart for the settlement of North Koreans, from their initial application onwards, and gives details of support provided after the initial eight-week course, both by the state and by NGOs. A BBC News article of 9 July 2009 noted that all North Korean refugees "are debriefed by the South Korean security services before admission [to Hanawon], to ensure that they are not North Korean secret agents."

58. **US State Department Reports.** The State Department Report for 2013, published in February 2014, recorded that by that date, the South Korean government had resettled about 24,000 refugees since 2002, with 970 in the first half of 2012 alone.

> "The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. …
>
> Access to Asylum: The law provides for the granting of asylum or refugee status. The government considers refugees from North Korea under a separate legal framework and does not include refugees from North Korea in refugee or asylum statistics. The government has an established system for providing protection to refugees, but the government does not routinely grant refugee status or asylum in most non-North Korean cases. A new independent law, the Refugees Act, took effect July 1 [2013]. …
>
> The government continued its longstanding policy of accepting refugees, or defectors, from North Korea, who by law are entitled to citizenship in South Korea. The government resettled 970 such refugees during the first half of the year, raising the total to slightly more than 25,400 since 2002.

> Many refugees from North Korea alleged societal discrimination by South Koreans and cultural differences that resulted in adjustment difficulties. The government provided adjustment assistance services to recently settled refugees, including rental aid, exemption from education fees for middle- and high-school students, medical assistance, business loans, and employment assistance. The government also operated Hana Centers, or Centers to Adjust to Regions, which educated refugees about adapting to specific geographic areas, provided counseling services, and aided social adjustment."

59. The report noted two examples under 'refoulement', the first being a Chinese Falun Gong practitioner who was released in 2013 after being in detention pending the outcome of court proceedings since 2011, and the second, a Mongolian student returned to Mongolia in 2011, whose parents were not returned because the immigration authorities could not locate them. We note in particular that the State Department accepts that North Korean migrants are by law entitled to South Korean citizenship.

60. **Amnesty International** noted a successful challenge through the South Korean courts by Professor Oh Se-chul, who was wrongfully accused of 'enemy-benefiting' activities.

61. **International Crisis Group.** ICG's report, 'Strangers at Home: North Koreans in the South', published on 14 July 2011, recorded that the Korean peninsula had a population of 72 million people, of whom 500,000-750,000 had been separated from family members when the country was divided. The number of North Korean migrants living in South Korea as at December 2010 was over 20,000, with a further 2500-3000 expected each year. The report spelled out the change in migrant profiles over the years: the early defectors had been men from the North Korean elite, who were valuable propaganda tools in South Korea; nowadays, North Korean migrants were mostly ill-educated, poorly nourished women, many of them single mothers with dependent children, who were not. They were said to experience social discrimination in South Korea.

62. South Korea was aware of the risk of total failure of the North Korean state in the future, which might create a massive outflow of refugees to South Korea and China. Delicate negotiations between North Korea and South Korea about the question of migrants were made more fragile by that risk. South Korea's treatment of North Korean intelligence agents, even those who had plotted to kill Hwang Jang-hyŏp, was to prosecute and sentence them to imprisonment in South Korea, not to refoule them to North Korea.

63. **Freedom House.** In its 2012 report on South Korea, Freedom House was generally optimistic about that country's democratic status, while noting that there were some problems with corruption (bribery, influence and extortion) which were the subject of prosecutions and punishment by the South Korean authorities. In general, privacy, press freedom, freedom of religion, and academic freedom are protected, both constitutionally and in practice, although exceptions occurred. South Korea had entered into a Korea-United States Free Trade Agreement; South

Korea, Japan and the United States were committed to cooperation in dealing with North Korea.

64. **IPI Global Observatory.** An article dated 23 August 2012 written by Kim Cheong-ju, an inspector with the South Korean National Police agency engaged as a graduate student on Columbia University's Master of International Affairs course, reported that China's attitude to North Korean refugees was hostile and that North Koreans were particularly vulnerable once in China. The writer considered that there was a real risk of refoulement from China to North Korea: up to 5000 migrants were arrested by the Chinese authorities and returned to North Korea each year.

65. Some Chinese human trafficking organisations were said to be persuading young women to travel from North Korea to China, only to sell them on for $500 to Chinese farmers, who needed wives due to the shortage of young marriageable women in China.

66. South Korea had been seeking to persuade China to take a more relaxed stance. The article contained a table obtained from the Ministry of Unification in South Korea showing the numbers of North Koreans arriving in South Korea in recent years. After varying figures in the range of 2500-3000 migrants arriving each year between 2007 and 2011, there was a sharp drop to about 750 migrants arriving in 2012, reflecting what now appears to have been misplaced optimism in the first few months of Kim Jong-un's leadership.

67. **Press reports.** A BBC News article of 9 July 2009 noted that all North Korean refugees 'are debriefed by the South Korean security services before admission [to *Hanawon*], to ensure that they are not North Korean secret agents'.

68. **United Nations News Service.** The UN News service on 25 January 2008 recorded praise by Special Rapporteur Vitit Muntarbhorn for the support given by the South Korean government to 'over 10,000 nationals from the DPRK it has accepted for settlement' but recommended increased support and longer-term care for torture victims and older North Koreans who had escaped to South Korea.

69. **Other press reports.** The bundle contains a number of other press reports from 2010, dealing with the rise in tension between the two countries when North Korea sank the South Korean warship, the *Cheonan*, and two North Korean intelligence agents were arrested for plotting to assassinate Hwang Jang-hyŏp. In a round table discussion with students later that year, former North Koreans expressed embarrassment and concern at the constant questioning by their classmates as to the motivations of the North Korean government, but stated that other students had been supportive and understanding, on the whole. There was no evidence that any hostility to North Korean migrants had endured once the Cheonan incident was past. At the time of the hearings in April and July 2013,

there were fresh tensions between the two Koreas but the tension did not break out into a further civil war.

70. **Quality Solicitors letter (14 October 2011).** A letter from Charlotte Buckley, a senior caseworker with Quality Solicitors (MP's solicitors) asserted her understanding that an application for South Korean citizenship must be made in person to the Embassy, requiring two personal attendances, the first time to receive a list of required documents, and the second time, to be interviewed. That letter predates the Readmission Agreement in December 2011 which changed the relevant procedures.

Submissions

71. We received and have had regard to skeleton arguments and oral submissions from Mr Norton for the respondent, Ms Hulse for the GP family, and Mr Karnik for MP. We summarise the position adopted by each of the parties in their skeleton arguments and submissions as follows.

Respondent's submissions

72. At the beginning of the hearing, Mr Norton sought permission to rely upon an acknowledgement of service on behalf of the respondent which had been settled by Counsel in an unrelated judicial review application before the High Court, by way of submissions on the 'effective' nationality question and the *Nottebohm* case. Given the lack of apparent nexus between that case and these proceedings and Mr Norton's very limited knowledge of the facts of the judicial review application, we refused to admit that document in these appeals. Mr Norton did not make any further oral submissions concerning the *Nottebohm Case*.

73. The respondent's case was that the Readmission Agreement plainly was intended to, and did, provide for re-documentation and return to South Korea of all 'citizens of Korea' as defined by South Korea, including those originally from North Korea. In practice, however, ETDs under the Readmission Agreement were presently issued by South Korea only where documents and/or fingerprint evidence had established that the individual was already on record in South Korea as a citizen of that country, or had registered as such with by application to a South Korean Embassy or Consulate. Individuals who had never lived in South Korea would be invited to apply to register as South Korean citizens at the South Korean Embassy in London. The South Korean Embassy had informed the UKBA that no Korean citizen would lose their nationality while abroad, even for more than 10 years, unless they had acquired another nationality. If they had lost their nationality, they could apply to reacquire it, and would be given preference as former South Korean citizens.

74. In general, the respondent understood that male South Korean citizens could not legally travel abroad between the ages of 25 and 30, because they were liable to military service. That was not the case for South Koreans originating from North Korea: the Military Service Act Article 64(1)(3) expressly excluded from military

service 'persons who have immigrated from the northern area of the Military Demarcation Line' (the standard South Korean description referring to North Korean defectors), and they would never be required to undertake military service for South Korea. No distinction was made in the Military Service Act for North Korean migrants in third countries who had not yet lived in South Korea.

75. Mr Norton asked us to give weight to, and to prefer, Dr Hwang's evidence as to the practice on nationality within South Korea since it was based on Dr Hwang's professional experience as a lawyer practising before the South Korean courts and living in South Korea. In contrast, he contended that Professor Bluth's evidence was inconsistent in some respects and was based on third party data and hearsay. Mr Norton submitted that Professor Goodwin-Gill's evidence was more in the nature of a legal submission and added nothing of substance to the evidence before us.

Submissions on behalf of the GP family

76. On behalf of the GP family, Miss Hulse acknowledged that the adult appellants had entered the United Kingdom illegally on 16 November 2007, as all asylum seekers always, or nearly always, did, and were not entitled to the wider protection provided in Article 32 of the Refugee Convention for those lawfully in the United Kingdom. There were now four family members, the first, second and third appellants, and another daughter who was three. None of them had United Kingdom or European Union citizenship: they had North Korean citizenship. As such, her submission was that they were all at risk of persecution or serious harm in North Korea. That is not disputed by the respondent.

77. Ms Hulse did not accept that the GP family were South Korean citizens or could be expected to return there. For the GP family to be returned to South Korea would require the consent of the South Korean authorities, which would not be forthcoming. Her instructions were that the GP family would refuse to apply for entry to the South Korean 'protection' procedure even at the risk of refoulement to North Korea or China. Ms Hulse reminded us that thus far, the Readmission Agreement was being used to return only those who had already been to South Korea and were known to be citizens of the Republic of Korea. The GP family did not claim to have done so and the respondent's assertion to the contrary should be rejected.

78. Ms Hulse accepted that the evidence did not suggest that refoulement to China from South Korea was reasonably likely on the general evidence, or in the light of the factual matrix applicable to the GP family.

79. Ms Hulse acknowledged that there appeared to be some conflict between the expert evidence of Professor Bluth and Dr Hwang as to the length of detention during the JIC phase of the 'protection' procedure. She asked the Tribunal to prefer the evidence of Professor Bluth, whose evidence she contended was more measured than that of Dr Hwang. Professor Bluth's evidence was that JIC detention lasted for at least 120 days.

80. If the GP family were permitted to enter the procedure, they (or at least the parents), Ms Hulse contended that they would be detained separately during both the JIC and *Hanawon* stages. Ms Hulse submitted that parents were routinely separated during the 'protection' procedure, but was unable to identify any evidence in the country materials which supported that submission, nor any evidence suggesting that children were separated from their parents during either phase of the 'protection' procedure. However benign the family's treatment in the two phases of the 'protection' procedure, Ms Hulse submitted that taken as a whole, it amounted to a deprivation of the family's liberty for a substantial period, which she contended amounted to inhuman treatment.

81. Those in the 'protection' procedure were completely in the hands of the South Korean authorities, with no monitoring or complaints procedure. There was no access to the courts until after the end of the 'protection' procedure. Amnesty International and Human Rights Watch (HRW) had sought, and been refused, access to South Korean JIC and *Hanawon* centres. The authorities published notices of successful completion of the 'protection' procedures, but no notices of those who did not successfully complete them. The Tribunal should not consider that as an indicator that nobody failed the 'protection' procedure: rather, we should be prepared to imply that the South Korean authorities had something to hide and that their reluctance to admit international observers was an adverse indication. She commented that most countries preferred to 'show off' when things were going well.

82. Ms Hulse accepted that the GP family had not raised private and family life under Article 8 ECHR in their grounds of appeal to the Upper Tribunal. Article 8 had been formally raised in the grounds of appeal to the First-tier Tribunal but in extremely vague terms. There was no suggestion that Article 8 arguments had been made to the First-tier Tribunal judge, or that any such argument had been overlooked. No new evidence had been provided to her for the Upper Tribunal hearing. For those reasons, Ms Hulse did not rely on Article 8 ECHR before the Upper Tribunal: any Article 8 issue which did exist could be put to the respondent separately by the GP family at a later time.

Submissions on behalf of MP

83. Mr Karnik reminded us of MP's accepted history. He left North Korea in 2006, travelled to China, and reached the United Kingdom in 2008. He has been outside the Korean Peninsula for eight years. The respondent had accepted that he was at risk of persecution or serious harm if returned to North Korea. MP was refused consular assistance by the South Korean Consulate in Shenyang; MP's evidence, which he invited us to accept, was that the Consulate had taken his fingerprints, and that was why they were on the South Korean database.

84. Mr Karnik reminded us that South Korea was not obliged to recognise third country nationality determinations: every country has the right to determine who are its citizens and any State may be expected to examine a nationality claim with

rigour and care. Where a person was entitled to the nationality of more than one country, he accepted that all relevant citizenships must be excluded before Refugee Convention protection was available, as a last resort. MP had chosen not to make an application to the South Korean Embassy for a 'protection' visa to enter South Korea, giving good subjective reasons why he did not wish to accept the 'protection' of South Korea as his country of nationality, even if it were available to him. He would prefer to become a British citizen.

85. There was no reason to suppose that the South Korean authorities would not follow a rational process in determining nationality. The 'protection' procedure was more akin to a naturalisation process, despite the South Korean constitutional position that all those on the Korean Peninsula were its citizens. Its outcome was anything but certain. In particular, there was a separate step of 'asking for protection' to which paragraphs 23-26 of *Nottebohm* might be relevant. The South Korean citizenship expressed in its Constitution was therefore not 'effective' nationality in the *Nottebohm* sense. Mr Karnik did not seek to argue that the position of the German citizen in the *Nottebohm* judgment was on all fours with the position of North Korean migrants who might be able to claim South Korean citizenship.

86. Mr Karnik contended that the Upper Tribunal should disregard the effect of the Readmission Agreement in assessing MP's case, since the UKBA's use of it had so far been limited to re-documenting North Koreans who had established South Korean citizenship and/or had lived in South Korea already. The Upper Tribunal should approach the position of MP as though there were no such agreement and the factual position had not changed since *KK* in 2011. He reminded us of the July 2010 letter written by the South Korean Embassy in London to the respondent on the day of the *KK* hearing and set out at [28] of that determination:

> "The Embassy of the Republic of Korea to the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Foreign and Commonwealth Office and has the honour of informing the latter of the Republic of Korea's Policy towards North Korean defectors.
>
> 1. The Government of the Republic of Korea, in principle, accepts all North Korean defectors, who, of their own free will, wish to resettle in the Republic of Korea. However, their application may be rejected in exceptional circumstances; for example, applicants who, once the screening process is complete, are determined to be or have been spies, drug dealers, terrorists, or other serious criminals may have their asylum claims rejected.
>
> 2. *The first and most important criterion in the determination of offering protection and settlement support to North Koreans is to ascertain whether the person in question desires to live in the Republic of Korea.* This is clearly articulated in the "Act on the Protection and Settlement Support of Residents Escaping from North Korea". *As such, the protection of the Government of the Republic of Korea for North Koreans does not apply to those North Koreans who wish to seek asylum in a country other than the Republic of Korea.*

3. When a North Korean expresses his or her wish to resettle in the Republic of Korea, there will be a screening process in order to verify whether the person in question is a genuine North Korean.

4. Once screening is complete and the asylum claimant is verified as being North Korean, a further determination takes place to see whether he or she is entitled to receive a settlement package under the domestic law of the Republic of Korea. A typical settlement package comprises accommodation, financial support, remedial education and job training. *Claimants who have lived for a considerable period in other countries may be excluded from receiving a settlement package.*

The Embassy of the Republic of Korea avails itself of this opportunity to renew the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland the assurances of its highest consideration." [*Emphasis added*]

87. Mr Karnik argued that South Korea's practice in relation to the admission of North Koreans differed from its public statements, relying on the evidence of Professor Bluth to that effect, and on Dr Hwang's evidence, which he considered should be regarded as particularly helpful since the diplomatic and governmental personnel of both North Korea and South Korea spoke freely to Dr Hwang. The Upper Tribunal should find that in reality, South Korea adopted a narrow approach to return, both to discourage North Koreans from coming to South Korea, and to weed out North Korean intelligence agents before return took place, to avoid having to deal with them in South Korea.

88. Since the Readmission Agreement was not presently being used to re-document and return North Koreans who had not lived in South Korea, those, like MP, who had claimed asylum in a third country were unlikely to be re-admitted and allowed to enter the 'protection' procedure because their action in claiming asylum meant that they did not genuinely wish to become South Koreans. Mr Karnik argued that the Upper Tribunal's findings in *KK* on the position of individuals who had been outside Korea for less than 10 years were *obiter dicta* since all those appellants had been outside Korea for much longer.

89. A North Korean migrant in the position of MP should not be expected to act *bona fide* nor to take all reasonably practicable steps to obtain the requisite documents to enable him to return to South Korea. *MA (Ethiopia)* [2009] EWCA Civ 289, which held that it was lawful to require a person in the United Kingdom to take reasonable steps to apply for a passport or travel document, or to establish their nationality, unless they could show that an application to a foreign Embassy would place at risk relatives or friends in the country of origin, should be distinguished. MP had never previously lived in South Korea, nor could he demonstrate a genuine desire to live there: the contrary was the position.

