

Submission to the Honourable Jason Kenney,
Minister of Citizenship, Immigration and Multiculturalism

Recommendations on
Abuses of Generosity and Compassion
- A case of "*fraudulent* North Korean refugee claimants" -

December 2012

Submitted by
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"Canadians take great pride in the generosity and compassion of our immigration and refugee programs. But they have no tolerance for those who abuse our generosity and seek to take unfair advantage of our country." **Minister Jason Kenney, February 16, 2012**
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Definition

1. For the purpose of this Submission herein only,

1.1 "**North Korean**" refers to a citizen of North Korea residing within North Korea, or residing outside North Korea who has nothing to do with defection.

1.2 "**Defected North Korean**" or "**defected NK**" refers to a citizen of North Korea who defected from North Korea but neither became naturalized as South Korean nor wants to be naturalized as such,

1.3 while "**North Korean defector**" or "**NK defector**" refers to a citizen of North Korea who defected from North Korea and either became naturalized as South Korean or wants to be naturalized as such.

1.4 Some NK defectors who are naturalized as South Koreans leave South Korea to claim refugee protection elsewhere, and they are called "**South Korean defectors**" or "**SK defectors**."

1.5 "**North Korean refugee claimants**" or "**NK refugee claimants**" refer to the defected North Koreans who claim, or claimed, refugee protection,

1.6 while "**fraudulent North Korean refugee claimants**" or "**fraudulent NK refugee claimants**" refer to those who deceive, or deceived, Canadian authorities in their refugee claims, by posing as "defected North Koreans."

NK Defectors' Resettlement in South Korea

2. NK defectors coming to South Korea from China

2.1 North Koreans who defected from North Korea are neither allowed to apply for political asylum in China, nor allowed to leave China for South Korea or other third countries. Rather, they are arrested as illegal border crossers and forcibly repatriated back to North Korea.

2.2 Only a very small number of NK defectors are fortunate enough to leave China safely for South Korea. Mostly, they are asylum seekers who successfully entered foreign diplomatic compounds and were allowed by the Chinese government to quietly leave for South Korea via a third country.

For example, back in 2004, 44 NK defectors stormed the Canadian Embassy in Beijing and the Canadian Embassy arranged for their safe passage to South Korea.

3. NK defectors coming to South Korea via other third countries

3.1 Some NK defectors in China make their way - through escape routes akin to the underground railroad in the United States for slaves seeking freedom in the 19th century - to "other third countries," such as, Vietnam, Cambodia, Laos, Myanmar, Thailand, Mongolia, and finally to South Korea.

3.2 Over the years, Thailand has become a regular transit country before the NK defectors are resettled in South Korea. Mongolia maintains a policy of not repatriating NK defectors.

4. NK defectors' Naturalization and Resettlement in South Korea

4.1 At present, there are some 24,000 NK defectors in South Korea, who came mainly via other third countries. Upon arrival in South Korea *and after their biometrics (i.e., fingerprints and photographs) are taken*, they are all naturalized as South Koreans since the South Korean constitution grants them automatic citizenship.

4.2 In addition to granting South Korean citizenship, the South Korean government administers a resettlement program and provides monetary compensation, training and other social assistance for all NK defectors.

4.3 On occasion some NK defectors return to North Korea. These so-called "re-defectors" are usually from one of two categories: either North Korean agents ("NK agents") dispatched by the North Korean regime ("NK regime"), *disguised* as NK defectors, in order to perform espionage activities and subsequently recalled to Pyongyang, or *bona fide* NK defectors who are lured or intimidated into returning by NK agents.

It is known that the NK regime targets, lures and intimidates those NK defectors with family members who remain in North Korea and who can be threatened should the NK defectors refuse to work for the regime.

SK Defectors' Refugee Claims in Canada

5. SK defectors coming to Canada from South Korea

5.1 Reportedly, many NK defectors naturalized as South Koreans (*or who have taken up residence in South Korea*) have difficulties in integrating into the South Korean society.

Some of them choose to leave South Korea, **at the lure of refugee brokers**, to claim refugee protection elsewhere, mostly in contravention of *the UN Convention Relating to the Status of Refugees and its Protocol* ("Refugee Convention"). These people are called "South Korean defectors" or "SK defectors." (see 1.4)

5.2 According to a recent Special Report by KBS, South Korea's national TV station, that interviewed several "SK defectors" residing in Toronto, **refugee brokers** in South Korea recruit NK defectors, provide them with information and guidance for *false* refugee claims in Canada, induce them to sign bank loans, and arrange for their travel to Canada. <see Attachment #1>

5.3 According to unconfirmed rumours, refugee brokers typically take between 50% and 70% of the loan proceeds and advise the NK defectors not to worry

about repayments, since once the defectors leave for Canada and are granted refugee status, they will be considered missing and their debts are written off. The NK defectors are further advised to dispose of all their belongings in South Korea, including their living quarters and furniture, before they leave for Canada.

