



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2809/2016\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Seok-ki Lee, Hong-yeol Kim, Sang-ho Lee, Soon-seog Hong, Dong-kun Han, Yang-won Cho and Keun-rae Kim (represented by counsel, Ki- nam Kim and others)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Republic of Korea
<i>Date of communication:</i>	15 December 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 14 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2020
<i>Subject matter:</i>	Freedom of expression
<i>Procedural issue:</i>	None
<i>Substantive issue:</i>	Permissibility of restrictions on freedom of expression
<i>Article of the Covenant:</i>	19
<i>Article of the Optional Protocol:</i>	None

1. The authors of the communication are Seok-ki Lee, Hong-yeol Kim, Sang-ho Lee, Soon-seog Hong, Dong-kun Han, Yang-won Cho and Keun-rae Kim, all nationals of the Republic of Korea. They claim that the State party has violated their rights under article 19 of the Covenant. The Covenant and the Optional Protocol entered into force for the State party on 10 July 1990. The authors are represented by counsel.

\* Adopted by the Committee at its 130th session (12 October–6 November 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Furuya Shuichi, Christof Heyns, David Moore, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

\*\*\* A joint opinion by Committee members Furuya Shuichi, Andreas Zimmermann and Gentian Zyberi (partially dissenting) and an individual opinion by Committee member Hernán Quezada Cabrera (partially dissenting) are annexed to the present Views.



### Facts as submitted by the authors

2.1 The authors were active in the Unified Progressive Party.<sup>1</sup> They were detained and indicted between 30 August 2013 and 24 October 2013. All were indicted for conspiracy to insurrection and for violating article 7 of the National Security Act, which criminalizes, *inter alia*, praising, inciting or propagating the activities of an anti-State organization with the knowledge that this may endanger the existence and security of the State or the fundamental democratic order,<sup>2</sup> in relation to several different facts. It was claimed that Soon-seog Hong and Dong-kun Han had met to study books praising the Democratic People's Republic of Korea and that Sang-ho Lee had made speeches on 11 December 2011 and 30 July 2013 which according to the authors concerned the differences between revolutionaries and activists and the importance of comradeship and of increasing support. It was claimed that all authors except for Hong-yeol Kim had acquired, possessed and distributed anti-State materials. It was also claimed that all authors except for Dong-kun Han had sung a song entitled *Comrades in the Revolution* on 8 March 2012, 3 May 2012, 21 June 2012 and 10 August 2012.

2.2 Additionally, the charges referred to two meetings in May 2013 in which all authors were involved. According to the authors, given increased tensions between the State party and the Democratic People's Republic of Korea since the end of 2012, Hong-yeol Kim had decided to organize a meeting to improve understanding of the political situation, limiting attendance to executives of the Unified Progressive Party's Gyeonggi Provincial Committee. The meeting was attended by 130 participants and took place on 10 May 2013 with both Hong-yeol Kim and Seok-ki Lee speaking, but it was stopped after 10 minutes because of security concerns.

2.3 On 12 May 2013, a second meeting took place, with the same number of participants. Seok-ki Lee made remarks, which were followed by a discussion on the military situation and the importance of preparing for a possible war. Hong-yeol Kim then invited the participants, in discussion in subgroups, to explore how to make political and military preparations. Sang-ho Lee suggested attacking communications and oil supply lines and establishing guidelines in this regard. He discussed ways of producing guns and bombs and of sabotaging the railway system. Dong-kun Han mentioned that the most important weapon would be to protect the organization, that a decision should be made on stealing weapons and that organizational capabilities to respond to a war should be improved. The youth division

<sup>1</sup> Seok-ki Lee was a lawmaker for the Unified Progressive Party in the National Assembly. Hong-yeol Kim chaired the Unified Progressive Party's Gyeonggi Provincial Committee and Soon-seog Hong was its Vice-Chairperson until their respective arrests. More information on the authors' activities is available on file.