90. Mr Karnik reminded us of the evidence that during the JIC phase of the 'protection' procedure, there was, in general, no access to the South Korean courts and no provision for legal challenge of any citizenship status determination. There was at least some risk that adverse events might occur during the JIC and

Hanawon phases of the 'protection' procedure which could further contravene the appellant's protected ECHR rights. In particular, the appellant would rely on Article 6 ECHR rights and on the decision of the European Court of Human Rights in *Othman (Abu Qatada) v The United Kingdom* - 8139/09 [2012] ECHR 56. Dr Hwang's evidence about the difficulties inherent in the 'protection' procedure should be given weight in the absence of published information. Mr Karnik accepted that the international reports before the Tribunal made no mention of any difficulty during returns to South Korea from Western countries, arguing that this might be because such returns did not occur.

91. South Korea regarded North Korean defectors as potential spies; acknowledging that there was no published record and no evidence of anyone being found to be a North Korean spy and refouled, Mr Karnik reminded the Tribunal that while such information was readily available in the United Kingdom through publication and Freedom of Information requests, South Korea did not do the same. Information on what occurred in the JIC phase was not publicly available, and although South Korea did have freedom of information legislation, the national security restrictions therein made such information much more difficult to access.

92. Mr Karnik acknowledged that, since MP was not a Korean Chinese or Chinese Korean, there was no risk of his being refouled by South Korea to North Korea via China in breach of Article 33 of the Refugee Convention.

93. Dealing next with Article 8 ECHR, Mr Karnik relied on the evidence of Professor Bluth of social difficulties for 'new South Koreans' who were successful North Korean migrants. They were treated as second class citizens, had high levels of unemployment, were not integrated into South Korean society as a whole and had no ties to the community. Mr Karnik acknowledged that MP had not produced evidence of private life from his friends in the United Kingdom, but nevertheless, given the length of time he had been here, the Upper Tribunal should be prepared to imply some degree of private life during the six years he had spent in the United Kingdom, studying for at least part of the time. Although MP was not in a relationship at the moment, he had had personal relationships during that period.

94. MP had some family members, in South Korea, in particular his mother, but would prefer to acquire United Kingdom citizenship. It appeared that MP regarded application for refugee status as a path to such citizenship in due course.

Discussion

The expert evidence

95. We have been greatly assisted by the evidence of the country experts. Professor Bluth's experience and knowledge of the situation in South Korea, derived both from living and holding various academic posts in that country over 10 years, and

from his international and Embassy contacts, enabled him to give us a helpful overview of the approach of the South Korean government and authorities to North Korean migrants returning from third countries, which he was able to expand in cross-examination.

96. Dr Hwang has a high profile in South Korea as a human rights lawyer and was the principal drafter of the South Korean Refugee Act which brought the Refugee Convention into South Korean law. His report confirmed that South Korea did not consider that the Refugee Act applied to North Koreans, who are considered not as aliens but as citizens of the Republic of Korea. We were particularly interested in his account of two cases which he had litigated on behalf of clients, one of whom was a female Chinese citizen and one of whom had been travelling with a Chinese woman. However, despite his human rights knowledge and practice, Dr Hwang was unable to identify any statistical evidence or press reports of refoulement of North Koreans, or even of Chinese citizens posing as North Koreans, to China.

97. The evidence of Professor Goodwin-Gill was more in the nature of a submission on the United Kingdom's Refugee Convention responsibilities than country evidence in the usual sense. Two points emerged as the core of his arguments: first, that that the Readmission Agreement exposes to involuntary removal to South Korea persons who are not South Korean citizens or entitled to such citizenship; and second, that the Readmission Agreement is therefore unlawful, with particular reference to the different terms in the 2006 UK-Algerian Readmission Agreement which is confined to Algerian citizens and contains guarantees as to treatment on return.

98. As to the risk that persons may be involuntarily returned to South Korea who are entitled only to North Korean citizenship and are therefore refugees, we consider that Professor Goodwin-Gill has not given sufficient weight to the provisions of Article 10 of the Readmission Agreement, which states that the provisions of the Readmission Agreement are in addition to the international obligations of the Contracting Parties, nor to the respondent's express recognition that those who have only North Korean citizenship are refugees, which means that they have the right to remain in the United Kingdom. Both South Korea and the United Kingdom are signatories to the Refugee Convention, South Korea as recently as 2012, and nothing in the evidence before us indicates that they would not meet the international obligations arising therefrom.

99. The purpose of the South Korean Readmission Agreement is to establish whether a person is South Korean, either by documents or consular interview, with fingerprint verification in the South Korean database, to enable the issue of return documents to South Korea. If any person is a citizen only of North Korea (and on the evidence before us, no such person exists because South Korea accepts as its citizens all those who are born on the Korean Peninsula or to Korean parents from either North Korea or South Korea), then they will not be issued with a travel document to South Korea. The country evidence does not support a finding that

any person who has to make a readmission request and is successfully returned to South Korea on travel documents issued under the Readmission Agreement will fail the 'protection' procedure or be refused full South Korean citizenship under any circumstances at all, unless they are North Korean spies or Chinese citizens. North Korean spies are prosecuted in South Korea; the evidence before us does not support a finding that they are required to return to North Korea thereafter.

100. We do not consider that comparison with the Algerian Readmission Agreement assists us. There is only one citizenship in Algeria, whereas in the Korean Peninsula there are two, overlapping citizenships, with each country asserting that all those born on the Korean Peninsula are its citizens. It is right that the Algerian document contains some provisions about treatment of returning Algerians and the South Korean document does not, but since we do not find that there is a real risk of ill-treatment or serious harm in South Korea, nothing turns on that difference.

'Effective nationality' and the *Nottebohm* case

101. In relation to 'effective' nationality, the position remains as set out in *KK* at paragraph 1(c): there is no separate question of 'effective' nationality and the issue is the availability of protection in the receiving State. We are not persuaded by the appellants' contention that South Korean citizenship is not 'effective' nationality for North Korean migrants.

102. The *Nottebohm* case was a restitution case brought by the state of Lichtenstein concerning the detention and the property of Mr Nottebohm who had acquired citizenship of Lichtenstein before the Second World War but had always lived and traded in either Germany or Guatemala, spending hardly any time in Lichtenstein. The question in *Nottebohm* was whether, as a country claiming Mr Nottebohm as its citizen, Lichtenstein had *locus standi* before the International Court of Justice to pursue such proceedings. That is not the issue here and *Nottebohm* 'effective' nationality is not relevant.

103. In any event, the nationality to which these appellants have access in South Korea is 'effective'. According to South Korea's perspective, all of these appellants had lived in the Republic of Korea (because they lived on the Korean Peninsula) for most of their lives before coming to the United Kingdom. There was very little evidence of anyone failing the 'protection' procedure and no evidence at all that anyone was returned to North Korea even if they did not succeed.

Readmission Agreement and South Korean nationality

104. As stated at paragraph 1(d) of the *KK* guidance, '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'. The question of the South Korean authorities' unwillingness to issue travel documents to North Korean migrants who could not

establish that they genuinely wished to live in South Korea must now be answered in two ways: first, by the Readmission Agreement, which provides a mechanism for the issue of such documents which is not dependent on the genuineness of the individual's wish to live in South Korea; and second, applying *MA (Ethiopia),* because the question of refugee status is an objective one, requiring a person to demonstrate that they have cooperated by seeking to establish whether they can avail themselves of protection from another State of which they may be a citizen. Only if they have done so can they begin to argue that the second State will not provide them with protection and seek to establish refugee status based on nationality of a State where they may be at risk.

105. In entering into the Readmission Agreement, South Korea undertook to accept everyone who meets the conditions set out therein. It is right to say that the Readmission Agreement does not mention North Korea: as drafted, it applies to all those who originate on the Korean Peninsula, which South Korea regards as its territory, and that territory includes North Korea. It is not open to the appellants now to argue that they can defeat removal, either as failed asylum seekers who would be unwelcome in South Korea for that reason, or by asserting that they are unwilling to go to South Korea, for example, because they would prefer United Kingdom citizenship. Such preference is irrelevant to the question whether they are refugees. Refugee status is not in itself a citizenship route; that is not its purpose.

106. There is a general obligation on asylum claimants to cooperate with authorities in the receiving country. In *MA (Ethiopia),* the appellant, an Ethiopian citizen of Eritrean descent, was reluctant to return to Ethiopia; her evidence was that when she attended the Ethiopian Embassy she was refused a travel document to Ethiopia after she told them that she was an Eritrean citizen, which the Tribunal found to be factually incorrect.

107. The Court of Appeal held that asylum applicants who have reached a safe country are expected to apply to the relevant Embassy or High Commission to exercise any nationality which they may possess before seeking international protection as refugees. In his judgment at [49]-[52] Elias LJ, with whom the other members of the Court agreed, held that an applicant was required to act *bona fide* and to make an application at the relevant Embassy before international protection could be sought. There was normally no risk in the country of refuge to an appellant in doing so, although exceptionally such a risk might arise, for example where identification of the applicant at the Embassy put at risk their family members in the country of origin. At [52] he said this:

> "52. Furthermore, this approach to the issue of return is entirely consistent with the well-established principle that, before an applicant for asylum can claim the protection of a surrogate state, he or she must first take all steps to secure protection from the home state. That was the approach adopted in *Bradshaw* [[1994] Imm AR 359], to which I have made reference. It can be seen as an aspect of the duty placed on an applicant to co-operate in the asylum process. Paragraph 205 of the UNHCR handbook expressly states that an applicant for asylum must, if necessary, make an

effort to procure additional evidence to assist the decision maker. *Bradshaw* is an example of such a case. The issue was whether the applicant was stateless. Lord MacLean held that before a person could be regarded as stateless, she should make an application for citizenship of the countries with which she was most closely connected."

We are not persuaded that we should depart from *MA*, or that it is properly distinguishable.

108. The Readmission Agreement procedures set out at paragraph 24 above provide a complete answer to the asserted difficulty of returning North Koreans to South Korea, providing for an individual's origin in the Korean Peninsula to be established by the use of documents (even out of date or photocopy documents), and/or consular interviews, together with fingerprint checks in the South Korean database, on completion of which process, South Korean return documents must be issued by the South Korean authorities. Until a South Korean travel document is issued, of course, removal is not possible.

109. The evidence from the respondent that, of 20 individuals whose fingerprints were checked on the South Korean database, 14 sets of fingerprints were matched as recognised South Korean citizens supports the evidence of Professor Bluth that an official at the South Korean Embassy in London told him that most of those claiming to be from North Korea were South Korean citizens.

110. The respondent's evidence was that at least in the initial stages, the Readmission Agreement was used only to re-document individuals recognised by South Korea as its citizens or who had lived in South Korea. The legal effect of the Readmission Agreement is not, however, limited by the respondent's current practice, which may change from time to time, subject to the constraints of the Readmission Agreement.

The 'protection' procedure

111. Those returned to South Korea who have not previously asserted their South Korean citizenship or lived in South Korea must complete the 'protection' procedure before being given access to the full citizenship benefits and resettlement facilities available to 'new' South Koreans originally from North Korea. South Korea has absorbed over 20,000 such migrants since the division of the country, and is a modern, prosperous country in which solid support is available for resettling them. As recorded in particular in the International Crisis Group report 'Strangers at Home: North Koreans in the South' on 14 July 2011, new South Korean citizens who emerge from the 'protection' procedure are not high-level propaganda assets, but ordinary North Koreans, who tend to be in poor health, ill-educated and have difficulty adapting to capitalist society in South Korea.

112. Strikingly, there are almost no reports of any human rights abuses during the JIC procedure, save for Dr Hwang's two cases, one from 1999 and one from

2000. There are none at all for the *Hanawon* training phase. We are not persuaded that if harm were occurring during the 'protection' procedure, or family members were being separated, there would not be international NGO evidence reflecting such ill-treatment, whether or not the information is published within South Korea. Remedies are available before the South Korean courts both for claims of ill-treatment during the JIC phase, and for unlawful detention, as evidenced by the two cases in which Dr Hwang acted. We reminded ourselves of the evidence in the US State Department Report that a Chinese citizen had been able to access the South Korean courts in a suspensive appeal against deportation, and was detained in South Korea pending the outcome of his appeal.

Duration of the 'protection' procedure

113. There was an apparent conflict between the evidence of Professor Bluth and of Dr Hwang regarding the duration of the JIC phase of the 'protection' procedure, but the conflict is not, we think, significant nor their evidence irreconcilable: Dr Hwang's experience predated the South Korean government's increased security concerns in 2010, and appears to consist of only two clients whose JIC phase was in 1999/2000. We approach these appeals on the basis that, while in general the JIC phase of the 'protection' procedure now lasts up to 120 days, in some cases it may be longer, but normally not significantly longer. Suspected North Korean intelligence agents may have been detained for longer periods, up to three years in one case.

114. Dealing next with the *Hanawon* reorientation training, the final hurdle before full citizenship rights and benefits are available to new South Koreans coming from North Korea, we note, first, that there is no evidence of any abuse or harm during the *Hanawon* phase; second, that the purpose of the training offered is benign; and third, that substantial housing, training and employment grants are made available once the *Hanawon* phase is complete, with a bonus payable once employment is obtained. Although migrants who have lived for a time in the West may find *Hanawon's* training less necessary because they have some experience of capitalist society, all new South Koreans must spend three months in *Hanawon*.

115. Overall, therefore, it is right to say that it will normally take approximately seven months before a 'new' South Korean citizen from North Korea can move freely and benefit fully from South Korean citizenship and the financial and social support it offers. Those in the 'protection' procedure are treated differently from refugees because, despite the JIC examination and the *Hanawon* training centres, the South Korean authorities accept that all persons coming from North Korea are South Korean citizens.

Article 33 of the Refugee Convention: 'refoulement'

116. Ms Hulse and Mr Karnik accepted that the appellants in these appeals are not lawfully in the United Kingdom and that the wider protection from expulsion in Article 32 of the Refugee Convention was not available to them. They would

only be in a position to resist return to South Korea under Article 33 of the Refugee Convention, that is to say, if their life or freedom would be threatened in South Korea for a Convention reason:

> **"Article 33. PROHIBITION OF EXPULSION OR RETURN ("REFOULEMENT")**
>
> **1**. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. **...**"

There is no evidence at all that there is a risk to life or freedom for a Refugee Convention reason for North Korean migrants in South Korea.

117. Nor is there any evidence at all that on return to South Korea, North Korean migrants are at real risk of torture, inhuman or degrading treatment or punishment capable of engaging the very high standard required for Article 3 ECHR. At worst, there will be a period of restriction of freedom and some social and employment difficulties thereafter, despite the solid support programme available for resettlement of North Korean migrants. The evidence does not indicate that there is a real risk of adverse treatment during either phase of the 'protection' procedure. Many countries detain for a time those seeking entry and settlement. Such restriction on the freedom of these appellants as occurs under the 'protection' procedure is for a relatively short period and in benign circumstances.

What happens after the 'protection' procedure is complete?

118. There is no evidence in the material before us of anyone being refused access to the benefits of South Korean citizenship at the end of the 'protection' procedure, save where they had admitted to being Chinese citizens. A small number of self-confessed Chinese citizens may have been removed to China, with others benefiting from delays while they pursue lengthy appellate processes, against the background of removal directions to China. South Korea is a signatory to the Refugee Convention, which has been incorporated into South Korean national law, and is aware, therefore, of its responsibilities under Articles 32 and 33 of the Refugee Convention. North Korean Intelligence agents, even those seeking to do harm in South Korea, have not been returned to North Korea or refouled via China; rather, they are prosecuted and sentenced within South Korea. There is no evidence that they are removed when their sentences have been served.

119. The evidence is that financial and social support is provided to enable reintegration of 'new' South Koreans after *Hanawon* has been completed, including help with housing, employment, and financial inducements. North Korean migrants do find the adjustment difficult and there is some discrimination in employment and housing, but nevertheless, as Professor Bluth accepted, their situation is much better than it was in North Korea. Those who have spent some

time in capitalist countries such as the United Kingdom may make a better adjustment: the evidence before us did not address any differential for that group in contrast to those who travelled to South Korea via communist China. Nothing in the evidence before us comes close to the Article 3 standard in relation to the reintegration and subsequent life of former North Korean migrants in South Korea.

Conclusions

120. When all of the evidence and submissions are considered, there is much in the original list of issues that is no longer in dispute. The respondent has no intention of returning North Korean migrants to North Korea and there are no removal directions to China for any of these appellants. There was no evidence before us to support a finding that the United Kingdom returns anyone whose sole citizenship is of North Korea to South Korea, or anywhere else. On the contrary: the respondent accepts that under the Refugee Convention, North Koreans who have left the Korean Peninsula cannot be returned to North Korea, and that anyone entitled only to North Korean citizenship, if such a person exists, is a refugee. For the reasons set out at paragraph 122 below, we consider that there are in reality no such persons: South Korea considers all North Koreans to be South Korean citizens.

121. The arguments considered in *KK* regarding the treatment of those who are unwilling to live in South Korea fall away, having regard to *MA (Ethiopia)* and the Readmission Agreement. Applicants for international protection in the United Kingdom must cooperate in establishing whether any other country of which they are a citizen can offer them protection; the Readmission Agreement provides a mechanism by which that is achieved, and travel documents for those who can show that they have the required family or residence links to the Korean Peninsula. The position on 'effective' nationality remains as in *KK*: the *Nottebohm* case does not assist the appellants.

122. The South Korean Refugee Act is of some importance. Given South Korea's apparent intention to comply with the Refugee Convention, its exclusion of North Koreans from the definition of 'refugee' makes it clear that a North Korean in South Korea cannot, in the view of South Korea, be 'outside the country of his nationality' because he is, and always has been, a South Korean citizen. The evidence as to nationality is clear: South Korea regards all persons born on the Korean Peninsula as South Korean, and on that basis, there is no group of persons whose only nationality is North Korean.

