GOVERNMENT RESPONSE TO THE FOURTH REPORT OF THE STANDING SENATE COMMITTEE ON HUMAN RIGHTS ENTITLED "THE FORGOTTEN MANY: HUMAN RIGHTS AND NORTH KOREAN DEFECTORS"

The Government of Canada has carefully considered the Fourth Report of the Standing Senate Committee on Human Rights entitled "The Forgotten Many: Human Rights and North Korean Defectors."

The Government of Canada remains deeply disturbed by the human rights situation in North Korea and by accounts of systematic human rights violations and abuses documented in various authoritative sources.

The Government would like to thank the members of the Committee for the opportunity to participate in the hearings, as well as the opportunity to respond to the recommendations contained in the report. The Government would also like to thank the Committee for its efforts in preparing the report and welcomes the continuing interest of the Committee in human rights issues related to North Korea.

Below is the Government's response to the specific recommendations made by the Committee, including relevant measures under implementation by the Government of Canada.

RECOMMENDATION 1: The Committee recommends that, as a short-term solution for North Korean defectors, the Minister of Immigration, Refugees and Citizenship Canada undertake to exercise his discretion under section 25 of the *Immigration and Refugee Protection Act* to allow the entry into Canada of the most vulnerable North Korean defectors, such as those trapped in Thailand and other third countries, with particular attention to women and children. This initiative should include a pilot project in Thailand to identify appropriate North Korean candidates for resettlement in Canada.

As is required by the *Immigration and Refugee Protection Regulations* (R139(1)(d)), Canada resettles government-assisted and privately-sponsored refugees who have no other durable solution, which includes those who have no reasonable prospect of resettlement in a country other than Canada. The ultimate goal of refugee protection is to find durable solutions which will enable refugees to live in safety and rebuild their lives and an opportunity to build secure futures.

"Durable solution" is an internationally accepted legal principle applied by both United Nations High Commissioner for Refugees and individual States who participate in the resettlement of refugees. It means that the refugee has found a place where he or she may start a new life with a future away from endless conflict or fear from persecution. Most North Koreans are found to have access to a durable solution in South Korea as they are eligible to apply for South Korean citizenship and enjoy all the same rights as South Korean citizens. In addition the South Korean government provides North

Koreans with resettlement funding, housing assistance, education for social adaptation, support services and employment resources to assist with the integration in South Korea. Likewise, the United Nations High Commissioner for Refugees generally considers North Koreans to have a durable solution available in South Korea and therefore does not typically refer North Koreans for resettlement.

Section 25 of the *Immigration and Refugee Protection Act* (the Act) authorizes the Minister to grant permanent residence, or an exemption from most criteria or obligations of the Act, to individuals and families who would not otherwise qualify in an existing immigration class, if justified by humanitarian and compassionate considerations. Requests for humanitarian and compassionate consideration are assessed on a case-by-case basis taking into account the personal circumstances of the individual, and are intended for use only in exceptional circumstances. A wide range of factors may be taken into consideration, such as establishment in Canada, family relationships, the best interests of a child directly affected by the decision, and certain factors in the individual's country of origin, for example, medical inadequacies, general country conditions, discrimination, or other hardships which are not assessed as part of the refugee decision-making process.

The use of humanitarian and compassionate consideration includes an assessment of the hardship the individual would be subjected to if a request for humanitarian and compassionate consideration were denied. In the case of North Koreans, this would include assessing the hardship that the individual would face if they were to be resettled to South Korea.

The Minister also has the authority to create a public policy under section 25.2 of the Act. Public policies are created at the discretion of the Minister, often to facilitate permanent residence for foreign nationals who do not meet the eligibility criteria of an existing immigration class. Similar to the humanitarian and compassionate provision, the public policy provision is used to circumvent statutory and regulatory provisions in exceptional circumstances. In the case of North Koreans, a public policy would be a means to circumvent relevant requirements including that the individuals must not have access to a durable solution (for both government-assisted and privately-sponsored refugees).