5.4 " ... it's so simple. All you have to do is enter the country you wish to go to, posing as a tourist, conceal your South Korean identity, and fabricate a new identity, posing as a North Korean who has just defected from North Korea." The Korea Times (on KBS Special Report), August 15, 2012 <see Attachment #2>

5.5 "Because the (*SK defectors*) false claims were uncovered (*in large numbers in Great Britain, through biometric checks*) in 2008, only a few have been admitted ... since then. Now that Great Britain stopped the inflow of their refugee claims, it is known that they would rather choose Canada or the Netherlands as their alternate destination for refugee claims." VOA News, October 3, 2012

5.6 According to the IRB statistics, the number of "NK refugee claimants" has noticeably increased since 2011; 26 in 2006, 113 in 2007, 31 in 2008, 44 in 2009, 176 in 2010, 385 in 2011 and 544 in 2012(up to September).

6. SK defectors' refugee claims as South Koreans

6.1 With South Korean passports, SK defectors are free to enter Canada as **visa exempt tourists**. Some SK defectors are checked, though, at the Canadian border(airport), and they claim refugee protection on the spot as South Koreans.

6.2 Most likely, these SK defectors fail the Refugee Protection Hearing because they are "**excluded persons**" under the Refugee Convention, who have already taken up residence in South Korea. (see 10)

6.3 The failed claimants, upon their return or enforced removal back to South Korea, find themselves empty-handed; no jobs, no more government assistance, and no living quarters. They also find that the debt the refugee broker had arranged when they left for Canada, has snowballed with accumulated interests, often at usury rates.

6.4 In many cases, families are broken and some choose to commit suicide in despair, as exposed in the KBS Special Report(see 5.3). It is SK defectors themselves, of course, to blame for their misery but, the **loopholes of Canada's refugee claim system and its inattentiveness thereto**, which attracted their inflow, is partly to blame as well. (see 5.4)

7. SK defectors' refugee claims, posing as "defected North Koreans"

"As a refugee protection claimant, you must provide information that is **complete, true and correct**." IRB Claimant's Guide

7.1 Other SK defectors successfully pass the Canadian border and claim refugee protection at Citizenship and Immigration Canada("CIC") offices -"inland claims." It is well known that these claimants conceal their South Korean identity, **pose as "defected North Koreans**, and fabricate new personal information, including name and personal history - a sort of "**identity fraud**."

7.2 The CIC officers take biometrics from the claimants but, *seemingly*, these biometrics are not checked against the same biometrics that are available in other countries including South Korea (*perhaps due to costs, tight time limit or for whatever reason*), before their claims are referred to the Immigration and Refugee Board of Canada("IRB").

7.3 Most likely, these "**fraudulent NK refugee claimants**" -- *fraudulent, because they deceive Canadian authorities by **misrepresenting and withholding material facts*** -- are granted refugee status at the Refugee Protection Hearing and subsequently allowed to apply for Permanent Residence("PR") in Canada.

7.4 A group of *fraudulent* NK refugee claimants, elated by the seeming naivety or credulity of Canada's refugee protection authorities, formed an organization in late 2011 professedly in order to guide and assist their fellow (*fraudulent*) claimants. Recently, they registered the organization, by Letters Patent, as "**North Koreans in Canada**"(see 1.1) and boast, through media interview, that they have some 300 members. <see Attachment #3>

8. One person with dual identities

8.1 Apparently, these "*fraudulent* NK refugee claimants," abandon their South Korean citizenship by claiming refugee protection as "defected North Koreans," (South Korea does not permit dual nationality). Nonetheless, they do not surrender their South Korean passports but keep them for future use. (see 8.3)

8.2 In other words, these *fraudulent* NK refugee claimants have, in effect, two different identities; a citizen of South Korea with South Korean passport (*in the name he/she used in South Korea*) and a citizen of North Korea with refugee claim documents (*in his/her new fabricated name*), issued by Canadian authorities.

8.3 With the South Korean passports, they are free to return to South Korea to be NK defectors (*naturalized as South Koreans*), and revisit Canada, posing as South Korean tourists. In Canada they are recognized as NK refugee claimants (*with their refugee claims referred to the IRB*) or PR applicants (*with their refugee claims granted by the IRB*).