123. There is no evidence in the materials before us that anyone, other than Chinese citizens, has been returned from South Korea to China. The return by South Korea to China of Chinese citizens in South Korea who have claimed to be North Korean does not create a risk of refoulement to North Korea of such individuals, because they are Chinese. The evidence is that South Korea prosecutes North Korean spies and that they are then punished according to law

within South Korea, not returned to North Korea. There is no evidence that anyone other than North Korean spies and Chinese citizens has ever failed the 'protection' procedure.

124. The subsequent treatment of North Koreans whose South Korean citizenship is confirmed after the 'protection' procedure is not such as to require international protection: they receive full South Korean citizenship with all its benefits and duties (except that military service is not required of them) and although they there may be some difficulty adjusting and some hardship discrimination, a support package is in place and their lives are much better than they would have been in North Korea.

125. The challenge to the Upper Tribunal's finding that those who have been outside the Korean Peninsula for more than 10 years would lose their South Korean citizenship is made out. The wider expert and country evidence before us in these appeals indicates that in practice South Korea will not reject any returning person from the Korean Peninsula unless they have acquired another nationality since leaving the Korean Peninsula. The Readmission Agreement makes no distinction based on length of absence. To that extent, the country guidance in *KK* is wrong and we have amended it.

126. The finding in *KK* at paragraph 2(d) that South Korean law does not generally permit dual nationality requires revision. Under the Overseas Koreans Act (as amended in 2013), former South Korean citizens who have not yet reacquired their South Korean nationality ('Overseas Koreans') are entitled to return and reside in South Korea for a maximum of two years without resuming South Korean citizenship and, pursuant to the amended Nationality Act (last amendment 2010), to retain another, dual nationality for a time, as long as such nationality is never used to enter South Korea, nor relied upon when living in South Korea. Other conditions limit the time for which dual nationality can be maintained.

Country guidance

127. We therefore give the following updated country guidance:

(1) The Upper Tribunal's country guidance in *KK and others (Nationality: North Korea) Korea* CG [2011] UKUT 92 (IAC) stands, with the exception of paragraphs 2(d) and 2(e) thereof. Paragraphs (2), (3) and (4) of this guidance replace that given in paragraphs 2(d) and 2(e) respectively of *KK*.

(2) South Korean law makes limited provision for dual nationality under the Overseas Koreans Act and the Nationality Act (as amended).

(3) All North Korean citizens are also citizens of South Korea. While absence from the Korean Peninsula for more than 10 years may entail fuller enquiries as to whether a person has acquired another nationality or right of residence

before a travel document is issued, upon return to South Korea all persons from the Korean Peninsula are treated as returning South Korean citizens.

(4) There is no evidence that North Koreans returned to South Korea are sent back to North Korea or anywhere else, even if they fail the 'protection' procedure, and however long they have been outside the Korean Peninsula.

(5) The process of returning North Koreans to South Korea is now set out in the United Kingdom-South Korea Readmission Agreement (the Readmission Agreement) entered into between the two countries on 10 December 2011. At present, the issue of emergency travel documents under the Readmission Agreement is confined to those for whom documents and/or fingerprint evidence establish that they are already known to South Korea as citizens, or who have registered as such with the South Korean Embassy in the United Kingdom.

(6) Applying *MA (Ethiopia) v Secretary of State for the Home Department* [2009] EWCA Civ 289, North Koreans outside the Korean Peninsula who object to return to South Korea must cooperate with the United Kingdom authorities in seeking to establish whether they can avail themselves of the protection of another country, in particular South Korea. Unless they can demonstrate that in all of the countries where they are entitled to citizenship they have a well-founded fear of persecution for a Refugee Convention reason, they are not refugees.

(7) If they are not refugees, it remains open to such persons to seek to establish individual factors creating a risk for them in South Korea which would engage the United Kingdom's international obligations under the EU Qualification Directive or the ECHR.

(8) There is no risk of refoulement of any North Korean to North Korea from South Korea, whether directly or via China. South Korea does not return anyone to North Korea at all and it does not return North Koreans to China. In a small number of cases, Chinese nationals have been returned to China. A small number of persons identified by the South Korean authorities as North Korean intelligence agents have been prosecuted in South Korea. There is no evidence that they were subsequently required to leave South Korea.

(9) Once the 'protection' procedure has been completed, North Korean migrants have the same rights as other South Korean citizens save that they are not required to perform military service for South Korea. They have access to resettlement assistance, including housing, training and financial assistance. Former North Koreans may have difficulty in adjusting to South Korea and there may be some discrimination in social integration, employment and housing, but not at a level which requires international protection.

Application of the country guidance to the individual appellants

Appellant GP

128. GP and his wife are both North Koreans, born in 1986 and therefore 27 years old. It is accepted that they both left North Korea illegally and were each returned once by the Chinese authorities to North Korea before managing to escape and make their way to the West. They do not wish to go to South Korea and it is accepted that they have never been there. They now have two young children born in the United Kingdom. The respondent accepted that the GP family would be at risk if returned to North Korea and that if that were their sole nationality, they would be entitled to refugee status.

129. In February 2010, their appeals were dismissed. Designated Judge Phillips found that they were South Korean citizens who could lawfully be returned there. The appellants appealed to the Upper Tribunal, arguing that they had no ties to South Korea, either by family or residence. They asserted that they could not reasonably be expected to avail themselves of the protection of South Korea, arguing that the First-tier Tribunal had misunderstood the effect of the Protection Act, which would not provide them with full citizenship of South Korea.

130. Permission to appeal was granted by Upper Tribunal Judge Jordan on two grounds:

(1) That the First-tier Tribunal had arguably failed to deal adequately with the provisions of the Protection Act and its effect on these appellants; and
(2) That the First-tier Tribunal had arguably failed to consider whether there was discrimination in South Korea against North Koreans of a type sufficient to render unlawful the removal of North Koreans from the United Kingdom.
(3) Upper Tribunal Judge Jordan also granted permission on the question whether there was a risk of refoulement for these appellants from South Korea to North Korea via China.

131. None of those arguments can succeed, in the light of the guidance we have given. These appellants are South Korean citizens and their asylum appeal must fail. Article 3 ECHR is not engaged: the evidence does not establish any real risk of persecution or serious harm to them in South Korea, either in general or during the 'protection' procedure, and no individual risk has been established.

132. Article 8 of the ECHR (private and family life) was not relied upon in these appeals and there was no evidence of private life outside the family circle. Ms Hulse specifically reserved her position on Article 8 for a later application. We are not required, therefore, to deal with Article 8, within or without the Immigration Rules.

133. Pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009, we have had regard to the best interests of the third appellant and of GP and JP's three year old daughter, who is not an appellant in these proceedings. The

children are three and five years old: they are both of an age where their main connections are to their parents and there is no evidence before us to indicate any other reason why these children should not be removed from the United Kingdom and live in a country of which all of the family, including these children, are citizens. There is no evidence before us which establishes that the appellants' children would be separated from their parents during the 'protection' procedure or that there exists any other factor making it inappropriate to return these particular children to South Korea with their parents.

134. It follows, therefore, that there was no material error of law in the First-tier Tribunal determination and the First-tier Tribunal determination dismissing the appeals of the GP family stands.

Appellant MP

135. MP was born in 1981 in North Korea and is currently 33 years old. He is unmarried. He appeals against the respondent's decision to remove him from the United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 to the Immigration Act 1971. His North Korean citizenship is not disputed in the refusal letter accompanying that decision; again, if that were his only citizenship, on the appellant's North Korean history the respondent accepts that he would be a refugee.

136. MP left North Korea for China in September 2006, travelling with his mother, who in 2007 went to South Korea and lives there. MP stayed in China, then came to the United Kingdom on 21 October 2008, travelling on a Korean passport to which he was not entitled. He has never been lawfully in the United Kingdom. He has a liver problem which he also had in North Korea, but for which he has never received or sought any medical treatment. MP claimed asylum on 30 June 2010.

137. In October 2011, Immigration Judge Birrell dismissed MP's appeal against the removal directions on the basis that he was both a North Korean and a South Korean citizen, that he had left North Korea illegally and would be at risk of persecution if returned there, but that the appellant had not demonstrated a well-founded fear of persecution in South Korea and that, as a matter of fact, the appellant would not tell the South Korean authorities that he did not wish to settle in South Korea. She dismissed the appeal on Refugee Convention, humanitarian protection and human rights grounds.

138. The basis of the appellant's appeal to the Upper Tribunal was that his presence in the United Kingdom as an asylum claimant and his previous residence in China would cause the South Korean authorities to treat him with suspicion and that after removal to South Korea it was unlikely that he would be able to satisfy the South Korean authorities that he was a North Korean migrant and he would be removed to China, putting him at risk of refoulement to North

Korea where he was at risk or persecution. In November 2011, when the grounds were drafted, South Korea had not yet signed the Refugee Convention.

139. Permission to appeal was granted on the basis that the First-tier Tribunal Judge had arguably erred in her approach to the evaluation of the risk of refoulement via China and may have erred in her application of *KK (North Korea), ST (Ethiopia)* or *MSS v Belgium and Greece* 30696/09 [2011] ECHR 108. On 16 January 2012, Upper Tribunal Judge King ordered that the questions of the application of *KK* and the risk of refoulement should be dealt with at a rolled up hearing and gave directions for the submission of expert and country background evidence. By a Rule 24 reply, the respondent indicated that she did not oppose the application and invited the Upper Tribunal to determine the appeal by way of a fresh oral continuance hearing to consider the appellants' asylum appeal.

140. MP has been outside the Korean Peninsula for eight years, having travelled first to China. His mother lives in South Korea. In December 2006, while in China, MP approached the Shenyang South Korean Consulate-General. He told them he was a North Korean defector living in hiding in China and asked for help to move on to South Korea. Embassy officials told him they could not assist him and that he would have to approach the main South Korean Embassy in Beijing. MP considered that to be too dangerous because he was living in China illegally, so he did not go. He claims to have worked as a lumberjack in China and seeks to retract a statement apparently made at interview that he was detained in China for some time. In October 2008, using a South Korean passport to which he claims not to have been entitled, MP left China and came to the United Kingdom, claiming asylum on arrival. He was screened but never had a formal asylum interview.

141. MP's fingerprints are on the South Korean database and his mother already lives in South Korea. MP has expressed himself as willing to apply to enter South Korea under the 'protection' procedure, but has not made such an application yet. He would prefer to receive United Kingdom citizenship but such preference has no bearing on his entitlement to international protection as a refugee, by way of humanitarian protection or on human rights grounds.

142. We reject MP's assertion that the reason the South Korean government has his fingerprints is that they were taken at the Shenyang Consulate-General in China, which refused to process his application for a 'protection' visa to enter South Korea. There is evidence to support the refusal of Chinese South Korean embassies and Consulates to assist North Koreans to enter South Korea, but no evidence to support the taking of fingerprints in the course of such refusals: both Professor Bluth and Dr Hwang were specifically asked about this point and stated that they had no knowledge of such a practice.

143. We treat the fingerprint recognition as a clear indication that MP has already been accepted as a South Korean citizen, like his mother. That being the case, he already has the full benefit of South Korean citizenship and would not be

required to enter the 'protection' procedure. As a South Korean citizen, MP is entitled to come and go from South Korea as he wishes, and he will be able to return without significant difficulty, using the Readmission Agreement to renew his travel documents if he needs to do so. We are not satisfied on the evidence before us that in South Korea there is any risk to MP of persecution or serious harm engaging the Refugee Convention, the Qualification Directive, or Article 3 ECHR. He is not a refugee and he is not irremovable on Article 3 grounds.

144. We turn to consider Article 8 ECHR. The evidence before us is slight: the appellant has not explained how he has been spending his time in the United Kingdom, save that he has been learning English and studying. There was no evidence from friends or from any colleges where he may have studied. While there may be some limited degree of private life and Article 8 ECHR may be engaged, we consider that the First-tier Tribunal was unarguably entitled to conclude on the evidence before it that any such interference would not be of sufficient gravity to outweigh the United Kingdom's right to control immigration. We find that the appellant has not established that his removal to South Korea, of which he is a citizen, would be disproportionate.

145. In this appeal, the respondent in her rule 24 notice in effect conceded that there was an error of law. We therefore set aside the determination and remake it by dismissing it on all grounds.

Anonymity

146. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants have been granted anonymity throughout these proceedings and after their conclusion, absent any order to the contrary by the Upper Tribunal or any other Court seised of relevant proceedings. Unless an application to the contrary is made within seven days of receipt of this determination, we consider that there is no need to maintain that order and we revoke the anonymity direction.

Date: 3 September 2014 Signed:

Upper Tribunal Judge Gleeson

APPENDIX A

Documents before the Upper Tribunal

Date	Source	Description
1997		
13 December	*Republic of Korea*	Nationality Act (as amended)
2003		
Undated	*Republic of Korea*	Military Service Act (as amended)
2005		
11 March	*US State Department*	"The Status of North Korean Asylum Seekers and U.S. Government Policy Towards Them"
2006		
11 July	*United Kingdom - Algeria*	Cm 7921 - Agreement on the Circulation of Persons and Readmission between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Democratic Republic of Algeria [ratified 25 February 2007, in force 27 March 2007]
19 December	*United Kingdom IND*	OGN: North Korea
2008		
11 March	*US State Department*	"Country reports on human rights practices 2007: Korea, Democratic People's Republic of"
6 May	*US State Department*	"The importance of human rights for North Korea"
28 May	*Amnesty International*	"Amnesty International report 2008: Korea (Democratic People's Republic of)"
2 July	*Dr Young-hae Chi*	Expert Report for GP
28 November	*Amnesty International*	"South Korea: repeal or fundamentally reform the National Security Law"
2009		
16 July	*Freedom House*	Freedom in the World 2009: South Korea
21 July	*UKBA*	Country of Origin Report on Democratic People's Republic of Korea (excerpt)
11 September	*UKBA*	Key documents Republic of Korea (South Korea)
2010		

20 May	*Radio Free Europe/Radio Liberty*	"South Korea blames North Korea for sinking of warship, promises retaliation"
25 May	*Voice of America News*	"North Korea breaks relations with South Korea"
11 June	*Radio Free Asia*	"Cheonan fallout hits Defectors"
12 June	*Voice of America News*	"North Korea threatens South"
2011		
14 July	*International Crisis Group*	"Strangers at Home: North Koreans in the South"
18 October	*Travel China Guide*	"Embassy and Consulates of South Korea in China"
20 December	*The Stationery Office*	Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea concerning the Readmission of Persons (Cm 8392)
2012		
undated	*Professor Christoph Bluth*	Supplemental Expert Report prepared for GP
24 May	*European Parliament*	"Resolution on the situation of North Korean refugees" (2012/2655(RSP))
23 August	*IPI Global Observatory*	"Human rights of North Korean defectors in dire straits"
27 September	*UKBA*	Operational Guidance Note: North Korea (DPRK)
25 October	*Professor Christoph Bluth*	Expert Report prepared for GP
4 December	*Andrew Wolman*	"North Korean Asylum Seekers and Dual Nationality"
2013		
20 March	*BBC News*	"North Korea enters 'state of war' with South"
27 March	*Professor Christoph Bluth*	Expert report prepared for MP
April 2013	*Professor Guy Goodwin-Gill*	Expert report prepared for GP
24 May	*Dr Pillkyu Hwang*	Expert report prepared for MP

APPENDIX B
South Korean Legal Materials

1. The statutory South Korean materials relevant to these appeals are as follows:

Description	Statute	Website link
South Korean Constitution	Constitution of the Republic of Korea [1948] (last amended 1987)	http://www.refworld.org/docid/3ae6b4dd14.html
Nationality Act	No. 16: Nationality Act [1948] (amended 2010)	http://www.refworld.org/docid/3fc1d8ca2.html
Protection and Settlement Act	No. 5259: Act on the Protection and Settlement Support of Residents Escaping From North Korea, [1997]:	http://www.refworld.org/docid/3ae6b4ef28.html
Overseas Koreans Act	No. 6328: Act on the Immigration and Legal Status of Overseas Koreans [2000] (amended 2013)	http://korea.na.go.kr/res/low_03_read.jsp?boardid=1000000037&boarditemid=1000000425
Military Service Act	Military Service Act [2003] and Amendment to Military Service Act [2006]	http://korea.na.go.kr/res/tra_read.jsp?boardid=1000000024&boarditemid=1000005158
Refugee Act	No. 11298: Refugee Act [2012]	http://www.refworld.org/docid/4fd5cd5a2.html.

South Korean Constitution

2. The Constitution provides as follows:

> "**Article 1**
> (1)The Republic of Korea shall be a democratic republic.
> (2)The sovereignty of the Republic of Korea shall reside in the people and all state authority shall emanate from the people.
> **Article 2**
> (1)Nationality in the Republic of Korea shall be prescribed by law.
> (2)It shall be the duty of the State to protect citizens residing abroad as prescribed by law.
> **Article 3**
> The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands.
> **Article 4**
> The Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the principles of freedom and democracy."