<sup>2</sup> The text of article 7 ("praise, incitement etc."):

(1) Any person who praises, incites or propagates the activities of an anti-government organization, of a member thereof or of a person who has received an order from it, or who acts in concert with it, or propagandizes for or instigates a rebellion against the State, with knowledge of the fact that it may endanger the existence and security of the State or the democratic fundamental order, shall be punished by imprisonment for not more than seven years.

(2) Deleted.

(3) Any person who constitutes or joins an organization whose aim it is to carry out an act as referred to in paragraph (1) shall be punished by a fixed term of imprisonment of not less than one year.

(4) Any person who is a member of an organization as referred to in paragraph (3), and fabricates or circulates any false facts regarding matters which threaten to provoke any confusion in the social order, shall be punished by a fixed term of imprisonment of not less than one year.

(5) Any person who manufactures, imports, reproduces, holds, carries, distributes, sells or acquires any documents, drawings or other expressive materials with the intention of committing an act as referred to in paragraph (1), (3) or (4) shall be punished by the penalty as referred to in the respective paragraph.

(6) Any person who has attempted to commit a crime as referred to in paragraph (1) or (3) to (5) shall be punished.

(7) Any person who prepares for or plots a crime as referred to in paragraph (3) with the intention of committing it shall be punished by imprisonment for not more than five years.

had not considered the possibility of a war, but participants in other subgroups discussed the need to make physical and technical preparations for a revolutionary war, to procure guns, to attack telecommunications systems, to develop good relationships with infrastructure institutions and to have guidelines on preventive custody. Seok-ki Lee then asked the participants whether they were familiar with such preparations, and told them that they should be proactive and that there were many ways to prepare physically and technically. He stated that simple methods could be used to destroy a steel tower. He also referred to websites on home-made bombs and discussed information warfare, propaganda warfare and military warfare. The authors note that the meetings were not followed by subsequent activities.

2.4 In addition to the charges concerning all authors, Seok-ki Lee and Hong-yeol Kim were charged with incitement to insurrection in relation to their roles in the May meetings. The prosecution claimed that Seok-ki Lee led the “Revolutionary Organization”, which allegedly aimed to overthrow the Government and establish the ideology of the Democratic People’s Republic of Korea, and that he had instigated the Revolutionary Organization members at the May meetings to prepare for a war physically and militarily by planning to destroy infrastructure. The authors contested the charges.

2.5 On 17 February 2014, Suwon District Court found the authors guilty of all charges and sentenced Seok-ki Lee to 12 years of imprisonment and the other authors to 4 to 7 years. Both the authors and the prosecution appealed.

2.6 On 11 August 2014, Seoul High Court acquitted the authors of conspiracy to insurrection, but upheld their conviction under article 7 of the National Security Act as well as that of Seok-ki Lee and Hong-yeol Kim for incitement to insurrection. The High Court reduced Seok-ki Lee’s sentence to nine years and the sentences of the others to two to five years.

2.7 On 22 February 2015, the Supreme Court upheld the High Court’s decision.

### **Complaint**

3.1 The authors claim that the State party has breached their right to freedom of expression, as their criminal punishment interfered with this freedom, and the punishment was not necessary under article 19 (3) of the Covenant, because the statements made by Seok-ki Lee and Hong-yeol Kim during the May meetings did not threaten national security.

3.2 First, the nature of the speaker-audience relationship did not allow for such a conclusion; Seok-ki Lee and Hong-yeol Kim were not able to influence the participants, given that they were democratic activists resistant to manipulation due to their experiences of hardship and because of the Unified Progressive Party’s democratic nature. Seok-ki Lee had no close relationship with most of the participants.

3.3 Second, the context of the May meetings did not necessitate any restriction on the authors’ freedom of expression. The meetings were organized to enhance understanding of the political tensions on the Korean Peninsula. Tensions have existed since the end of the Korean War, and the Democratic People’s Republic of Korea has repeatedly declared its abrogation of the Armistice Agreement. Even though security concerns had increased, an armed conflict was not imminent.