8.4 For example, "the vanished 13-year-old NK refugee(named Sol Han) and her brother," reported by the Star on April 23, 2012 and sought by Toronto police, had not, in fact, vanished but returned to South Korea, according to their

neighbour interviewed by the KBS(see 5.2), apparently on their South Korean passports.
<see Attachment #4>

9. Other *fraudulent* claimants, posing as "defected North Koreans"

Now that the loopholes of the refugee claim system in Canada (i.e., *you are easily granted refugee status once you successfully pass the Canadian border and claim refugee protection at CIC office, posing as a defected North Korean*) are widely known, there is a rumour that not only SK defectors but some other groups are also joining, or will join, the *fraudulent* refugee claims in Canada. They are:

- South Koreans(*other than NK defectors naturalized*), including those married to NK defectors and criminals(see 10.1), residing in South Korea
- Korean-Chinese, including criminals(see 10.1), residing in China
- NK agents dispatched by the North Korean regime or criminals won over by such NK agents(see 10.2)

Criminals and NK Agents among Refugee Claimants

10. Excluded persons

"Excluded person is a person who cannot be considered a Convention refugee or a person in need of protection. This includes people who have committed a serious, non-political crime outside Canada, a crime against peace, a war crime, or a crime against humanity. It also includes people who are guilty of acts that are contrary to the purposes and principles of the United Nations, or who have taken up residence in a country where they have rights and obligations that are similar to those of a citizen of that country." IRB Claimant's Guide

10.1 Criminals among *fraudulent* NK refugee claimants

(a) It is known that there are a few instances where the South Korean authorities have sought for criminal fraudsters among *fraudulent* NK refugee claimants, often times via Interpol. (see 5.3)

It is also known that the Interpol results obtained by the CBSA show quite a number of cases among *fraudulent* NK refugee claimants, where warrants were issued outside of Canada by reason of *non-political* crimes. [Added in 2016]

(b) The possibility is that there might be Korean-Chinese criminals as well among *fraudulent* NK refugee claimants who come from China, as shown in the following news report:

"Kai-Guo Huang came to Canada from China as refugee claimant Yu Chen in 2006. He entered Canada from China using fake travel documents. He is wanted in the U.S. in connection with a grisly murder and decapitation 14 years ago."

The Star, November 6, 2012.

10.2 NK agents among *fraudulent* NK refugee claimants

Evidently, the loopholes of refugee claim system in Canada are known to the North Korean regime as well, and that the regime considers Canada an ideal hide-out for NK agents and the agents' agents won over, as shown in the following two incidents:

(a) "At a (Refugee Protection) Hearing in Vancouver in June, the lawyer representing the Minister of Public Safety argued that the man was inadmissible to Canada for crimes against humanity. The man had admitted his role in the abductions (*of North Korean defectors as well as a South Korean pastor who had been helping them*) to CBSA officer in January." National Post, December 20, 2012 <see Attachment #5> It is highly likely, by inference, that the man in question is an "NK defector" who was won over by NK agents, participated in abductions in China, and then came to Canada to be a "fraudulent NK refugee claimant".

(b) "An NK defector who had been approached by Mr. An, another NK defector who was won over by an NK agent, to join the assassination plot testified, on April 1, 2012, before the court that he was offered one million dollars upon successful assassination of Park Sang Hak (*a North Korean defector who heads "Fighters for Free North Korea" in South Korea*), along with **having his family members relocated to Canada** (*perhaps by having them claim refugee protection, posing as "defected North Koreans"*), and guaranteed payments of three to five thousand dollars a month for their future living expenses.

South Korea's National Intelligence Service arrested Mr. An last September, when he carried two poison pistols, one poison needle, and 3 poison capsules with him." Chosun Ilbo, April 2, 2012 <see Attachment #6>

Recommendations

11. Principled humanitarianism

"Humanitarianism, which underlies our refugee protection system, is neither a lenience bestowed upon the abusers, nor a naivety vulnerable to their abuses."

Kyung B. Lee, September 29, 2012

"Biometrics will be an important new tool to help protect the safety and security of Canadians by reducing identity fraud and identity theft." Minister Jason Kenney("Minister"), February 16, 2012

11.1 Security check for NK refugee claimants

(a) Be aware of the fact that North Korea is not only a mere refugee-producing "unsafe" country, but a "criminal" or "terror-sponsoring" country.

In vetting the NK refugee claimants who are suspected of the most serious crimes or security threats(see 10.2), ask for help/expertise to the South Korean government, if necessary, in determining their refugee protection.

(b) Deport all *inadmissible* NK refugee claimants to South Korea, where they are accepted as its citizens.

11.2 Veracity check for NK refugee claimants

(a) Determine eligibility of refugee claims at the port of entry, where the claimants' travel documents are available for check.

(b) Allow "inland claim" under extraordinary circumstances only. Make it mandatory, though, for claimants to present all their travel documents.

(c) Keep in mind that the chances for defected North Koreans to be able to leave China for Canada are very rare or practically impossible. (see 2.1)

(d) Check the biometrics of all those claimants **who pose/identify themselves as "defected North Koreans"** against the same data available in other countries including **South Korea**. If fraud is found, the claim should not be referred to the IRB. It should be rejected on the spot.