Nationality Act

3. The Nationality Act provides that the following are citizens of South Korea by birth: persons whose father or mother was a citizen of South Korea at the time of the person's birth; persons whose deceased father was a citizen of South Korea, if he died before the person's birth; persons 'born in the Republic of Korea' if the parents' nationalities are unknown or they have no nationality, and any child found abandoned in the Republic of Korea. For these purposes, 'born in the Republic of Korea' means born anywhere on the Korean peninsula, following Article 3 of the South Korean Constitution. Article 3 of the Nationality Act provides that where

a Korean citizen who is still a minor, but who is not a citizen of the Republic of Korea (a 'foreigner') reports to the Minister of Justice and establishes that his father or mother is a Korean citizen and recognises him as their child, he shall attain Korean citizenship when such report is made, subject to procedures to be determined by Presidential decree. If the minor is under 15, Article 19 provides that he shall be legally represented for the making of any nationality report.

4. Articles 4-8 of the Nationality Act deal with naturalisation provisions for foreigners, including provision for the naturalisation of spouses and minor children. Article 9 provides a procedure whereby a person who has lost their Korean nationality can apply to the Minister of Justice for it to be reinstated, subject to procedures to be set out in a Presidential decree, and to four exceptions set out at Article 9(2):

> "**Article 9 (Attainment of Nationality through Reinstatement of Nationality)**
> (1) A foreigner who was a national of the Republic of Korea may attain the nationality of the Republic of Korea by obtaining permission for the reinstatement of nationality from the Minister of Justice.
> (2) The Minister of Justice shall not allow the reinstatement of nationality to a person who falls under any of the following subparagraphs, after screening such person who has applied for the reinstatement of nationality:
>
> 1. A person who has inflicted harm on the State or society;
> 2. A person whose conduct is disorderly;
> 3. A person who lost or renounced his/her nationality of the Republic of Korea in order to evade military service;
> 4. A person for whom the Minister of Justice regards the reinstatement of his/her nationality as inappropriate, for the purposes of national security, sustainment of order or public welfare."

5. Articles 10-15 deal with multiple nationalities and the length of time for which persons may have dual nationality and when they must elect. Article 15(1) provides for automatic loss of nationality, where a person has voluntarily attained the nationality of another country, which takes place at the time when the foreign nationality is obtained. Article 15(2) provides for deemed loss of nationality retroactively, unless within six months the Korean citizen declares an intention to retain Korean citizenship, where another nationality has been acquired in the following circumstances: by marriage to a foreigner; by adoption by a foreigner; by acknowledgment by a foreign father or mother resulting in acquisition of such parent's nationality; or in the case of a minor or spouse of a person who has lost nationality in any such circumstances.

6. Persons who lose their nationality are required to immediately report such loss to the Minister of Justice. If a public official finds that a person has lost nationality, he must also report it to the Minister, who will notify the family registration office and the resident registration office of the loss of nationality. Other procedures are to be set out in a Presidential decree, as before.

7. Article 17 provides for all acquisitions and losses of nationality to be published in the Official Gazette by the Minister of Justice. Article 18 specifies the loss of rights accruing to South Korean citizens when nationality is lost, subject to a proviso for transfer of any transferable rights to another South Korean citizen within 3 years.

8. Articles 20-22 provide:

"**Article 20 (Adjudication of Nationality)**

(1) Where it is unclear whether a person has attained or is holding the nationality of the Republic of Korea, the Minister of Justice may determine such fact upon review.

(2) Procedures for screening and determination under paragraph (1) and any other necessary matters shall be determined by Presidential decree.

Article 21 (Revocation of Permission, etc)

(1) The Minister of Justice may revoke permission or adjudication of a person who has obtained permission of naturalisation, reinstatement of nationality or adjudication of nationality by false or other wrongful means.

(2) Standards and procedures for revocation under paragraph (1), and other necessary matters shall be determined by Presidential decree.

Article 22 (Delegation of Authority)

(1) The authority of the Minister of Justice may be partially delegated to the head of an immigration office or its branch office, as prescribed by Presidential decree."

Protection and Settlement Act

9. The Protection and Settlement Act defines its terms and purpose in Articles 1-4:

"**Article 1 (Purpose)**

The purpose of this Act is to specify such matters relating to protection and support as are necessary to help North Korean residents defecting from the area north of the Military Demarcation Line (hereinafter referred to as "North Korea") and desiring protection from the Republic of Korea, to adapt themselves to, and settle down as quickly as possible in, all spheres of their life, namely, political, economic, social and cultural life.

Article 2 (Definitions)

For the purpose of this Act,

1. "Defecting North Korean residents" mean persons who have their residence, lineal descendants, spouses and workplaces in North Korea and who have not acquired any foreign nationality after defecting from North Korea.
2. "Protected persons" mean defecting North Korea residents who are provided care and support pursuant to this Act.
3. "Settlement support facilities" mean facilities set up and operated to provide protection of and settlement support for protected persons pursuant to the provision of Article 10, Paragraph 1.
4. "Protection money or articles" mean money or goods paid, delivered or lent to protected persons pursuant to this Act

Article 3 (Scope of Application)

This Act shall apply to defecting North Korean residents who have expressed their intention to be protected by the Republic of Korea.

Article 4 (Basic Principles)

(1) The Republic of Korea shall provide protected persons with special care on the basis of humanitarianism.

(2) Protected persons shall strive to lead a healthy and cultural life by adapting themselves to the free and democratic legal order of the Republic of Korea."

10. Article 5 provides that in general, settlement support is available in special facilities for a year and at home for two years after that, although there is discretion to extend or curtail it for 'special grounds'. Normally, under Article 5(2), protection is given to the individual but it may

be given on a household basis where deemed necessary. Under Article 5(1), support 'shall reasonably be determined in consideration of [the migrant's] age, composition of the household, school education, personal career, self-supporting ability, health conditions and personal possessions.'

11. Article 6 set up a consultative council to determine protection and support questions. Article 7 requires an application for protection to be made by the migrant to the head of an overseas diplomatic or consular mission, who shall without delay inform both the Minister of National Unification and the Director of the Agency for National Security Planning. The National Security Director is required to take 'provisional protective steps' immediately and report to the Unification Ministry. Article 8 (1) sets out their respective responsibility in the protection decision:

> "(1) The Minister of National Unification shall, when he receives such a notice as stipulated under the provision of Article 7, Paragraph 3, decide on the admissibility of the application for protection following the deliberations of the Consultative Council. However, in the case of a person who is likely to attest national security to a considerable extent, the Director of the Agency for National Security Planning shall decide on the admissibility of the application, and inform or notify the Minister of National Unification and the protection applicant of the decision without delay."

The protection decision is a shared responsibility of the Ministries of Unification and Security.

12. Article 9 excludes certain categories of migrant from protection (that is to say, from the benefits of South Korean citizenship):

"**Article 9 (Criteria for a Protection decision)**
(1) In determining whether or not to provide protection pursuant to the provision of the text of Article 8, Paragraph 1, such persons as stipulated in the following Subparagraphs may not be determined as protected persons.
1. International criminal offenders involved in aircraft hijacking, drug trafficking, terrorism or genocide, etc.
2. Offenders of non-political, serious crimes such as murder, etc.
3. Suspects of disguised defection
4. Persons who have for a considerable period earned their living in their respective country of domicile; and
5. Such other persons as recognized by the Presidential Decree as unfit for the designation as protected persons."

13. In addition, pursuant to Article 27, protection and/or settlement support may be withdrawn in certain circumstances by the Unification Ministry of its own motion, or on the application of a local government head via the Home Affairs Ministry:

> "**Article 27 (Alteration in Protection)**
> (1) The Minister of National Unification may, where a protected person is involved in one of the following Subparagraphs, suspend of terminate protection and settlement support subject to the deliberations of the Consultative Council.
> 1. In cases where he is sentenced to penal servitude not less than one year and his sentence has been made irrevocable.
> 2. In cases where he intentionally provides false information contrary to the interest of the state
> 3. In cases where he is judicially declared dead or missing
> 4. In cases where he attempts to go back to North Korea
> 5. In cases where he violates this Act or an order issued under this Act; or

6. Such other cases as coming under such grounds prescribed by the Presidential Decree."

14. Articles 10-22 set out the protection scheme. In particular, Article 15 provides:

> "**Article 15 (Social Adaptation Education)**
> The Minister of National Unification may, pursuant to the determination of the Presidential Decree, offer protected persons with such education as deemed necessary for them to settle down in the Republic of Korea."

15. The social adaptation education is provided in *Hanawon,* a government resettlement centre, where they will spend three months learning how to live in the capitalist society of South Korea.

16. The rest of the protection scheme includes provision for a personal identification register (Article 12); for recognition of academic and other qualifications (Articles 13-14); for vocational training (Article 16); for employment assistance, including in agriculture (Article 17, 17-1, 17-2, and 17-3); and for discretionary appointment to public service or the South Korean military by way of special appointment, for persons who held similar posts in the north, on terms to be set out by Presidential decree.

17. Other Articles deal with accommodation support, compensation for valuable materials brought into South Korea on arrival, settlement money, adjudication of housing disputes, educational support, medical care and support for minimum living standards, including pensions. Article 30 establishes an Association of Supporters for Defecting North Korean Residents to execute the various resettlement provisions already set out.

Overseas Koreans Act

18. An 'overseas Korean' is defined in Article 2 of the statute:

> "**Article 2 (Definitions)**
> The term "overseas Korean" in this Act means a person who falls under any of the following subparagraphs:
>
> 1. A national of the Republic of Korea who has acquired the right of permanent residence in a foreign country or is residing in a foreign country with a view to living there permanently (hereinafter referred to as a "Korean national residing abroad"); and
> 2. A person, prescribed by Presidential Decree, of those who, having held the nationality of the Republic of Korea (including those who had emigrated abroad before the Government of the Republic of Korea was established) or as their lineal descendants, have acquired the nationality of a foreign country (hereinafter referred to as a "foreign nationality Korean")."

19. Article 3 states that the Act regulates the entry into and departure from the Republic of Korea of overseas Koreans as so defined. Article 4 requires the South Korean government to give 'necessary support…lest he or she should suffer unfair regulation or treatment in the Republic of Korea'.

20. Article 5 sets out the discretionary power of the Minister of Justice to grant permission to live in South Korea who applies to do so on the basis that he is a 'foreign nationality Korean' who is going to engage in activities in the Republic of Korea. However, permission to sojourn may not be granted under the age of 38 years where Article 5(2) such person has acquired a foreign nationality 'without any purpose of permanent residence in a foreign country' or in

order to avoid military service, or where the Minister of Justice is 'apprehensive that he may impair the interests of the Republic of Korea, such as national security, maintenance of public order, public welfare and diplomatic relations of the Republic of Korea.'

21. Articles 6-9 deal with reporting conditions, residence and documentation whilst in South Korea for overseas Koreans. Article 10 limits such sojourn to three years, subject to a discretion to the Minister of Justice to extend the period. An overseas Korean may enter South Korea on any occasion during that period without a further application for sojourn. Employment or other occupation is freely permitted, 'to the extent that he/she does not impair social order or economic stability'. Under Article 14, for visits of less than 90 days, health insurance is not required.

Military Service Acts

22. The 2003 Military Service Act at Article 64(1)(3) expressly excludes from such service 'persons who have immigrated from the northern area of the Military Demarcation Line'. That is the description used in Article 1 of the Protection and Settlement Act to describe North Korean migrants.

23. The 2006 amendment had for its objective to set up a permission system for those intending to travel overseas 'to prevent persons who are under obligation to serve in the military from staying abroad to dodge their military duty'. It notes that the State can impose active service between the ages of 18-30 and provides for persons less than 25 years old who are not in active military service to go abroad freely without permission. A provision at Article 70(5) of the 2003 Act requiring those called up for military service to report within 30 days was deleted.

Refugee Act

24. The Republic of Korea acceded to the 1951 Convention on 3 December 1992, and the 1954 Convention relating to the Status of Stateless Persons on 22 August 1962. Pursuant to Article 6 of the Constitution of the Republic of Korea, these treaties are considered to be part of the domestic law of the Republic of Korea and are the primary source for regulating the rights and obligations of refugees and stateless persons in the Republic of Korea.

25. The Refugee Act formally incorporated into South Korean law the provisions of the Refugee Convention and its 1967 Protocol, and came into force on 1 July 2013.

26. It was common ground at the hearing before us that the Refugee Act is concerned only with non-Korean refugees arriving in South Korea from states outside the Peninsula and has no bearing on the present appeals.

United Kingdom-South Korea Readmission Agreement

27. Following the Tribunal's decision in *KK*, on 20 December 2011, the United Kingdom and the Republic of Korea entered into a Readmission Agreement ('the Readmission Agreement'). The Readmission Agreement came into force on 1 July 2012.

28. The Readmission Agreement aims to enable readmission applications to be processed efficiently and effectively in the territory of the requesting Contracting Party, and for recognised nationals of the requested Contracting Party to be returned with appropriate documents and without difficulty. The expressed purpose of the Readmission Agreement is to

facilitate the return to their country of nationality of citizens of the United Kingdom or Republic of Korea who do not, or no longer, meet the applicable entry or residence requirements of the other Contracting Party, in order to 'effectively counteract illegal immigration into their territories in the spirit of international efforts'.

29. Article 1 of the Readmission Agreement provides for the readmission by each Contracting Party of its own nationals, upon request by the other Contracting Party, subject to proof or prima facie evidence that such persons possess the nationality of the requested Contracting Party.

30. Article 2 sets out the documents which are required to establish nationality. The primary proofs contemplated are citizenship certificates, passports of any kind, ETDs, and children's passports and if any of these documents are available, the person concerned shall be readmitted without any formalities. Secondary documents identified are listed as copies of the primary proofs; driving licences or copies thereof, birth certificates or copies thereof; the results of an interview with the person concerned, conducted by the competent diplomatic representatives of the requested Contracting Party, or 'any other document which may help to establish the nationality of the person concerned'. The documents, and their copies, suffice even if expired.

31. Where no such document is available, and absent the interview provided for by Article 2, Article 3 provides for a readmission request. The request is to be supported by an original set of finger prints of the person concerned, his or her gender and claimed date of birth; in default of fingerprints, their surname, given names, date of birth, place of birth where possible, and last place of residence in the territory of the requested Contracting Party; indication of the means by which of evidence of nationality will be furnished; a statement, with the person's consent, indicating that they may need assistance, help or care, owing to sickness or old age; and details of any protection or security measures which may be necessary in the individual return case.

32. At Article 6, the Readmission Agreement sets out an exhaustive list of information which may be communicated to the receiving state for the purpose of a readmission request: the personal particulars (surname, given names, resident registration number or equivalent); identity card or passport (all particulars); other details needed to identify the person; stopping places and itineraries; any other information at the request of the receiving state 'which it needs in order to examine the readmission requirements pursuant to this agreement'. Data protection provisions are set out at length and the Readmission Agreement emphasises at Article 10 that the Readmission Agreement 'shall not affect the obligations of the Contracting Parties arising from other international agreements to which they are party.' There is no time limit on the Readmission Agreement, which can be terminated by either Contracting Party on 90 days' written notice, or suspended for reasons of public security, order or health.

33. The respondent gave details of its operation in practice, in her 'Korean Country Guidance Case Position Statement' of 7 December 2012, which exhibits a copy of the Readmission Agreement, and in further evidence provided for the July 2013 hearing.

34. A total of 14 requests for readmission were submitted by UKBA between July and September 2012. Two individuals received ETDs; one of those had already been returned when the respondent prepared her December 2012 Position Statement; four were rejected as unknown to the South Korean authorities, based on fingerprint evidence; and 10 received positive fingerprint checks showing that they were known to the South Korean authorities and

were already South Korean citizens. There was one child, whose parents were registered but the child not; those parents were required to complete the relevant forms register the child before that readmission could be further processed. Those whose fingerprints had been found on the South Korean database, and who were therefore already South Korean citizens, would be returned after a face to face interview with the South Korean Embassy officials.

35. The period covered by the December 2012 position statement represented only the first two months of its operation, between July and September 2012: we therefore asked Mr Norton to provide further information for the hearing in July 2013. In an email dated 1 July 2013 sent to Mr Norton, the respondent stated that in the first year of the Readmission Agreement's operation, three ETDs had been issued and two returns effected. A further 20 ETDs had been requested. There were 14 positive fingerprint matches, indicating that those individuals had already received South Korean citizenship before coming to the United Kingdom; such individuals were awaiting further consideration or a face to face interview.

APPENDIX C
Country Experts

Professor Christoph Bluth

1. Professor Bluth teaches strategic studies and terrorism as Professor of International Studies at the Faculty of Politics and International Studies in Leeds. His doctorate is from King's College London. His research interests are in international security studies, especially nuclear weapons policies and the prevention of the spread of weapons of mass destruction. His general regional expertise is in Russia and Eurasia, Pakistan, Iraq, Germany, and North East Asia (especially Korea). He has considerable knowledge of the practice of the South Korean government in relation to its treatment of North Korean migrants and to nationality issues.

2. Since 2004, Professor Bluth's research has focused on the South Korean national security policy, and he has spent several months each year in South Korea since then. During 2005, he was both a visiting Research Fellow at the Korea Institute for Defense Analysis (a research institute of the South Korean Ministry of National Defense) and a visiting Professor at Seoul's Yonsei University. He has published various academic and newspaper articles on Korean affairs and also two books, *Korea* (published by Polity Press in 2008) and *Crisis on the Korean Peninsula* (published by Potomac Books in August 2011). He has assisted the Upper Tribunal in previous country guidance cases, notably in *KK*.