3.4 Third, the authors’ intent behind the meetings did not justify a restriction. Seok-ki Lee and Hong-yeol Kim did not intend to incite the participants to engage in violence, but rather shared their opinion on how to deal with the situation. The meetings were open to a specific audience belonging to the same party. Moreover, even though words used including “fight”, “war”, “revolution”, “battle”, “local and unconventional warfare” and “destroy” sound radical, persons with left-wing views commonly use them, and they should be explained contextually. It is unclear what Seok-ki Lee recommended that the participants do, he did not participate in the subgroup discussions where targets were discussed, he shared his personal opinion and he did not clarify himself when he asked whether the participants were unfamiliar with the topics discussed. Furthermore, the meetings were a one-time event and the remarks were not repeated.

3.5 Fourth, no need for a restriction arose out of the content of the discussions. Seok-ki Lee and Hong-yeol Kim did not directly call for violence. Seok-ki Lee’s references to

physical and technical readiness remained abstract. Likewise, his statements about the need to “destroy the physical foundation established by the ruling faction in the past 60 years” and to “destroy the regime under which the two Koreas exist” are vague and refer only to the political status quo. Given his other remarks, his references to “fighting” and “battle” refer to endeavours to overcome United States imperialism. Through his advice not to carry guns, he clarified that the participants should not kill. His reference to the destruction of a steel tower signalled the importance of finding creative solutions rather than encouraging the destruction of infrastructure. He and Hong-yeol Kim never directly mentioned what specific actions should be taken or who or what should be targeted. Their tone was calm. Furthermore, in opening and closing the meetings, Hong-yeol Kim only expressed the rhetoric typical of the Unified Progressive Party.

3.6 Fifth, the restriction was not justified as regards the manner in which the information was disseminated, as the meetings were directed at a specific audience of 130 people in a closed space and were not followed up on by subsequent events.

3.7 Sixth, there was no likelihood or imminence of violence. Seok-ki Lee’s question whether participants were unfamiliar with the topics showed his dissatisfaction with the outcome of the discussions. His remark that there is “a myriad of ideas for physical and technical readiness based on the premise mentioned before. Is it too many? Too abstract? It is definitely huge. You can find it in your own workplace” cannot be easily understood. His statements that “If an order for all-out attacks is issued, I will trust your creative ideas” and “Are you fully prepared to assume combat readiness once you are ordered?” are conditional; it is not clear who would give the order or who should be targeted.

3.8 The authors also dispute that any of their activities justified a restriction on their freedom of speech under the National Security Act. The Supreme Court did not explain how Seok-ki Lee’s remarks constituted such a threat, instead simply concluding that he was propagating the revolutionary strategy of the Democratic People’s Republic of Korea towards the State party. Hong-yeol Kim only expressed rhetoric typical of the Unified Progressive Party and stated that to win battles against the United States of America, they must use the people’s sovereign capability to their advantage. Sang-ho Lee’s remarks about attacking infrastructure and fabricating guns and bombs are disturbing but he did not go beyond making verbal expressions. Dong-kun Han only mentioned that the organization must be protected and that a decision should be made on stealing weapons and taking military actions. Soon-seog Hong, Keun-rae Kim and Yang-won Cho only summarized their respective subgroup discussions, which can thus not be attributed to them personally. The authors conclude that the meetings presented no possibility of putting the discussions into practice.

3.9 The authors submit that the Supreme Court did not explain what threat was presented by singing “Comrades in the Revolution” or by studying and discussing *juche*. Likewise, Sang-ho Lee’s remarks and the materials seized were of an anti-government nature but did not call for violence, and the Supreme Court did not explain how they threatened national security.

3.10 The authors also claim that their prison sentences were not proportionate, given that the public did not have access to the May meetings and the discussions did not threaten national security. Moreover, less restrictive measures were available, given that Seok-ki Lee had been deprived of his National Assembly seat, and the Government could have requested the Unified Progressive Party to apply its internal discipline mechanisms. It could also have sought a political solution, such as asking the authors to apologize publicly. Moreover, no measures were taken with respect to publicly accessible online comments inciting a war between the Koreas. The Party became the target of the pro-government National Intelligence Service, through which the Government sanctioned the Party.