There are over 20 million refugees in the world, more than 1 million of whom are in need of resettlement and have no access to a durable solution. As Canada has limited resettlement spaces, it is important to consider that any public policy for the resettlement of North Koreans, who do have access to protection, would mean that fewer spaces would be available to refugees who are just as much in need of protection but who do not have access to a durable solution.

Even if a public policy were created to facilitate the resettlement of North Koreans, there would likely be challenges in accessing the refugees for immigration processing, as

well as traveling to Canada. For example, Thailand facilitates the onward movement of individuals who have fled North Korea to South Korea, but it is not facilitative of the resettlement of non-status migrants to third countries. Thai law stipulates that only persons who have legal status in Thailand are permitted to depart the country. For individuals who have fled to Thailand in search of protection, legal status means they are recognized as Convention refugees by the United Nations High Commissioner for Refugees. In the past, the Department has not been able to secure exit permits for privately sponsored refugees who were found not to have a durable solution but who have not been recognized by the United Nations High Commissioner for Refugees, and the Department expects that this would also apply to individuals identified for resettlement under a public policy.

RECOMMENDATION 2: The Committee recommends that the *Immigration and Refugee Protection Act* be amended to create an exception to the definition of a refugee to allow North Korean defectors to qualify for refugee status in Canada. The experiences of other countries, such as the United States, should be studied and alternatives identified to correct any limitations identified regarding existing programs in other jurisdictions.

The in-Canada asylum system provides protection to asylum seekers who meet the definition of a refugee under the 1951 United Nations *Convention Relating to the Status of Refugee* and to persons in need of protection (i.e. a risk to life, persecution, torture or cruel and unusual treatment or punishment to the individual).

North Koreans in need of protection are able to seek asylum in Canada through the *Immigration and Refugee Protection Act*, and processes under existing regulations and guidelines. Each eligible North Korean claimant is referred to the Refugee Protection Division of the Immigration and Refugee Board of Canada for an assessment. Each claim is heard on its own merits.

As part of the decision-making process, the Refugee Protection Division must consider whether the claimant has received refugee protection, permanent resident status or citizenship from another country. If they have status in another country, where they may return to and remain in, they may be excluded from refugee protection under Sections E of Article 1 of the United Nations *Convention Relating to the Status of Refugees. The* Convention *"shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."* As such, the Convention for Refugees is clear that North Korean claimants who have been granted South Korean citizenship are excluded from refugee protection which has in turn resulted in negative asylum claim decisions. That said there may still be instances in which a North Korean requires protection, which is why every eligible claim is heard by the Refugee Protection Division.

If North Korean claimants who have resettled in South Korea wish to make a claim against South Korea because they feel they face discrimination or are in danger, they may do so. However, Canadian Courts have consistently ruled that discrimination does not amount to persecution and is not grounds for refugee protection.

In 2013, the Ministerial Reviews and Interventions pilot project, an initiative intended to strengthen overall program integrity of the asylum program, helped to expose an identity fraud movement by North Korean claimants who had obtained South Korean citizenship and passports. United States biometric checks confirmed that most of the claimants had transited through the U.S. using their South Korean identity before making their refugee claim in Canada.

Changing the definition of a refugee for this group would be inconsistent with the Convention for Refugees and the Government's position with regards to individuals who are excluded from refugee protection as they have a durable solution or protection elsewhere. This is consistent for all claimants.

North Koreans are not barred from making an asylum claim in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea. This means that the existence of potential access to South Korea citizenship does not preclude North Koreans from claiming asylum in the United States. However, if the claimant has first resettled in South Korea, they are subject to a resettlement bar in the United States. This is consistent with Canada's policy on asylum claims under which North Koreans in need of protection are able to seek asylum and each claim is heard on its own merits. However, North Korean claimants who have been granted South Korean citizenship are excluded from refugee protection in Canada.