3. Professor Bluth's evidence and reports refer interchangeably to 'refugees' and 'defectors' from North Korea to South Korea. The words used in South Korea are 'migrants' and 'refugees'. In this summary, for clarity, we have used 'North Korean migrants' throughout

Professor Bluth's reports

4. Professor Bluth provided reports for GP and MP. There were two reports, one for GP and his family, and one for MP. The earlier report for GP and family was consolidated into the later report for MP. The following is a summary of the MP report which constituted Professor Bluth's evidence-in-chief and he adopted it as such.

5. After setting out his research interests and qualifications, Professor Bluth's report noted his connections with the various levels of the South Korean government including many contacts in the Unification Ministry and the Ministry of Foreign Affairs and Trade. He also has connections in the North Korean refugee communities in South Korea and in the United Kingdom.

6. He prepared for his report by reading the relevant South Korean legislation in English and seeking clarification in relation to the interpretation of certain paragraphs in the Korean original version, as well as wider reading set out in paragraph 4.2 of his report. His own understanding of the Korean language is basic, but he is able to access materials in Korean through students of his who are Korean speakers. He consulted various experts, notably Professor Andrei Lankov from Kookmin University, Dr Daniel Pinkston from the International Crisis Group in Seoul, Professor Lim Eul-chul, the North Korean refugee community in West Yorkshire, and officials at the South Korean Embassy in London and the Unification Ministry in Seoul.

7. Professor Bluth's opinion is that the appellants do not meet the criteria for admission to South Korea and the South Korean Embassy will refuse to deal with them. The South Korean

government maintains its public 'one-Korea' policy but in practice takes a very selective approach to refugees, with a view to discouraging North-South defection as far as possible. The approach was normally 'maintained by stealth' but sometimes publicly expressed. Professor Bluth gave a 1999 example.

8. He noted the reluctance of South Korean staff in China to assist North Koreans wishing to enter South Korea. It was necessary for such defectors to make use of professional people smugglers, and often, to go via a third South East Asian country where they could obtain a ticket and travel document from the local South Korean Consulate. Even then, the policy of discouraging North Korean migrants meant that not all such 'defectors' would be accepted.

9. Former South Korean Presidents Kim Dae-jung and Roh Moo-hyun had been cautious in their approach to defectors; the issue was a serious irritant in North-South relations. He was not aware of any change in the policy of the current President Lee Myung-bak. South Korea was endeavouring to improve relations with the North and wished to avoid hostile reactions from North Korea.

10. Early defectors brought intelligence and propaganda value which was not the case with current migrants, and the increasing numbers of such migrants had led to a tougher approach by the South Korean government.

11. Native South Koreans resented the cost to the public purse of providing for North Korean migrants. Large numbers of North Koreans arriving in the South would be a security risk because they might be North Korean agents, or be targets for such agents; they were a financial burden on the South Korean state, albeit an affordable one; and their poor integration into South Korean society threatened social cohesion.

12. Access to South Korean citizenship by North Koreans was exercised by following procedures; citizenship could be refused under certain conditions, set out in Article 9 of the Protection Act. The basic requirements were that the person could meet the requirements of Article 2 of the Nationality Act, had lived in Korea, and had not been outside North Korea for a period longer than 10 years, and that such person wished to become a citizen of South Korea.

13. The procedure required for a North Korean was to approach a South Korean Embassy and seek permission to enter South Korea, by requesting 'protection' under the Protection Act. The Embassy or Consulate would then transmit that request promptly to the Minister of Unification and the Director of the National Intelligence Service in Seoul. Candidates are interviewed by trained officials from the Ministry of Foreign Affairs and Trade, to determine whether they are indeed North Korean citizens and whether their account of their life and circumstances is credible. If their North Korean credentials are established and no Article 9 reasons found to deny them leave to enter South Korea, they are then granted permission to enter South Korea at the South Korean Embassy.

14. On arrival, North Koreans are the subject of an in-depth review and further interviews, with the decision on whether to grant protection (that is to say, whether to recognise them as South Koreans) made on a case by case basis. The South Korean government is concerned to establish whether applicants for protection are in fact North Korean, have not spent sufficient time in a third country to acquire status there, are not criminals or North Korean government agents, or fail to meet the criteria in some other way.

15. North Koreans are initially taken to Sindaebang in South Seoul, to the Government Joint Intelligence Centre (JIC), run by the Institute of National Intelligence. They have no recourse to South Korean courts during what Professor Bluth considers amounts to a period of extra-legal detention at the JIC. Professor Bluth was aware of one case where an individual had been detained for over three years while his claim to be a North Korean migrant was examined. On 21 April 2010, the South Korean government had announced an increase in the period of questioned in the JIC from 90 days to 120 days, in response to infiltration of the process by two North Korean agents who entered South Korea for the purpose of assassinating the prominent defector Hwang Jang-hop. Professor Bluth stated that in practice everyone was detained for the full period.

16. After the JIC, North Koreans usually were debriefed by the Ministry of Unification and attended three months' residential integration classes at a *Hanawon* centre in Anseong, to prepare them for life in South Korea. Residence at the *Hanawon* centre was compulsory and again, Professor Bluth regarded it as a form of detention. The *Hanawon* phase was not subject to any legal means of challenge. At the end of this total period of seven months, the North Korean migrant was required to sign a document applying for citizenship of South Korea.

17. In the case of the present appellants, Professor Bluth considered this process to be irrelevant. They would not be considered for admission to South Korea while an asylum application was pending and in the last four years, every case of which he was aware in which a North Korean contacted the South Korean Embassy had been unsuccessful for that reason. The South Korean Embassy had made it clear on more than one occasion to Professor Bluth that if a person did not wish to reside in South Korea, he would be denied refuge. Even if a person had acquired South Korean nationality at birth they would be deemed to have lost it and would not have a subsisting or demonstrable entitlement to South Korean nationality.

18. The Protection Act, in terms, applied only to those who had expressed their intention to be protected by the Republic of Korea. Having applied for asylum or refugee status in another country was now considered to be sufficient evidence to exclude the person from consideration for admission to South Korea: South Korean officials would 'respect the wish' of such a person to remain outside South Korea. It was the unstated policy of the South Korean government to find any reason it could to reject North Koreans wishing to enter South Korea.

19. Dealing with the risk of refoulement to China, and thence to North Korea, Professor Bluth stated that he had been told by a South Korean ambassador to the United Kingdom in the past that he believed most of those claiming to be refugees from North Korea in the United Kingdom were not North Korean but Chinese citizens of Korean descent ('Chinese Koreans'). Chinese Koreans could be, and had been, deported from South Korea to China. In his opinion, there was an ongoing risk of double refoulement, resulting in the appellants being returned eventually to North Korea and persecuted there.

20. The South Korean authorities would not recognise a nationality determination by the United Kingdom but would make their own decision, including an assessment by interview of the applicant's regional accent, information about childhood and upbringing, geographical, cultural and social references, and so forth' the South Korean National Intelligence Service had a high level of knowledge of North Korean geography, history, social and political facts. The question of accent was more difficult, since even native Korean speakers found it difficult to distinguish the accents of a Chinese Korean and of a North Korean who had lived in China. The appellant MP in particular had been in China from a relatively young age and the South Korean authorities might conclude that he was a Chinese Korean.

21. The South Korean authorities considered many of those claiming to be North Koreans in the United Kingdom to be Chinese Koreans, and the South Korean authorities were very concerned to ensure that no Chinese Koreans were granted citizenship on the basis of a claim to be North Korean.

22. Moving to the conditions of North Korean refugees in South Korea, Professor Bluth's evidence is that at the end of the 'protection' procedure, they received full South Korean citizenship, indistinguishable in law, and in terms of rights, from that of other South Koreans. North Koreans received 'settlement money' in three instalments of South Korean Won (SKW) 10,000,000 (about £5650) and could be given a further SKW 10,000,000 to enable them to put a deposit down on a flat. Their first place of residence was allocated by the South Korean government, often outside Seoul; after that they were on their own. *Hanawon* studies did not equip North Korean refugees for even very low level employment in South Korea, although it did have a good success rate on religious studies, with many North Koreans joining Protestant Churches, the only social group in South Korea which actively supported and welcomed them. However, his evidence was that a monthly scholarship of SKW 200,000 (approximately £113 in March 2014) was available for vocational training between six and twelve months, and SKW 2,000,000 was paid on completing the course. In addition, North Koreans received SKW 2,000,000 if they secured an appointment to a position (approximately £1130 in March 2014).

23. There was however 'all manner of informal discrimination'; the two Koreas had diverged dramatically since their separation in 1945 and the culture in South Korea was 'largely alien' and 'practically foreign' for North Koreans. Coming from a communist culture with close social relations, it was difficult for them to adapt to the individualism of capitalist South Korea and they were often socially ostracised. Even the language presented difficulties; it was not just a question of the southern dialect, but also of the absorption of a large number of English words into South Korean. Further, North Koreans were prohibited from using Chinese characters, which were in use in South Korea, so they found it difficult to master South Korean speech well enough for white collar jobs.

24. About 80% of North Koreans arriving in South Korea owed money to the 'brokers' who had arranged their journey, which they paid about seven or eight months after their arrival (that is to say, presumably, when they completed the 'protection' procedure and became entitled to settlement money). Some 'brokers' extorted money by gaining control of the North Korean refugees' South Korean bank accounts. The fee payable to the brokers is described by Professor Bluth as amounting to about $6000.

25. In the 1990s, the early refugees were educated, often university graduates, and sometimes members of the North Korean elite, but found it very hard to make a good living in South Korea, a free market democratic society where success depended on informal connections based on regional origins and certain educational institutions, a hierarchical 'old boys' network'. North Koreans were by definition outsiders to this system. In January 2011, only 50% of North Korean defectors were in employment, 77% of them doing manual labour, and only 4% in skilled jobs, up from 38% in 2004. Recent defectors had been manual workers or farmers, with very poor education, only 1% of whom had been to university, and only just over half had finished high school. In South Korea, they remained manual workers, in fulltime or part-time work. South Korea as a whole had an unemployment rate of only 2-4%. It was a dynamic, prosperous country. According to a survey conducted by the Korean Institute of Labour in 2004, 46% of respondents considered they were in work which did not suit their skills, 37% agreed they had no ability for the work, 40% considered their future in the work to be uncertain, 27% considered there were problems with discrimination against defectors, and

21% said they were not earning enough. Including government benefits, nearly 80% of defectors earned less than SKW 1,000,000 a month. South Korea has experienced a steep rise in income between 2004 and 2012: in March 2014, the Ministry of Strategy and Finance reported that average monthly household income in 2012 was SKW 4,077,000 (£2300).

26. Marriage prospects for defectors were poorer because of their low perceived status and the reluctance of South Korean parents to see their children marry North Koreans. Many refugees turned to crime, at twice the national average rate, and poorly educated women suffered employment discrimination, had difficulty accessing social services, and often ended up in abusive relationships or as sex workers. 80% of defectors were now women, making 'desperate efforts' for themselves and their children. If they disclosed their North Korean origin on a CV or if they had a northern accent, their job prospects were worse. Children of North Koreans were teased at school.

27. Nevertheless, from a material point of view, Professor Bluth recognised that North Koreans in South Korea were considerably better off than they would be either in China or North Korea. However, in comparison to life in the United Kingdom, they could be described as existing in a 'social ghetto with considerably reduced life chances'.

28. Professor Bluth had been asked to comment both on the Home Office Position Paper and on the Readmission Agreement. At section 8 his report he makes observations about legal interpretation which, since he is not a lawyer, cannot assist us. At paragraph 8.1.4, he reminds us that North Korean defectors are specifically exempted from South Korean military service.

Oral evidence

29. Mr Karnik asked Professor Bluth some supplementary questions on his relationship with the embassies of North and South Korea in London. He told us that he frequently participates in meetings at the South Korean Embassy and with London and international organisations, where he is known for his specialisations in national security for both Koreas. He was an expected and recognised participant at all such gatherings. He also acted as an advisor to a prominent member of the National Assembly in South Korea, who was a former Chairman of the Parliamentary Committee on Trade and Unification. He was a visiting Professor at Yonsei University in Seoul. He knew or had close contacts with most of the people in Seoul who were experts on North Korea.

30. Professor Bluth clarified that he had developed a specialism in Soviet nuclear policy. He is a German citizen and studied German security policy, with particular reference to German integration. There were differences between the situation of West Germany before integration and South Korea now: West Germany had been much better off and had taken a policy decision to accept as many East Germans as possible. South Korea was under-resourced and a much smaller country; there was a much more serious threat of collapse if large numbers of North Koreans relocated simultaneously to South Korea.

31. In addition to his links to the South Korean Embassy, Professor Bluth had contacts with three different North Korean ambassadors to the United Kingdom. That had assisted him to check his interpretation of the situation when possible, and to confirm his general view of the kind of state which North Korea was: however, he was not able to discuss with the North Koreans the issue of North Korean migrants.

32. Professor Bluth stated that North Korea did not recognise the existence of South Korea, and vice versa. There was a frozen civil war in the Korean peninsula which had been going on for many decades, with each side considering itself the one true Korea and that the other should disappear. In particular, North Korea considered South Korea its enemy. Neither of the Koreas accepted that the other was a legally constituted entity. South Korea's naturalisation procedure reflected this: North Korean citizens were required to swear allegiance to South Korea, thus becoming part of what they had been brought up to regard as the enemy.

33. There had been a change in relations between the two Koreas: for many decades, there had been no contact at all, but since 1990, it was South Korean policy to engage with North Korea and bring about gradual change leading to reunification. The flow of North Korean migrants from North to South Korea was a political irritant for both Koreas. North Korea did not want citizens to relocate to the South. A massive influx would have a huge, potentially catastrophic effect on both Koreas, so South Korea had a policy of seeking to limit the number of North Korean migrants it received from North Korea. He drew our attention to a graph in his report concerning this.

34. A considerable number of North Koreans crossed into China. There were camps on the Chinese side of the border, where migrants were detained for repatriation. China and North Korea were allies of sorts but there were problems between them. China saw North Korea as a buffer state between it and South Korea which was perceived as a United States ally. It considered that the collapse of North Korea would result in a huge influx into China by armed North Koreans and China's objective was to keep them in North Korea.

35. Professor Bluth was aware that some asylum seekers in the United Kingdom who claimed to have arrived from China or from North Korea had already undergone the South Korean citizenship process in South Korea, and had come to the United Kingdom from there. There would, in his understanding, be no difficulty with their readmission to South Korea under the Readmission Agreement.

36. Professor Bluth was asked to comment on the report of Andrew Walman. He agreed with much of it. South Korea did not automatically accept North Koreans as citizens: the 'not wishing to go to South Korea' test was based on national security, to enable South Korea to keep out undesirables such as these appellants and those with low tolerance of South Korea's values. The South Korean government had a right to choose its citizens.

37. In answer to questions from Miss Hulse, Professor Bluth repeated that there had been a change in relations between China and the two Koreas over the last few years. There was a real fear that North Korea would collapse, which he considered might well happen. In that case, the region could see a lot of internal fighting and millions of heavily armed North Koreans relocating to China and South Korea. In North Korea they already had little to eat and nothing to lose. There was a definite threat to both China and South Korea.

38. North Korean migrants from North Korea had enormous difficulty in integrating in South Korea. Women tended to end up in the sex industry; male and female North Korean migrants were legally accepted in South Korea but socially rejected, and it was extremely difficult for them to form relationships with South Koreans.

39. In cross-examination, Professor Bluth stated that he was aware of and had read the Upper Tribunal country guidance in *KK*. He was not an expert on British law. His own

opinion was that there were people outside North Korea who would not be accepted as citizens by Republic of Korea. When a North Korean came to the United Kingdom and was refused asylum, if that person then went to the South Korean Embassy to seek admission to South Korea, a very thorough interview would be conducted.

40. The South Korean Embassy would not even discuss admission while an asylum claim was pending, and according to the reports Professor Bluth had read, even after asylum procedures were concluded, they would not be accepted for South Korean citizenship; such a person was regarded as not really wanting to go to South Korea and they would suggest they seek admission to a third country. An application for asylum was regarded as a clear indication that they did not wish to seek the protection of South Korea.

41. South Korea only wanted to accept North Korean migrants who very clearly wanted to live in South Korea and integrate there. Any indication to the contrary would be used as a reason not to accept them. In fact, South Korea wanted to discourage North Koreans from taking up their legal right to South Korean citizenship; it was a matter not just of law but of national security policy. There was no legal means by which North Koreans could enforce their right to assert South Korean nationality if they were outside South Korea. His opinion was informed by a political rather than a legal perspective.

42. North Korean migrants who reached South Korea were detained initially in Sindaebang without access to legal Counsel. He had interviewed at length someone who had been through the process. Some of those with whom this person was detained had been there for over a year; others had been deported to China. Quite a few NGOs working with North Korean refugees in China had tried to estimate the scale of the North Korean problem there: there were approximately 300,000 North Korean refugees in China and 20,000 North Korean migrants in South Korea.

43. The South Korean Constitutional Court had become involved with the decisions of the National Assembly to impeach President Roh, which it had reversed, since the majority of people did not agree, but had then nullified his plan to move South Korea's capital city to the middle of the country. Border security had been reduced.