3.11 The authors claim to have exhausted all available domestic remedies, as the Supreme Court is the highest competent court. They did not file a petition with the Constitutional Court on the constitutionality of the application of the National Security Act, as the Court had already answered this question in another case, leaving no prospect of success.

3.12 The authors request the Committee to invite the State party to provide them with appropriate remedies in accordance with article 2 (3) of the Covenant, including nullification

of the Supreme Court decision, a retrial in keeping with the standards in the Covenant, the issuance of a pardon and monetary reparations.

### **State party's observations on admissibility and the merits**

4.1 In a note verbale dated 11 April 2017, the State party submitted its observations on admissibility and the merits, claiming that the authors' expressions had threatened national security and that all measures taken against them were proportionate.

4.2 The State party submits that the May meetings took part in the context of the brink of a war, given that three days prior to the first meeting, the Democratic People's Republic of Korea had threatened to turn "the five West Sea islands into a sea of fire", and that between 18 and 20 May 2013 it launched five rockets.

4.3 The State party recalls the remarks made by Seok-ki Lee and Hong-yeol Kim at the May meetings, which included saying that they were now at war. The State party observes that Seok-ki Lee and Hong-yeol Kim, as speakers, were at the top of a hierarchical relationship whereby they directed the participants, who were aware of the tendency of the Unified Progressive Party's leadership to follow the violent strategy of the Democratic People's Republic of Korea. Following Seok-ki Lee's remarks, the participants, including the six other authors, discussed concrete measures for material and technical preparations through the manufacture of bombs and guns and the commission of violence, including the destruction of infrastructure at specific spots such as communications installations, oil pipelines and railways. The State party submits that this demonstrates that the remarks made by Seok-ki Lee and Hong-yeol Kim posed a real threat, in that they could generate and bolster resolve among the participants to commit acts of insurrection. The State party observes that the covert nature of the meetings shows that the participants knew that they were illegal. The courts ruled that the purpose had been to induce the participants, in case a war broke out, to destroy infrastructure and to engage in propaganda and information wars. These acts would disrupt railway transport and communications networks as well as fuel supplies and thus affect the State party's ability to counter a war. Given the authors' experience, criminal records and roles in the meetings, and the attitude and responses of the participants and the political context, the courts ruled that the authors' statements may have a practical influence on the participants' behaviour.

4.4 Regarding the violation of the National Security Act, the State party argues that the authors' expressions threatened national security and that it was thus necessary to restrict them. It submits that by way of their remarks at the May meetings and their singing of "Comrades in the Revolution", they glorified the ideology, leadership, nuclear tests and military of the Democratic People's Republic of Korea, and its plan to attack the State party, and thus praised, propagandized for and acted in concert with an anti-State organization. Given the situation in the Democratic People's Republic of Korea and the meanings of the authors' expressions, these threatened the existence and security of the State or the fundamental democratic order. Additionally, by glorifying the leadership and ideology of the Democratic People's Republic of Korea, Seok-ki Lee indoctrinated the other authors at the May meetings, who blindly accepted this. Furthermore, the materials held by the authors identified the State party as a colony of the United States, encouraged violent struggles against it and incited people to follow *juche*. These actions, as well as Seok-ki Lee's call to immediately put into practice everything that had been prepared, threatened national security. The courts accordingly found a violation of the National Security Act.

4.5 The State party adds that it is permanently subject to the military provocations of the Democratic People's Republic of Korea and that certain expressions constitute a threat of inflicting harm on its existence and security and the fundamental democratic order. Amid aggravated military provocations, the authors emphasized that it was wartime. The State party submits that, therefore, article 7 of the National Security Act should be maintained.

4.6 The State party also submits that the measures taken by the authorities were proportionate, as the authors' acts were criminally punishable and thus no other measures were available. The present individual communications procedure cannot replicate the authors' domestic criminal trial, which was conducted in accordance with due process and impartiality standards. The length of the prison sentences shows that the principle of

proportionality was respected in light of the authors' criminal records and behavioural patterns and the extent of the illegality.