RECOMMENDATION 3: The Committee recommends that Global Affairs Canada continue to closely observe the human rights situation in North Korea and the circumstances of individuals that flee that country, and advocate proactively in all relevant forums regarding the human rights in that country. Advocacy efforts should integrate the concerns outlined in the report of the United Nations Commission of Inquiry on Human Rights in the People's Republic of Korea and by witnesses before the Standing Senate Committee on Human Rights, including but not limited to prisoner's rights, freedom of expression and movement and gender equality.

The promotion and protection of human rights, including the rights of refugees, are an integral part of Canada's constructive engagement in the world and our government is committed to do more. Canada works to advance international norms on thematic issues and to promote human rights in country-specific contexts in a variety of multilateral forums ranging from UN bodies to the G7.

Canada engages through multilateral organizations, bilateral diplomacy, development assistance and trade policy and services to enhance the promotion and protection of

human rights internationally. Generally, Canadian human rights efforts in multilateral forums focus on advancing the rights of women and children, those of LGBTI persons, Indigenous peoples, freedom of expression, including Internet freedom, as well as country-specific issues in countries where human rights violations are particularly egregious. In the case of North Korea, multilateral efforts are focused on grave violations of basic human rights and fundamental freedoms such as violations of the rights to food, life, freedom of expression, and freedom of movement, as well as violations related to prison camps, torture and inhuman treatment, arbitrary arrest and detention, discrimination, and enforced disappearances including abductions of nationals of other states.

Canada remains gravely concerned about North Korea's human rights violations, and will continue to seek opportunities to advocate for improvement in the promotion and protection of human rights in North Korea both through bilateral and multilateral channels.

Canada consistently voices its concerns, through official statements and in international forums, about North Korea's egregious human rights violations, and works closely with allies and partners to highlight and address abuses in North Korea.

As part of this approach, Canada continues to support and actively engage in negotiations on resolutions on the human rights situation in North Korea at the UN General Assembly Third Committee and at the Human Rights Council – the key multilateral institutions mandated specifically to consider human rights issues. Canada also closely monitors developments by attending briefings on the human rights situation in North Korea held throughout the year, including briefings at the UN Security Council.

In addition to actions in support of North Korean human rights within the UN framework, Canada's *Controlled Engagement Policy* limits official bilateral contact with the North Korean government to four areas, one of which is the human rights and humanitarian situation in North Korea. Canada has regularly called on North Korea to address issues of human rights, urging it to abide by international human rights standards and obligations and to allow visits by UN special procedure mandate holders, such as Special Rapporteurs.

Canada continues to advocate on North Korean human rights issues through its accredited mission in Seoul. On three separate occasions between October 2015 and April 2016, Canada made direct representations to officials in Pyongyang on human rights issues. Canada's Ambassador to South Korea has regular interactions with the UN Office of the High Commission of Human Rights (Seoul), whose mandate is focused on documenting human rights violations in North Korea, and also participates in Interactive Dialogues with the UN Special Rapporteur on Human Rights in North Korea whenever the latter visits Seoul. In November 2015, the Canadian Embassy in Seoul was the venue of a conference that included presentations by organizations focused on human

rights in North Korea and a panel of defectors from North Korea. Canada continues to seek advocacy opportunities to highlight and address human rights concerns related to North Korea.

RECOMMENDATION 4: The Committee recommends that Canada should lead on North Korean human rights, continuing to work with allies to implement sanctions and champion human rights in that country and the human rights of North Korean defectors. This work should include support for relevant non-governmental organizations and taking action to coordinate the international response to North Korean human rights violations, as well as advocating for an end to the Chinese policy of repatriating North Korean defectors and for a greater number of countries to provide opportunities for resettlement for North Korean defectors.

As previously noted, Canada consistently voices its concerns, through official statements and in international forums, about North Korea's egregious human rights violations and works closely with allies and partners to highlight and address abuses in North Korea.

Canada strongly promotes and defends human rights through international forums and engagement with civil society and will continue to use these means to highlight the situation in North Korea and urge North Korea to meet international human rights norms and obligations.