44. The ten-year rule was a policy not a regulation: in effect, the South Korean government considered that a person who had been outside North Korea for so long must have established a legal entity elsewhere. There was no way of challenging that assumption for a person who was outside South Korea. He was unaware of any litigation within South Korea against the government in relation to this policy, or any moves to change the position. There was a procedure available but to his knowledge it had have been used and could not be accessed from outside the country. It arose under Article 20 of the South Korean Nationality Act which provided a nationality adjudication procedure administered by the South Korean Minister of Justice. In addition, North Korean migrants could in theory obtain a declaratory judgment from the South Korean courts, as set out in a 2010 study entitled *The Treatment of Stateless Persons and the Reduction of Statelessness: Policy Suggestions for the Republic of Korea* by In-seop Chung, Chul-woo Lee, Ho-taeg Lee and Jung Hae, published by the Korea Research Institute in Issue 13 of the Korea Review of International Studies.

45. North Korean migrants could not necessarily force the South Korean government to accept them. However, a North Korean migrant who was willing to go through the process and wanted to go to South Korea had a good chance of being accepted as a South Korean citizen. The act of protection was part of South Korean law but its operation was primarily

based in policy rather than law; his clients were always those who were in the process of seeking asylum. He had no experience of those who really wanted admission to South Korea and were not seeking asylum. It was a sensitive question: the South Korean government was committed to receiving and accepting North Korean migrants and did not wish to make public statements on its policy.

46. The ten-year rule was an official policy; South Korea did not distinguish between those who had spent the time lawfully in a country and those whose residence was unlawful.

47. There was a pattern of migration from China by North Koreans and Chinese, posing as North Koreans, with ships and agents taking them directly to South Korea. The embassies of both Koreas in Beijing were under police surveillance.

48. Professor Bluth was unable to state whether North Koreans in China would have their fingerprints taken in the South Korean Consulates-General, in particular the one in Shenyang, which handled applications for admission to South Korea from persons in Jilin, Liaoning and Heilongjiang Provinces. (During re-examination, he clarified that those provinces together constitute the area known in the west as Manchuria and were the home of the Korean diaspora in China).

49. The South Korean authorities would refuse to accept for readmission those who had spent ten years in China; one former South Korean ambassador to the United Kingdom had told him that "we think they [the claimed North Korean migrants] are all Chinese". Nevertheless, he very much doubted that the South Korean authorities would knowingly return to North Korea a migrant who had reached South Korea via China. His evidence on this point was based on interviews with persons in Sindaebang who had been accepted as North Korean migrants and who had told him about others who had been sent back to China.

50. Professor Bluth's understanding was that the time that people spent in Sindaebang was normally up to 120 days, and a minimum of 90 days. The people he had spoken to had spent less than 120 days in Sindaebang. However, if the authorities were not satisfied, the person would be detained for longer: one of his interviewees in Sindaebang was aware of a single individual who had been detained there for more than a year, in fact, for more than three years. Where they determined that a North Korean migrant was really Chinese, even if of North Korean family origin, such persons were deported to China. The final decision on admissibility to South Korea was made in Sindaebang.

51. He was not aware of any case where a person had changed their mind about applying for South Korean citizenship while in Sindaebang. He did not think that if they did they would be forced to live in South Korea: it was much more likely that the South Korean authorities would try to send them back to where they came from. The only accounts he had heard concerned people who had left Sindaebang for a *Hanawon* centre. There was no reason to suspect foul play.

52. Once a person had been cleared by Sindaebang, they were transferred to the *Hanawon* centre in Anseong, where they were given classes in aspects of South Korean life and society over a period of three months and then could make an application for citizenship. They were not free to move outside the *Hanawon* centre until their acclimatisation training was complete: some people were very bored there because there was not much to do. Once that training was complete, they were able to enter South Korea.

53. There were, however, some restrictions: male North Korean migrants were excluded from South Korean military service after admission.

54. In answer to questions from the Tribunal, Professor Bluth confirmed that the two Koreas had been engaging across the internal Korean border since about 1990, before which the border was particularly impenetrable. It was now much more porous: the civil war had been defrosting but had not ceased. North Korea was losing control of its territory. However, everyone realised that unification could not happen overnight. The border between the two Koreas would be needed for a period of 10-20 years, to allow for gradual integration. It was almost impossible to leave North Korea other than via the Chinese border. There was extreme poverty and hardship in North Korea: the North Korean border guards on the Chinese border were much more susceptible to bribery.

55. The two Koreas had distorted views of each other: North Koreans were taught that South Koreans lived in abject poverty and people were starving to death there. They had a lot of learning to do; that was much more true of North Korea. We asked whether it was his understanding that taking South Korean citizenship excluded a person from North Korean nationality, Professor Bluth replied that if a person had defected to the South from North Korea and sought to return, he believed that they would be arrested on return as an escapee from North Korea.

56. South Koreans considered the government of North Korea to be a criminal organisation committing gross human rights abuses against its own people who were living in poverty. The North Korean government, in the eyes of South Koreans, had usurped power which did not belong to it, but nevertheless, North Koreans were their people too, however misguided. Human rights were very important to the South Korean government and to return a North Korean to the hellish conditions considered to exist there was regarded as a betrayal.

57. Professor Bluth explained that there was a demilitarised zone, 4 km wide, between North Korea and South Korea, with no mines, the borders of which were virtually impenetrable and which had wonderful wildlife. There was also Kaesong, a special commercial zone built by South Korea in North Korea, which employed North Korean and South Korean staff. South Koreans could not go there at present because of the tensions between the two countries. Approximately 500 South Korean companies, principally textiles and manual labour, operated in Kaesong. He confirmed that it was near the border and that South Koreans reached it by bus.

58. Chinese people of Han ethnicity look like Koreans and some, if of Korean descent, are also Korean speakers. Koreans in both parts of the peninsula were a very homogeneous people; the separation of the two parts of Korea dated back only 50 or 60 years, but there were now significant cultural and linguistic divergences.

59. South Koreans referred to North Koreans in their country as 'refugees' or 'migrants'; the vast majority of North Koreans did not leave North Korea. North Koreans called themselves 'Cho Song' (a reference to the Cho Song dynasty). South Koreans called themselves 'Korean persons', but used the description 'North Koreans' for the 15 million or so Koreans in the North; they regarded them as brethren but did not consider them as citizens of South Korea while still in the North. North Korean migrants in South Korea were an irritant and were therefore restricted. There were, nevertheless, about 20,000 North Korean migrants in South Korea at the present time.

60. Most of the migrants arriving in South Korea from China, either directly or via south-east Asia, were women, sponsored by churches, often trafficked as brides for Chinese men, due to the shortage of Chinese women for them to marry. The majority of those who reached South Korea came via South-east Asia, in particular Thailand and Vietnam. The process of asserting South Korean nationality in Vietnam or Thailand for the purpose of readmission to South Korea was the same as in the United Kingdom.

61. North Koreans who had never been to South Korea were regarded with caution. If the South Korean Embassy or Consulate abroad sensed that an applicant for citizenship was doing so only *pro forma,* without any real desire to be readmitted, they would not accept them. The same attitude was not taken to South Korean citizens being deported from third countries such as the United Kingdom, who had been born and lived in South Korea before travelling overseas. The authorities tried to use readmission procedures at the embassies and Consulates to 'weed out' those whom they did not wish to admit to South Korea.

62. The South Korean authorities identified three groups among those who sought recognition as South Korean citizens: those who were Korean and entitled to citizenship; those who were not Korean; and those who were from North Korea but not entitled to protection in South Korea under Article 9 of South Korea's Protection and Settlement Act. The 'support' provisions in the Act covered all of the migrants' needs including citizenship.

63. When applying for South Korean citizenship, North Korean migrants were required to take an oath of allegiance to the constitution of South Korea, which was important as an implicit renunciation of loyalty to North Korea, although there was no explicit renunciation ritual. South Koreans were not required to take any oath of loyalty. Any North Korean who was not prepared to take that oath would be regarded as still a North Korean and therefore an enemy likely to do harm to South Korea. All North Korean migrants were required to go through *Hanawon*, even those who had been in the west before returning to South Korea.

64. The Sindaebang processing facility was very secretive; there were no public reports of its activity, nor of a perceptible group of people who were kept there for a long time. Its main purpose was to weed out North Korean agents and spies, with its secondary purpose being to reduce the numbers of migrants coming to South Korea.

65. In re-examination, Professor Bluth explained that the period of detention in Sindaebang had been extended because of South Korean authorities' concerns about their inability to identify and 'weed out' spies in time. There was a surveillance culture in North Korea such that everyone was a spy and security was organised down to neighbourhood levels, and there must be many of those now among the South Korean citizens who had originally been North Korean migrants.

66. Mr Karnik asked about Chinese surveillance of Korean embassies and Consulates. Professor Bluth explained that the source of his knowledge was Lankev's report and his own experience. The issue was politically sensitive for China but it had occurred. After reaching China, North Koreans seeking to enter South Korea were taken to another country such as Thailand or Vietnam to approach the embassies there instead. There was a risk that if a person was identified as a North Korean seeking to enter South Korea, while in China, that the Chinese authorities would refoule them to North Korea.

67. Professor Bluth said that he had no knowledge about fingerprinting at South Korean embassies save that the South Korean government had agreed to share its fingerprint database

with the United Kingdom government. The South Korean authorities would not remove people to North Korea, but if they found them to be Chinese, they would remove them to China. He was unable to say whether that would need the cooperation of the Chinese authorities; that was not his area of expertise.

68. If the South Korean government believed an individual was Chinese, although they really were North Korean, there was a risk of their being deported to China because even expert linguists could not always distinguish Chinese Koreans from North Koreans.

Professor Goodwin-Gill

69. Professor Guy Goodwin-Gill is Professor of International Refugee Law at Oxford University and a former Professor of Asylum Law at Amsterdam University. He is a Senior Research Fellow of All Souls College. His work is well known internationally and to the Upper Tribunal, which has often benefited from expert evidence, in writing and sometimes orally, from Professor Goodwin-Gill. He submitted his report in his capacity as an international lawyer, based on his research, experience and knowledge of refugee protection, the negotiation and drafting of the Refugee Convention and its 1967 protocol, jurisprudence relating to the interpretation of that Convention and Protocol in a number of jurisdictions, and human rights and international law in general.

70. His instructions were to assist the Upper Tribunal as to the legality in international law of the December 2011 Readmission Agreement which came into force in June 2012. He understood it to be the respondent's position that North Koreans fall outside refugee protection because they either are South Korean citizens by operation of South Korean law or may be entitled to claim such citizenship, and therefore can be sent to South Korea without violating the United Kingdom's international obligations. His opinion also dealt with recent interpretation of the Refugee Convention in *MA (Ethiopia) v Secretary of State for the Home Department* [2009] EWCA Civ 289; *KK and ors (Nationality: North Korea) Korea CG* [2011] UKUT 92 (IAC); and *Secretary of State for the Home Department v SP and ors (North Korea)* [2012] EWCA Civ 114. We heard no oral evidence from Professor Goodwin-Gill.

71. It can be seen from the above summary of his instructions that Professor Goodwin-Gill's evidence to the Upper Tribunal is not country evidence, properly understood. Rather it is a combination of expert opinion on the proper interpretation to the Refugee Convention and its Protocols, and an analysis of the reasoning in three recent decisions. We summarise the parts which deal with the status and operation of the United Kingdom-South Korea Readmission Agreement and matters relating thereto. Despite Professor Goodwin-Gill's recognised expertise, the interpretation of the Refugee Convention and its Protocols before the Upper Tribunal and the Court of Appeal is a matter of argument, not evidence.

72. After setting out the relevant international law (the Refugee Convention, the EU Qualification Directive, and the 1969 Vienna Convention on the Law of Treaties, Article 31), discussion of the Readmission Agreement begins at section 4 of the Report. Professor Goodwin-Gill notes that Article 10 of the Readmission Agreement provides that it 'shall not affect the obligations of the Contracting Parties arising from other agreements to which they are party'. South Korea and the United Kingdom are both now parties to the Refugee Convention.

73. Professor Goodwin-Gill's report then sets out the readmission obligation and where in the document the means of proof of nationality is to be found. He notes that those who can

prove their South Korean nationality are to be readmitted without formalities, whereas where there is an 'absence of proof of nationality' a readmission request is required under Article 3(1). He draws the conclusion that the Readmission Agreement therefore contemplates the readmission of those who are not citizens either in fact or in law and whose nationality remains undetermined. Article 3(4) provides after 20 days from such application for deemed agreement to readmission without consideration of the evidence presented if no decision has been made by the requested state, and in Article 4, for return to the requesting state if within a period of three months after readmission, the requirements for readmission by the requested party are not met.

74. At section 4.1 Professor Goodwin-Gill compares this agreement to that which the United Kingdom entered into in 2006 with Algeria. There are, he says, marked differences, since the South Korean agreement exposes to involuntary removal individuals who have a well-founded fear of persecution in North Korea but are not South Korean citizens or have not been so determined. He considers that the extended scope of the agreement is incompatible with the United Kingdom's Refugee Convention obligations.

75. Section 4.2 of the report deals with treatment on return to South Korea. Professor Goodwin-Gill states that he is not an expert in South Korean law or the treatment in South Korea of North Korean defectors. This part of his report derives from other reports which are before the Upper Tribunal and adds nothing to that evidence.

76. Section 5 sets out the writer's conclusions. He considers that despite the reservation in Article 10 that the agreement's provisions are in addition to any international obligations of the contracting states, its operation is nevertheless incompatible with the United Kingdom's Refugee Convention obligations since North Koreans are to be required to return to South Korea even when they are not accepted as South Korean citizens. He does not consider that the return provision at Article 4 is a solution consistent with the United Kingdom's international obligations for those who, after such return, are not accepted as South Korean citizens.

77. Professor Goodwin-Gill notes that the evidence suggests that birth within the Korean peninsula to parents, at least one of whom is a Korean citizen, may establish a *presumptive* entitlement to South Korean citizenship but that exceptions exist. In contrast with the Algerian Readmission Agreement, the South Korean agreement does not confine its readmission provisions to nationals, as required by international law, and specifically the Refugee Convention. He criticises the process of 'investigation, interrogation and 'detention'' after return to South Korea, based on other expert evidence before us, as potentially going further than is proper in the circumstances and being incompatible with international requirements for liberty and security of the person, noting that there is no guarantee in the agreement as to the treatment of those readmitted to South Korea.

Dr Pillkyu Hwang

78. Pillkyu Hwang is a human rights lawyer at the Gonggam Human Rights Law Foundation, the only non-profit full-time public interest lawyers' group in South Korea. He specialises in international human rights law and human rights issues concerning migrants and refugees. He holds LLB and PhD degrees in law from Seoul National University. He has a high profile in human rights law in South Korea, having worked with various international organizations such as the International Organization for Migration (IOM) Seoul Office, the UN High Commissioner for Refugees (UNHCR) Representation in Korea, and the UNESCO Beijing

Office, as well as numerous national institutions/NGOs including the National Human Rights Commission of Korea, the Korean Bar Association, Minbyun-Lawyers for a Democratic Society, and the People's Solidarity for Participatory Democracy (PSPD). In 2009, he was the first recipient of the Seoul Bar Association's Young Lawyer Award and for the last two years he has been Chair of the Asia Pacific Refugee Rights Network and the Asian Consortium for Human Rights Based Access to Justice.

79. Dr Hwang was the principal drafter of the South Korean Refugee Act 2011 which came into force in July 2012, and was also joint author and editor with Professor In-seop Chung of Seoul National University Law School of the first Korean book on refugee law, 'The Meaning of a Refugee and its Recognition Procedure', published by Seoul National University Press in 2010. Professor Cheung is the former President of the Korean Society of International Law.

80. Dr Hwang's evidence was sourced in detail to the relevant South Korean law and relevant national and international commentary.

Political history of Korean peninsula

81. Dr Hwang set out briefly the political history of the Korean peninsula. Until 1910, the Chosan Dynasty ruled a unified Korea. Between 1910 and 1945, the peninsula was occupied by Japan. The peninsula was effectively partitioned after the end of the Second World War, with the Soviet Union occupying what is now North Korea, and the United States occupying South Korea. In 1948, North Korea declared itself to be an independent state and the only legitimate government of the Korean peninsula. South Korea responded by declaring that the Korean peninsula was its territory and that the North should be restored to its government.

82. In 1950, the Korean War broke out. In 1953, the conflict ended with an armistice but there has never been a final treaty and the two countries are still theoretically at war, each country regarding the nationals of the other as 'their nationals to be rescued'. Both Koreas continue to claim all residents of the Korean peninsula as their citizens.

The 'protection' procedure

83. Dr Hwang summarised the 'protection' procedure (paragraph 5.19.1 of his report) as follows:

> "A North Korean escapee's right to enter and reside in South Korea and protection and support measures is contingent upon the following:
> 1. Application for protection under the Protection and Settlement Act
> 2. The expression of a desire to obtain protection in South Korea.
> 3. Denunciation of North Korean sovereignty.
> 4. Confirmation of North Korean nationality; and
> 5. Completion of the prescribed protection procedures, comprising of:
> (i) detention without grounds for a period of up to six months during which a joint investigation will be conducted by government agencies including the South Korean National Intelligence Service (NIS); and
> (ii) a further three month social assimilation in quasi-detention conditions [*Hanawon*]."

84. For North Koreans to exercise their right to South Korean nationality, they had to defect from North Korea by what was now called the 'protection determination procedure' set out in the Protection and Settlement Act 1997. Any North Korean outside South Korea, wherever they were in the world, was entitled to make a protection application for recognition as a South

Korean citizen, unless they were a spy or undesirable person as set out in the Presidential Decree. No constitutional provision excluded any person who had been outside North Korea for more than 10 years from making such an application.