#### **Authors' comments on the State party's observations on admissibility and the merits**

5.1 On 20 June 2017, the authors submitted their comments on the State party's observations. They dispute that the Koreans were on the brink of a war at the time of the May lectures, as the Democratic People's Republic of Korea had revoked its "top combat-ready posture" and had retreated its missiles from the border. Moreover, two university professors had interpreted the hostile words by the Democratic People's Republic of Korea as not showing an intention to attack. The reactions of the Government and the media did not reflect such an understanding either.

5.2 The authors further submit that during the criminal proceedings, the trial court ruled that the unintelligible parts of the audio recordings of the May meeting should be filled based on each party's claims, but that the Government deliberately misinterpreted certain parts. Moreover, the State party attributes certain phrases to Seok-ki Lee,<sup>3</sup> who never uttered those phrases in the order presented. The participants' awareness at the May meetings that the Unified Progressive Party's leadership followed the violent strategy of the Democratic People's Republic of Korea does not mean that they agreed with it. Their applause for Seok-ki Lee and their affirmative answers to his questions do not show that they were in a hierarchical order. The State party has not proven the authors' mindset concerning the content of the discussions; but even if they accepted Seok-ki Lee's remarks, this would still not show a national security threat. Furthermore, no one subsequently engaged in any corresponding action. The discussions on military preparations were not concrete and would remain meaningless if a war did not break out. Even though the State party attributes the expressions of one or two individuals to all participants, the authors only summarized the subgroup discussions, whose content therefore cannot be attributed to them. The atmosphere, with repeated laughs and the meetings being organized as a lecture programme with 130 participants, is not characteristic of an intent to plan a violent insurrection. The covert nature of the meetings was due to the State party's crackdown on those with left-wing views. The authors reiterate that no threat to national security resulted from the May meetings.

5.3 As for violation of the National Security Act, the authors refer to the Committee's jurisprudence, where it found that the State party's invocation of security threats posed by the Democratic People's Republic of Korea was insufficient to specify the precise nature of threats allegedly posed by certain expressions.<sup>4</sup> They state that the restrictions in the present case were likewise not necessary. As regards "Comrades in the Revolution", they submit that its writer has stated that the song recalls endeavours against the Japanese colonial regime and criticizes American imperialism. The authors submit that even if the State party's interpretation of the song is correct, then it still does not result that the singing threatened national security. Likewise, they dispute that the content of the May meetings showed their sympathy with the Democratic People's Republic of Korea and that the materials in their possession encouraged struggling against the Government, submitting that even if the State party's interpretation is correct, mere verbal expressions and the possession of materials do not amount to a threat to national security.

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<sup>3</sup> "We can win the war if only we engage in a new type of war that goes on nationwide in multiple places simultaneously, which can be very powerful even though the substance is not obvious. The matter is eventually bound to be settled by military means. We should come up with specific measures and immediately put them in practice, all that has been prepared, as soon as the order reaches us."

<sup>4</sup> *Park v. Republic of Korea* (CCPR/C/64/D/628/1995), para. 10.3; and *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 7.3.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

6.2 The Committee notes, as required by article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes that the State party has not contested the authors' contention that they have exhausted all available domestic remedies. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

6.4 The Committee considers that the authors have sufficiently substantiated their claims for the purposes of admissibility. Accordingly, it declares the communication admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

7.1 The Committee has examined the communication in the light of all the information submitted to it by the parties. It notes that the issue before it is whether the restriction on the freedom of expression of the authors in the form of criminal punishment was necessary for the protection of national security for the purposes of article 19 (3) (b) of the Covenant.