Canada is a strong supporter and co-sponsor of resolutions on the human rights situation in North Korea at the UN General Assembly Third Committee and at the Human Rights Council. We actively participate in negotiations to ensure Canadian concerns are reflected and pressure is maintained on the Government of North Korea to improve its human rights situation. Canada will continue to support and encourage UN efforts to advance and address these issues.
Canada will also continue to coordinate closely with allies and partners regarding human rights violations in North Korea and urge additional efforts by the international community to address the situation.

The Government of Canada has regular contact with a range of Seoul-based civil society organizations focused on DPRK Human Rights, including the Database Centre for North Korean Human Rights (NKDB), and the Citizens' Alliance for North Korean Human Rights (NKHR, or "Citizens' Alliance"). Canadian officials also interact with international civil society organizations such as the National Democratic Institute, International Republican Institute, and the Committee for Human Rights in North Korea (HRNK). In the past, Canada's Embassy in Seoul has supported civil society programming in the region and Canada will continue to take into consideration supporting possible research and/or defector-related project proposals. In addition, the Government of Canada will continue to regularly consult with international and domestic human rights organizations on relevant policy issues.

Canada will continue to ensure that advocacy efforts integrate the concerns outlined in the report of the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea and by witnesses before the Standing Senate Committee on Human Rights, including but not limited to prisoners' rights, freedom of expression and movement and gender equality.

Canada is committed to working with other UN Member States to ensure effective and coordinated implementation of the sanctions against North Korea. Canada's sanctions on North Korea are among the world's most robust. The Government of Canada has enacted sanctions against North Korea under both the *United Nations Act (UNA)* and the *Special Economic Measures Act (SEMA).* Canada is now in the process of amending the *Regulations Implementing the United Nations Resolutions on the Democratic People's Republic of Korea (DPRK)* in order to implement the new elements of UNSC Resolution 2270 (2016), which was co-sponsored by Canada, in domestic law. In addition to implementing all UN Security Council resolutions in domestic law, Canada has imposed autonomous sanctions since 2011 which include a ban on all imports from and exports to North Korea, with certain humanitarian exemptions. We stand ready to support further appropriate measures, including by the UN Security Council, to pressure North Korea to tend to the pressing needs of the North Korean people.

To address humanitarian needs in North Korea, Canada provides assistance to North Korea through trusted multilateral partners. In 2015, Canada was the fourth-largest country donor of humanitarian assistance to North Korea. Canada has provided over $30 million in humanitarian assistance funding between 2004 and 2015. This funding is channeled through experienced humanitarian partners such as the World Food Programme, UNICEF, and the International Federation of Red Cross and Red Crescent Societies, whose work is guided by the humanitarian principles of humanity, impartiality, neutrality and independence. Canada does not provide any humanitarian assistance directly to the Government of North Korea.

With respect to North Korean defectors, Canada will continue to closely monitor the situation of North Koreans who have fled their country and to raise related concerns in relevant international forums and with allies and partners. For example, Canada put forward a recommendation as part of the 2014 Universal Periodic Review of China which called for China to invite the UN Commission of Inquiry on North Korea to visit North-eastern China to meet officials and North Korean citizens who have fled to China. Ultimately this Canadian recommendation was among 48 recommendations rejected by China. We will continue to pursue opportunities to advocate for and defend the human rights of North Korean defectors, including encouraging the Chinese Government to address human rights concerns of North Korean citizens who have fled to China and end its policy of repatriating North Korean defectors.

Canada will continue to actively advocate for those who are displaced, persecuted and in need of protection, including North Korean defectors. However, with respect to

opportunities for resettlement for North Korean defectors, we reiterate that Canada, similarly to the UNHCR, considers South Korea to be a durable solution for North Korean claimants, as they are eligible to apply for South Korean citizenship. The UNHCR does not typically refer North Koreans for resettlement, given that they generally have a durable solution available in South Korea.