85. Article 4(3) of the Protection Act required such persons to pledge loyalty to South Korea, and to 'adapt themselves to the liberal democratic legal order of the Republic of Korea', implicitly denying that North Korea is a sovereign nation and that North Korean nationality existed. Dual nationality was not an option. For such a person, in Dr Hwang's opinion, until the 'protection' procedure was complete South Korea could not be 'the country of his nationality' in Article 1A Refugee Convention terms.

86. His evidence was that while any North Korean national who was a Korean before the establishment of the Republic of Korea on 9 September 1948, or who has at least one North Korean or South Korean parent, is a national of South Korea, on the basis that under the South Korean constitution, North Korea is included within the territory of South Korea.

87. The right to enter and reside in South Korea does not accrue automatically to North Koreans, who are required to apply for protection under Article 7 of the Protection Act and submit to the 'protection' procedure, in order to be subject to the rights and duties of South Korean nationals, including the right to enter and reside in South Korea. There is no other legal means by which North Koreans can enter South Korea and only the completion of the 'protection' procedure enables a North Korean migrant to enjoy the right of residence in South Korea. In South Korea it was generally accepted that the South Korean Embassy in China and its satellite offices were monitored by the Chinese authorities and do not openly receive North Koreans, to avoid diplomatic conflict. He was unable to say whether those attempting to apply for protection at North Korean diplomatic offices in China would be fingerprinted. Given the absence of facilities to make the application in China, many North Korean escapees travelled on to a third country such as Thailand, Vietnam, or the United Kingdom, to make their protection applications.

88. Under Article 9(1)(4) of the Protection and Settlement Act, South Korean protection is not available to 'persons who have earned their living for not less than 10 years in their respective countries of sojourn'. Dr Hwang had discussed the meaning of this provision with successive Deputy Directors of the Settlement Support Division of the South Korean Ministry of Unification, by telephone with Mr Gihwan Yoo on 13 January 2010, and in person with Mr Jong-wook Han, at a round table on the treatment of North Korean migrants, at the Korea Institute for National Unification on 28 February 2013. In both cases, he was advised that a North Korean migrant who applied for protection and successfully went through the 'protection' procedure would be accepted to live in South Korea, and that in principle, the period of his or her stay in a third country would not affect that protection. However, there was no accessible public information to support those statements.

The 'joint investigation' procedure

89. In order to successfully complete the 'protection' procedure, North Korean migrants must undergo the joint investigation procedure, pursuant to Article 7(3) of the Protection Act and Article 12 of the Presidential Decree relating thereto. The joint investigation was lead by the NIS, with other government agencies. Under Article 12(2) of the Presidential Decree, the NIS decides the contents, method, duration, establish and operation of facilities for the joint investigation process. The NIS is the principal security agency in South Korea with responsibility for information collection and counter-intelligence.

90. The joint investigation was not a detention, and was to be conducted in accordance with the relevant laws. In practice, those under investigation were held in custody: Articles 12(2) and 15(2) of the Presidential Decree stated that the investigation could last up to six months, and that the protection decision should be taken within one month thereafter, or longer if there were 'inevitable reasons' for a longer period. During the joint investigation, the NIS would review the contents of the protection application and investigate first, whether the applicant was North Korean; second, whether the applicant was a North Korean spy; and in the light of these investigations, it would then review and determine the applicant's eligibility for protection and settlement support measures.

91. The joint investigation is an administrative procedure, which Dr Hwang considered lacked due process. There was no right to counsel during the process, and he was unaware of any individual who had been permitted to see a lawyer during the 'protection' procedure.

92. The NIS decision on a joint investigation was confidential, but the Ministry of National Defence was one of the bodies involved in the joint investigation, and its Instruction on the Operation of Military Joint Investigation Facilities was a publicly available document. Article 13 of that document state that the Intelligence Commander can use North Korean migrants in press coverage, press conferences and welcoming assemblies; Article 14 provides that heads of any government agency, at any level, may continue to do so even after the 'protection' procedure is complete, subject to the prior permission of the Minister of National Defence. There is no reference to consent by the North Koreans themselves. Some North Koreans had been used for anti-communism lectures to military personnel, civil servants and the general public. Dr Hwang considered it likely that at least some had been asked to work for the NIS as informants.

93. Dr Hwang's attempts to obtain further information on the joint investigation procedure from the NIS in 2010, during the state compensation case, had been refused on national security grounds and the court had accepted the NIS explanation. A weekly journal reporter had made a similar request in May 2013 but could get no more information than the relevant law, presidential decree and ministerial regulation. A member of the National Assembly had been similarly rebuffed.

94. The only supervision of the NIS was the Information Committee of the National Assembly and that Committee could be required to keep the information it received confidential, on national security grounds. South Korea did have a Freedom of Information Act but it was clear that any attempt to find out more about the joint investigation would always come within the national security exception in that statute.

95. All family members, and all applicants underwent the process, even minors. Dr Hwang had tried to find out whether there were special arrangements for families. According to his two clients, and a couple of senior researchers of the Korean Institute for National Unification (a South Korean government think tank), there were no special arrangements for families. Men and women were separated both in the JIC and in *Hanawon*. He was not aware of any case where only one family member was rejected and considered it unlikely that such information would be made public.

Social Adjustment Education programme (*Hanawon* centres)

96. Once the 'protection' procedure was successfully completed, and a person had been found to be North Korean, not a spy, and given protection, they were required to undergo

social integration training, to re-educate them as South Koreans. The programme was administered by *Hanawon*, a settlement support facility established under Article 10(1) of the Protection Act.

97. The process took three months in a *Hanawon* facility, during which time the North Korean migrants were not allowed to leave and go into South Korean society. It was often suggested that this was a final attempt to weed out North Korean spies and remove them from the 'protection' procedure.

98. HRW had been refused access to *Hanawon* for unspecified 'security reasons'.

The grant of protection

99. Article 6 of the Protection Act authorised the Consultative Council, whose members are drawn from the government sector, to deliberate on the grant of protection but the final decision is made by the Director General of the NIS (Article 7(3) Protection Act and Articles 12(2) and 15(2) of the Presidential Decree). In practice, the Director General usually made such decisions without the need to ask the Consultative Council to deliberate; the Council was not a decision making body.

100. Criminals were not in principle denied such protection unless they came within the exclusions in Article 9(1) and the Presidential Decree. It was unclear whether all escapees whose North Korean nationality was confirmed were actually given the right to exercise their South Korean nationality.

101. Where a person was outside South Korea but had already been granted protection through the 'protection' procedure, there was no barrier to their re-entry, unless they had travelled to North Korea or met a North Korean who had not gone through the 'protection' procedure. In that case, on return they would be subject to prosecution under any or all of the National Security Act, Inter-Korean Exchange and Cooperation Act, and other national provisions.

102. On the successful completion of the investigation and integration processes, North Koreans had the right to exercise fully their South Korean nationality. There was no procedure for relinquishing that nationality when obtained, save for those who voluntarily acquired the nationality of a foreign country (Article 15). North Korea was not a 'foreign country' for this purpose since South Korea did not accept its existence. Where nationality of a 'foreign country' was acquired, a person could be returned to that country.

Refusal of protection

103. Article 9(1) of the Protection Act excludes from protection certain criminal offenders; persons 'who have earned a living overseas for not less than 10 years'; persons who apply for protection more than a year after their arrival in South Korea, which Dr Hwang considered would only be possible by people smuggling; and other persons specified in a Presidential Decree as unfit for protection, currently as follows:

> "1. Persons who are expected to bring about serious political and diplomatic difficulties to the Republic of Korea if it is decided that they are subject to protection;

2. Persons who, during the provisional protection period, used violence and destroyed facilities such that there is concern that they will cause serious harm to other people's personal security; or

3. Persons who obtained the legal right to reside in a third country after escaping from North Korea."

104. The ten year provision is disapplied in 'inevitable circumstances' which are also stipulated in the Presidential Decree: those for whom it was 'impossible to enjoy free activities due to detention and imprisonment against their will', long-term detention in a country of sojourn before coming to South Korea; and those for whom it is 'recognised that it was impossible to lead normal or stable lives due to hiding or absconding in their respective countries of sojourn'; and other similar circumstances acknowledged by the Minister of Unification as such.

105. There exists a theoretical right to challenge the conduct of the 'protection' procedure but it is in practice unenforceable because those undergoing the procedure are held incommunicado and no contact with lawyers or the outside world is permitted until the process has been completed.

106. Unless a person was successful in their application for protection, there was no recourse against the South Korean authorities' conclusions except through a general administrative appeal process under the Administrative Appeals Act or the Administrative Litigation Act. He was not aware of any case brought under either provision; in any event, the effect of such applications would not be to suspend deportation. Refusal of visa or entry denial in South Korea was not subject to administrative appeal or litigation.

107. No public information was available about the number of applicants whose protection applications were rejected under Article 9(1)(6) of the Protection Act, although there were published figures for successful applications. He was unable to say whether, in the case of a rejected application, reasons are given.

Refoulement risk

108. Dr Hwang was unaware of any statistical evidence regarding the return of Chinese Koreans to China. To the best of his knowledge, there was no evidence that South Korea had refouled any Korean, whether North Korean or South Korean, to China without both the permission of the returnee and the assent of the Chinese authorities. However, the joint investigation was an 'extremely clandestine' process which lacked any due process or monitoring.

109. Where persons were discovered to be North Korean intelligence agents, Dr Hwang's understanding was that they would still not be refouled but would be indicted and prosecuted under the South Korean National Security Act. A number of cases of such prosecutions had been publicised by the NIS but he did not know whether the list was exhaustive or selective. There was just no accessible public information about how many people unsuccessfully sought protection, what happened to them, and where they were now.

Dr Hwang's clients

110. Dr Hwang has represented a number of applicants in the 'protection' procedure in South Korea, in proceedings at all levels from the Seoul Administrative Court through the South

Korean Supreme Court, from 2005-2013. In particular, he represented 8 successful Burmese and 3 successful Chinese applicants, both cases taking place in 2008.

111. Dr Hwang had personally handled cases for two clients arising out of the 'protection' procedure and the JIC. His clients alleged 'illegal detentions, beatings and other degrading treatments'. The information on these cases appears in various places in the report. For convenience, we summarise them as follows:

(a) **The habeas corpus case**, which lasted from 2010-2013, concerned an admitted Chinese citizen, but of Korean ethnic origin, who was detained for six months in the JIC after arriving in South Korea on a Chinese passport and applying for protection at the airport. Dr Hwang's client was not permitted to make any family telephone calls during her six-month investigation in the JIC.

Two weeks into the joint investigation, she admitted that she was not North Korean but a Chinese citizen. The NIS asked her to give information concerning her brother, who was already in South Korea but was the subject of charges of espionage on behalf of North Korea. He was also Korean-Chinese.

Based on the sister's evidence, the brother was arrested and indicted and the ensuing publicity revealed the sister's whereabouts. Her family asked him to try to secure her release on the basis that the detention and investigation was illegal and lacked due process. As at 20 May 2013, Dr Hwang's case was still pending before the Korean courts. A removal order to China had been made.

(b) **The compensation case**, which lasted from 1999-2002 and went to the South Korean Supreme Court. Dr Hwang's client travelled to South Korea via China and Vietnam, with entry clearance for protection purposes granted in Vietnam. He was accompanied by a woman, a Chinese citizen purporting to be a North Korean escapee. That client had been detained in the JIC for one month, where he had been ill-treated. His companion's real nationality was discovered but Dr Hwang did not know whether she had been deported to China or was still in South Korea.

112. In each case, judgment had been in favour of the Republic of Korea, mainly for lack of evidence. During the progress of the cases, both clients had attempted suicide because of the psychological pressure and degrading treatment in the joint investigation.

113. Dr Hwang had no direct experience of successful protection applicants who might have subsequently sought protection in a third country, but his understanding was that as a matter of law they were free to do so, just like any other South Korean.

Dr Young-hae Chi

114. Dr Young-hae Chi is an university instructor with the Department of Korean Studies at Oxford University. On 2 July 2008, in the context of the First-tier Tribunal proceedings, he provided expert evidence on GP's origin. His report was based on an interview lasting seven and a half hours. His assessment is based on linguistic evidence and on the appellant's knowledge of North Korea. Describing that lengthy interview, Dr Young-hae Chi said this:

> "The interviewer's first impression of [the appellant GP] was that he lacked confidence and was a reluctant speaker. This impression turned out to be only half-true. In some situations, he was a proactive and spontaneous speaker, such as when he described frustration about the interview at the

Home Office, or the sense of fear when he faced an angry North Korean mob after being extradited to North Korea following an unsuccessful escape. During the interview the voice was sometimes feeble, and the expression of thoughts suffered unclear articulation. There were occasional hints that he is intellectually less than fully motivated, and the judgment and understanding of the events and situations that may affect him potentially was slow."

115. Dr Young-hae Chi's opinion, which is fully set out in his report, was that GP was born, brought up and lived in North Korea before his final escape, and that he was not a native Chinese or a member of the Korean diaspora (the *Joseonjok*) who live in the Yenben Korean Autonomous District in Jirin Province, China, near the Chinese-Korean border, and who are descendants of Koreans who migrated to China in the early 20th century, long before the division of China. He noted that the appellant had 'a rather unusual linguistic aptitude with the Chinese language' and had omitted a few days from the list of national holidays, but that nevertheless, his description of his home city in the North Korean province of Hamgyeonbuk-do was wholly convincing, his account internally coherent, and that his evidence contained some pieces of evidence which nobody who had not lived there would know. His accent was typical of his home city.

APPENDIX D

Country Materials

UKBA Reports

1. The most recent country information produced by the UKBA is in its 'Key Documents' report of 3 September 2009. The earlier 21 July 2009 Country of Origin Report has been removed from the UKBA website and we only have an excerpt from it in our bundle. In the Key Documents report, the UKBA deals with the question of North Koreans at [3.36]-[3.40]. The passage is not long and is worth citing in full:

> **"North Koreans**
>
> 3.36 The USSD Report 2008 recorded that "The government continued its longstanding policy of accepting refugees from the [Democratic People's Republic of Korea – North Korea] DPRK, who are entitled to [Republic of Korea] ROK citizenship. The government resettled 2,809 North Koreans during the year [2008], resulting in 15,057 North Koreans resettled in the country." The Human Rights Watch World Report 2009, North Korea, released on 15 January 2009, noted that "South Korea accepts all North Koreans as citizens under its constitution. South Korea has admitted more than 13,000 North Koreans..."
>
> **Treatment of North Korean refugees**
>
> 3.37 The website of the Republic of Korea, Ministry of Unification, accessed on 31 July 2009, advised as follows:
>
> > "The South Korean government operates support facilities called *Hanawon* for newcomers from North Korea to help them resettle in South Korean society. *Hanawon* was established under the Act on the Protection and Settlement Support of Residents Escaping from North Korea of 1997. *Hanawon* includes a main center and one branch facility that together can accommodate 400 people simultaneously and 2,400 in one year ... The resettlement program at *Hanawon* is an eight-week course for social adjustment in the South. The ultimate objective of the course is to instill confidence in the newcomers, narrow the cultural gap, and motivate them to achieve sustainable livelihoods in a new environment … Furthermore, the government provides them with a variety of financial and non-financial support to assist them with resettlement. The newcomers receive, for example, an initial cash payment, incentives related to employment and education, medical support, and favorable terms for leasing apartments. The government also creates a new family registry as they are South Korean citizens with all rights and privileges under the Constitution."
>
> The Ministry of Unification website sets out a flow chart for the settlement of North Koreans, from their initial application onwards, and gives details of support provided after the initial eight-week course, both by the state and by NGOs. A BBC News article of 9 July 2009 noted that all North Korean refugees "are debriefed by the South Korean security services before admission [to *Hanawon*], to ensure that they are not North Korean secret agents."
>
> 3.38 The BBC News article of 9 July 2009 commented that North Koreans had arrived in South Korea "after months, or years, of hardship and trauma, only to face another hurdle: how to adjust to what must seem like an alien landscape, with its bewildering, free-wheeling free market, and its strong emphasis on individual responsibility … Compared to the old North Korean certainties of a command economy and family networks, capitalism can be very lonely." The BBC article recorded that since July 1999, when the first centre opened, the *Hanawon* project has provided medical treatment, psychological counselling and practical support to almost 16,000 refugees from the North.

> 3.39 The UN News Service reported on 25 January 2008 that the UN Special Rapporteur on the human rights situation in the Democratic People's Republic of Korea (DPRK - North Korea), Vitit Muntarbhorn, "welcomed" the efforts of the South Korean Government has made to assist people fleeing North Korea. Mr Muntarbhorn praised the support given by the South Korean Government to "... over 10,000 nationals from the DPRK it has accepted for settlement."
>
> 3.40 UN Special Rapporteur, quoted in the same source, also recommended that the government should provide "'longer-term facilities to help them adapt to their new lives, and social, educational, employment and psychological back-up, with family and community based networks; more family reunion possibilities; more protection to be afforded to those who do not receive the protection of other countries; and a more active information campaign using success stories of those who have settled in the Republic of Korea to ensure a positive image and nurture a sense of empathy for those who exit from the DPRK in search of refuge elsewhere.'" The article recorded that the UN Special Rapporteur "…praised increased support for these persons, such as through longer term protection periods, the provision of pensions, and employment and other opportunities." He was "encouraged by educational and training programmes for the young generation from the DPRK, complemented by caring neighbours who help them adapt to society." Mr Muntarbhorn also highlighted the need for longer-term care for torture victims and older North Koreans who had escaped. He further called for more attention to be given to mixed marriages, where a North Korean has a relationship and child with a national of a third country (i.e. neither North nor South Korea) on the way to South Korea, but the child is left in the third country."