11.3 Fraud, if proved, not to be tolerated

(a) **Identity fraud** committed both in the course of refugee claim and PR application should not be tolerated.

(b) If identity fraud is found widespread, i.e., if a large number of NK refugee claimants are proved, **through biometric checks**, to be *fraudulent* NK refugee claimants (and *fraudulent* PR applicants), and if such claims are proved guided or assisted by **organized syndicate(s)**, that should be probed and not tolerated.
(see 7.4 and Attachment #7)

11.4 Relief for victims of fraud

(a) Apparently, most of the SK defectors who have become *fraudulent* NK refugee claimants were lured by the refugee brokers and/or organized syndicates, and then induced to do what they did. In that sense, they are victims of fraud, or victims of crime, who deserve compassionate relief to some extent.

(b) Under the circumstances, we urge the Minister to grant **special lenience or amnesty** for those victims who, upon receiving refugee status, ceased, or tried to cease, abusing the generosity of the refugee programs by joining work force in Canada and quitting social assistance.

(c) We believe that the lenience to be bestowed upon these people is justified not only on compassionate grounds but also on the need for a productive self-supporting work force in Canada. These people will integrate actively into Canadian society and repay the generosity given them with positive contributions to the betterment of Canada.

(d) Under no circumstances, those who have warrants mentioned in 10.1(a), posing as victims of fraud, should be granted special lenience or amnesty. [Added in 2016]

(e) Unfounded petitions to the Minister, if any, should neither go unchecked nor be tolerated as well. [Added in 2016]

11.5 Focus more on bona fide refugees

*"We believe that the new system ... will substantially reduce the attractiveness of making unfounded claims and will therefore allow us to focus our resources more on **the bona fide refugees who actually do need our protection.**"* Minister Jason Kenney, November 30, 2012

"Canada is also a leader in mobilizing international efforts to find solutions for refugees in protracted situations. This include the Government's decision to resettle up to 5,000 Bhutanese refugees in Nepal over the next few years and the resettlement of 3,900 Karen refugees from Thailand." CIC(celebrating World Refugee Day), June 18, 2010

(a) Canada is deeply concerned with the NK defectors in China being forcibly repatriated back to North Korea, according to the Canadian Intervention, HRC19, March 12, 2012. <see Attachment #8>

Once repatriated, they are tortured, imprisoned or executed, and it is these desperate and imperilled **NK defectors in China who do need protection.**

(b) Given the circumstances and for the sake of practicality, we recommend "**humanitarian protection**" (*rather than "refugee protection"*) for these NK defectors, and establishment of a "**humanitarian enclave**" (*rather than refugee camp*) in China to be taken care of by the International Red Cross (*rather than UNHCR*), which would be more acceptable to the Chinese government. This would serve, in effect, as a **First Asylum Program** (*which was mentioned in our September 29 Submission*), and we urge the Canadian government to take initiative in mobilizing international efforts for the project. (see 2.1)

(c) We also urge the Canadian government to extend humanitarian and/or refugee protection, through its embassies, to those who fled North Korea to "other third countries" across China via the "underground railroad," since they are **bona fide refugees who also do need protection.** (see 3.1)

(d) We also urge the Canadian government to explicitly address the issue of dual nationality of North Koreans in a law or policy directive analogous to the U.S. North Korea Human Rights Act of 2004, which clearly states that:
"North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea("South Korea").(Added in 2016)

(e) We also urge the Canadian government to introduce a law, mentioned in 11.5(d) above, for legislation in the form of "Human Rights in North Korea Act ("HRNK Act"), as moved by M-617 on June 3, 2015 in the House, that would facilitate application by North Korean defectors for refugee status in Canada, among others. (Added in 2016)

Attachments:

#1 KBS Special Report(link)

<http://tv.iamkorean.com/%EC%9C%A0%EC%BF%A0-%EC%B6%94%EC%A0%81-60%EB%B6%84-%ED%83%88%EB%82%A8%E8%84%AB%E5%8D%97%EC%9D%98-%EC%9C%A0%ED%98%B9-%EC%99%B8%EA%B5%AD-%EA%B0%80%EC%8B%A4%EB%9E%98%EC%9A%94-120815/>
Happy Korea(*an internet media*) report, Sept. 14, 2012

#2 The Korea Times report, Aug. 15, 2012

#3 Letters Patent for "North Koreans in Canada"

#4 The Star report, Apr. 23, 2012

#5 The National Post report, Dec. 19, 2012

#6 The Chosun Ilbo report, Apr. 2, 2012

#7 The Toronto Sun report, Sept. 17, 2011

#8 Canadian Intervention, HRC 19, Mar. 12, 2012

The Council for Human Rights in North Korea("HRNK Canada")

(Signatures for Submission to Hon. Jason Kenney, December 2012)

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