US State Department

2. A number of US State Department publications are before us, including in particular its 11 March 2005 publication as to the status of North Korean asylum seekers in the United States, and general commentary on the importance of human rights in North Korea. For present purposes, the US State Department Reports on conditions in South Korea are the most relevant. The reports in the bundle concern conditions in North Korea, which are not in issue: it is accepted that these appellants and all North Korean migrants are refugees in relation to return to North Korea.

3. The South Korean reports are not included in the bundle but are publicly available. The latest such report is for 2013, published in February 2014. The report records, in relation to North Korean migrants, that:

> "The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. …
>
> Access to Asylum: The law provides for the granting of asylum or refugee status. The government considers refugees from North Korea under a separate legal framework and does not include refugees from North Korea in refugee or asylum statistics. The government has an established system for providing protection to refugees, but the government does not routinely grant refugee status or asylum in most non-North Korean cases. A new independent law, the Refugees Act, took effect July 1 [2013]. …

> Refoulement: In July authorities granted Jin Jingzhe, a self-proclaimed Chinese practitioner of Falun Gong, temporary refugee status, based on his appeal of a previous court decision and released him from custody. Jin, who arrived in South Korea in 2008, was arrested in 2011 and detained at Hwasung Foreigner's Protection Center under threat of deportation. In 2011 Seoul Immigration Office officials deported a 17-year-old Mongolian student after police found he was not in the country legally. His parents were not deported because officials could not locate them. …
>
> The government continued its longstanding policy of accepting refugees, or defectors, from North Korea, who by law are entitled to citizenship in South Korea. The government resettled 970 such refugees during the first half of the year, raising the total to slightly more than 25,400 since 2002. Many refugees from North Korea alleged societal discrimination by South Koreans and cultural differences that resulted in adjustment difficulties. The government provided adjustment assistance services to recently settled refugees, including rental aid, exemption from education fees for middle- and high-school students, medical assistance, business loans, and employment assistance. The government also operated Hana Centers, or Centers to Adjust to Regions, which educated refugees about adapting to specific geographic areas, provided counseling services, and aided social adjustment."

4. In relation to refoulement to either China or North Korea, only one instance is cited, concerning the return of a Chinese citizen to China:

> **"Refoulement**: As of late November [2012], Jin Jingzhe, a self-proclaimed Chinese practitioner of Falun Gong who arrived in South Korea in 2008 and was arrested in September 2011, remained detained at Hwasung Foreigner's Protection Center under threat of deportation and awaited a court's decision on his appeal."

5. Two points are relevant: Mr Jin admits that he is Chinese and entered South Korea in 2008 (presumably posing as a North Korean migrant). Although he is threatened with removal, he has not been removed in a period of at least four years.

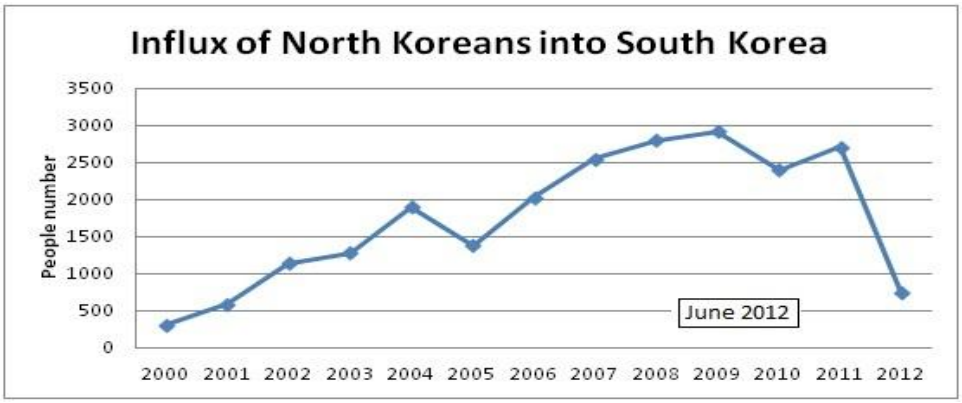
Amnesty International

6. On 28 November 2008, an Amnesty International article called on South Korea to 'repeal or fundamentally reform the National Security Law'. Whilst noting that there have been some instances when the 60 year old NSL was used as a form of censorship, the report acknowledges that South Korea has security concerns regarding North Korea.

7. The report cites two instances in which Professor Oh Se-chul was accused of 'enemy-benefiting' activities but the charges were roundly dismissed by the Seoul District Court. No other articles or publications critical of South Korea from Amnesty International are before us and this article is now over five years old.

IPI Global Observatory

8. In an article published on 23 August 2012 in IPI Global Observatory, written by Cheong Ju Kim, an inspector with the South Korean National Police agency who was then a graduate student on Columbia University's Master of International Affairs course, he reported that China's attitude to North Korean refugees was hostile and that North Koreans were particularly vulnerable once in China. South Korea had been seeking to persuade China to take a more relaxed stance. The article contained a table showing the numbers of North Koreans arriving in South Korea in recent years with a sharp drop in 2012, reflecting the first few months of Kim Jong-un's leadership:



9. In his article, Mr Cheong stated that:

> "The situation of North Korean defectors in China is extremely grim. China regards them as illegal border crossers that should be sent back to North Korea and repudiates the requests of the international community to acknowledge them as refugees. Their illegal status intensifies their vulnerability, because compulsory repatriation to North Korea entails severe punishments, making defectors cling to whatever harsh alternatives they have, such as hiding and waiting for assistance from the South Korean government and NGOs, or escaping to adjacent states such as Thailand, Vietnam, and Laos. This latter alternative often requires hiring assistance from brokers or volunteering to be trafficked or indentured as a means to cross the border. …
>
> The number of North Korean defectors crossing the Chinese border is decreasing since Kim Jung-un has reinforced border security. The annual influx of North Koreans into South Korea had long been an increasing trend, but it sharply dropped by about 50 percent relative to 2011 during the first six months of Kim Jung-un's leadership. Brokers organizing the escape from North Korea are becoming more organized as the business has become more lucrative due to the increased risk. Some Chinese human trafficking organizations are traveling to North Korea to lure young women by promising a better life out of poverty, only to sell them for $500 to Chinese farmers in need of housewives. …
>
> Diplomatic conflict about the defector issue is not likely to be solved easily. China has been avoiding any disputes with North Korea and is disregarding the human right infringements suffered by North Korean defectors. China adamantly repatriates North Korean defectors despite continuous requests from South Korea for China to reconsider its policy. China, in turn, presses the South Korean government to stop assisting North Korean defectors."

10. Mr Cheung noted that outside South Korea, neighbouring states were reluctant to assist North Korean migrants and that UNHCR in its 'Global Trends' report for 2011 had recorded only 1052 North Koreans given refugee status around the world, with the highest number being 603 in the United Kingdom. He expressed hope of more openness under Kim Jong-Un.

Press reports in 2010

11. On March 25 2010, North Korea sank the South Korean warship, the Cheonan. On April 20 2010, the South Korean authorities arrested two North Korean intelligence agents accused of plotting to assassinate Hwang Jang-hyŏp, the highest-ranking North Korean ever to defect. Mr Hwang was a former Secretary of the North Korean Workers' Party and Chairman of the Supreme People's Assembly. The reports fuelled suspicions in South Korea that some of the 20,000 North Korean defectors currently living in the South could be sleeper agents, dispatched by the North Korean regime.

12. On 20 May 2010, Radio Free Europe/Radio Liberty reported that South Korea blamed North Korea for the sinking of the Cheonan and was threatening retaliation. On 25 May 2010, Voice of American News (VOA) published an article stating that North Korea had broken off relations with South Korea, and on 12 June 2010, that North Korea had threatened the South.

13. On 11 June 2010, a more reflective piece in Radio Free Asia, entitled 'Cheonan fallout hits defectors', reported the outcome of a round table discussion on May 21 2010, between South Korean students and North Korean migrants living in South Korea. The North Korean students were hurt by being questioned as to why North Korea would do such a thing. They were South Korean citizens now and were not answerable for the actions of the North Korean regime:

> "…As soon as investigations confirmed the North's involvement, young North Korean defectors, who are all now citizens of South Korea, said they were subjected to constant questioning by classmates over the incident.
>
> "Before, when I introduced myself to a stranger, saying that I was from North Korea, people would just think 'Wow, he came from a tough place,'" one young defector told a round-table discussion between defectors and South Korean students sparked by the sinking incident. "However, now, when I introduce myself as someone born in North Korea, people can't avoid thinking of the Cheonan," he added. "I think I sense this prejudice. I sense that people feel that 'these North Koreans are dangerous,' so, since the Cheonan incident, I have no longer said I am from North Korea."…
>
> Children and young adults who defect to South Korea from the Stalinist North already face a long battle in adapting to life—and education—in a capitalist country. After receiving a North Korean-style education, which focuses on the 'supreme goodness' of the regime and stifles creative thinking, they often spend years in hiding, often in China, missing out on several years' education as their South Korean peers are flocking to cramming schools to improve their grades. …
>
> A South Korean student said that it is common for students in South Korea to pretend to ignore the existence of North Korean defectors in their midst. "From the moment North Korean defectors set foot on South Korean soil, they became citizens of the Republic of Korea," he said. "They used to live in North Korea but they are now citizens of the Republic of Korea, and I don't understand why they should feel guilty for actions conducted by North Korea."
>
> Another said he finds it regrettable that North Korean defectors in the South are hurt and offended by attitudes toward them."

14. War did not break out in 2010 nor, despite a brief flare up in 2012, has it done so to date.

BBC News

15. An article headed 'North Korea enters 'state of war' with South', dated 20 March 2013 recorded renewed tensions between North Korea and South Korea. The tensions did not subsequently develop into renewed warfare between the two states.

European Parliament Resolution on the situation of North Korean refugees (24 May 2012)

16. The Parliament deplored the human rights situation in North Korea and noted the May 2012 report by the South Korean National Human Rights Commission on human rights violations in North Korea, based on some 800 interviews with refugees, including several hundred defectors

who survived the prison camps. In the preamble to its conclusions, the Parliament noted the 2010 North Korean Ministry of Public Security decree which made defection 'a crime against the nation' and the statement in December 2011 by the North Korean authorities that they would 'annihilate up to three generations of a family where a family member fled the country during the 100 day period of mourning for the death of Kim Jong-il.

17. The report notes that the UNHRC deplored 'the grave, widespread and systematic human rights abuses in North Korea, in particular the use of torture and labour camps against political prisoners and repatriated citizens of the DPRK'; that large parts of the population are suffering starvation and a third of North Korean women and children were reported to be malnourished in 2009 by the World Food Programme; that over the years, up to 400,000 North Koreans had fled the country, many now living in China as illegal migrants, but most of whom had no intention to remain in China, to which they travelled in order to make their way to South Korea or other parts of the world. A large number of the North Korean refugees in China were women, many of whom were victims of human trafficking, sex slavery and forced marriage, whose children were considered stateless in China and either abandoned or 'left to the same fate as their mothers'.

18. China had entered into a 1986 repatriation agreement with North Korea, whereby UNHCR asylum procedures were not available to North Korean citizens in China, and up to 5000 North Korean refugees were arrested and returned there from China every year. Eye witness reports described the treatment of defectors returned to North Korea: they were systematically subjected to torture, imprisoned in concentration camps and may even be executed. Entire families were imprisoned, including children and grandparents, on the basis of 'guilt by association; those who returned pregnant were allegedly forced to abort and there was a risk of babies with Chinese fathers being killed. Satellite images and accounts from defectors supported allegations that North Korea operated at least six concentration camps and numerous 're-education' camps housing up to 200,000 prisoners, most of them political

19. The recommendations called on North Korea and China to change these practices and on China to treat North Korean defectors as 'full citizens of the Republic of Korea' and to grant them safe passage to South Korea or other third countries, and to treat them as refugees *sur place* with access to UNHCR procedures and to legal residence, if married to Chinese citizens.

Quality Solicitors letter (14 October 2011)

20. By a letter of 14 October 2011, Ms Charlotte Buckley, senior caseworker with Quality Solicitors (who represent MP) reported the outcome of their investigations into the procedures at the South Korean Embassy in London. They had been told that an applicant for South Korean citizenship is required to attend twice at the Embassy, the first time to make the request and be given a list of required documents; and the second time, for an appointment with the Consulate. Both appointments must be made in person; the Embassy was not prepared to indicate the likely timeframe for recognition of an applicant as a South Korean citizen, or refusal of that application.

International Crisis Group

21. The ICG report "Strangers at Home: North Koreans in the South" dated 14 July 2011 records that before 1999, there were hardly any North Korean defectors to South Korea and those small numbers who did arrive were Cold War heroes, true defectors of men from the North Korean elite. The numbers had surged since then, and were now mostly women, many of them single

mothers with dependent children, ill educated, under nourished, and socially discriminated against in South Korea.

22. By December 2010, a total of 20,360 defectors had arrived in the South, and the number was expected now to remain steady at 2500-3000 a year. Restrictions in North Korea had been tightened, including greater punishments for attempting to defect. Out of a total population of 72 million people on the Korean peninsula, approximately 500,000-750,000 remained separated from family members by the North-South division.

23. Integration of North Koreans into South Korea was problematic; South Korea was aware of the need to address it because of the possibility of total failure of the North Korean state in the future, which might create a massive outflow of refugees because of the brutal living conditions in the North. The issue was a constant risk to already delicate negotiations between the Koreas.

24. The report gives examples of a small number of North Korean intelligence agents who infiltrated the South through the 'protection' procedure and passed classified information back to the North including the names of South Korean agents operating in North Korea, who were killed; contact and background information on 100 senior military officers; and the whereabouts of prominent North Korean defectors (from the early phase of defection), one of whom, Hwang Jang-hyŏp, was later the subject of an assassination plot by two other intelligence agents posing as ordinary defectors. They were identified and sentenced to 10 years' imprisonment in South Korea in June 2010. There is no suggestion that they were refouled to North Korea.

Freedom House

25. The bundle included the Freedom in the World report for 2009 on South Korea. That document is significantly out of date, dealing with events now six years old. The most recent available report is that for 2012, which is broadly optimistic as to South Korea's freedoms. South Korea has transformed itself over the period since partition, from a poor agrarian country to one of the world's leading industrial nations. It had recovered well from the global financial crisis in 2008 under President Lee, who focused on strengthening relations with the United States. In November 2012, South Korea ratified the Korea-United States Free Trade Agreement, and South Korea, Japan and the United States reaffirmed their commitment to cooperate in dealing with North Korea.

26. South Korea is an electoral democracy with executive power vested in a directly elected President who may serve only one five-year term. Political pluralism is robust, with multiple parties competing for power. Travel both within South Korea and abroad is unrestricted, except for travel to North Korea, which requires government approval. During 2012, there had been increased tensions with North Korea, starting with North Korea's launch of a warhead satellite, and a brief retaliation by South Korea.

27. Overall, the political system is healthy, but plagued by bribery, influence peddling and extortion, which are successfully prosecuted and litigated on occasion. The report records the result of the April 2012 legislative elections, won by the Saenuri Party, and the country's first female President, Park Guen-hye, daughter of former President Park Chung-hee, a brutal dictator for whose past actions she has publicly apologised. There had been political and corruption scandals under the previous administration of President Lee Myung-bak.

28. The report notes that South Korea's news media are free and competitive. Newspapers are privately owned and report aggressively on government policies and alleged official and corporate wrongdoing. The National Security Law is used to monitor and control internet traffic and the media suffer from government interference and influence. However, the government generally respects citizens' right to privacy. An Anti-Wiretap Law sets the conditions under which the government may monitor telephone calls, mail, and e-mail.

29. The constitution provides for freedom of religion, but Buddhist groups accused the Lee government of religious bias. Academic freedom is unrestricted, though the National Security Law limits statements supporting the North Korean regime or communism. A January 2012 students' rights ordinance for all Seoul-based elementary, middle, and high schools bans corporal punishment and discrimination against students on the basis of gender, religion, age, race, sexual identity, or pregnancy and allows students to stage rallies. A related teachers' rights ordinance was also announced. The Ministry of Education, Science and Technology filed a lawsuit with the Supreme Court challenging the ordinance and filed an injunction to suspend its implementation, which the Supreme Court did in November. No further decisions on the two ordinances had been reached by the end of the year.

30. South Korea respects freedom of assembly, but police must receive advance notice of all demonstrations, which may not undermine public order. Human rights groups, social welfare organizations, and other NGOs are active and generally operate freely. South Korea's judiciary is generally considered to be independent. There are occasional incidents of police verbal or physical abuse but no systemic concerns. The death penalty still exists but has not been used since December 1997, although there are about 60 death row inmates. Prisons lack some amenities (hot water in winter) but there have been few reports of beatings or intimidation by guards.

31. The report drew a distinction between those in South Korea who are not ethnic Koreans:

> "The country's few ethnic minorities face legal and societal discrimination. Residents who are not ethnic Koreans have extreme difficulties obtaining citizenship, which is based on parentage rather than place of birth. Lack of citizenship bars them from the civil service and limits job opportunities at some major corporations."

32. There is no comment at all about the status of North Korean migrants in the 2012 report. Women have legal equality but face some discrimination in society and employment in practice. Married women have only had equal inheritance rights since 2005 and, despite President Park being the first woman President of South Korea, women remain underrepresented in government with just below 16% of seats.