7.2 The Committee recalls that restrictions on the right to freedom of expression must not be overbroad.<sup>5</sup> Restrictions must conform to the principle of proportionality, they must be appropriate to achieve their protective function, they must be the least intrusive instrument among those that might achieve their protective function and they must be proportionate to the interest to be protected.<sup>6</sup> The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination.<sup>7</sup>

7.3 The Committee also recalls that extreme care must be taken by States parties to ensure that provisions relating to national security are crafted and applied in a manner that conforms to the strict requirements of paragraph 3 of article 19 of the Covenant.<sup>8</sup> When a State party invokes a legitimate ground for restricting freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>9</sup>

7.4 The Committee notes that, in the present case, the courts of the State party convicted the authors under article 7 of the National Security Act on the ground that their conduct threatened national security and additionally convicted Seok-ki Lee and Hong-yeol Kim for incitement to insurrection, based on a variety of facts (see paras. 2.1–2.3 above). The Committee notes the State party's submission that the authors' convictions were based, inter alia, on the facts that they held materials and made utterances that advocated violent struggle and glorified the ideology, leadership, nuclear tests and military of the Democratic People's Republic of Korea, and its plan to attack the State party, including at defining moments of assemblies with the intention of instilling the spirit of revolution into the attendees' hearts. The Committee further notes the State party's argument that it is permanently subject to military provocations by the Democratic People's Republic of Korea and that certain expressions constitute a threat of inflicting harm on its existence and security and the fundamental democratic order.

<sup>5</sup> General comment No. 34 (2011), para. 34.

<sup>6</sup> Ibid.; and general comment No. 27 (1999), para. 14.

<sup>7</sup> General comment No. 34 (2011), para. 34.

<sup>8</sup> Ibid., para. 30.

<sup>9</sup> Ibid., para. 35.

7.5 In this regard, the Committee notes in particular that the courts of the State party also referred to the transcripts of the May meetings. The Committee notes that the authors claim that the authorities deliberately misinterpreted unintelligible parts of the audio recording, but that they do not point to specific examples. According to the summary of the transcript, Seok-ki Lee stated in his introductory remarks that the meeting was intended to face the tumultuous situation on the Korean Peninsula and that they, as revolutionaries, must proactively end the invasion attempts and military system of United States imperialists. He stated that the situation would be solved militarily and urged those present to make political, military, physical and technical preparations for a war. Hong-yeol Kim, as a moderator, then invited the participants to discuss in subgroups how to prepare politically and militarily in the current situation. The subgroups discussed various ways of attacking infrastructure, including the making of guns and bombs and sabotaging telecommunications and railway systems and oil storage facilities; this included reference to specific places. Following these discussions, Seok-ki Lee emphasized that the participants should be proactive with regard to physical and technical preparations. He referred to websites on home-made bombs, stating that “both a manual and a formula for a home-made pressure cooker bomb used in the Boston Marathon bombings are available on the Internet. If you take interest, you will start seeing things.” He also referred to “simple methods” of destroying a steel tower. In addition to the aforementioned remarks by Seok-ki Lee and Hong-yeol Kim, all other authors participated in or reported on the discussions on making military preparations and similarly engaged in discussing the procuring of weapons and the destruction of infrastructure.

7.6 In this regard, the Committee notes the authors’ contention that certain passages in the authors’ remarks were vague, that Seok-ki Lee told participants not to carry a gun and that the authors cannot be held responsible for remarks made by others. The Committee finds that the claimed ambiguity of certain passages does not affect the clear bearing of the aforementioned discussions on national security. While not all comments on the destruction of infrastructure were made by the authors, Seok-ki Lee’s subsequent remarks on the making of bombs and the destruction of steel towers can only be taken as endorsing such comments. Nor can such comments be seen separately from Hong-yeol Kim’s invitation to discuss military preparations. Furthermore, given that Seok-ki Lee was a lawmaker in the National Assembly for the Unified Progressive Party and that Hong-yeol Kim chaired the Party’s Gyeonggi Provincial Committee, it is difficult to conclude that they were not in a position of authority over the participants, all of whom were members of the same Provincial Committee.

7.7 The Committee notes that even though the authors argue that the remarks were conditional on the outbreak of a war, Seok-ki Lee acknowledged during the meetings that the conduct of the Democratic People’s Republic of Korea had rendered the situation on the Korean Peninsula highly tumultuous. In this regard, the Committee notes the State party’s observation that three days prior to the first meeting, the Democratic People’s Republic of Korea had threatened to turn “the five West Sea islands into a sea of fire”, and that between 18 and 20 May 2013 it launched five rockets. The modalities of the meetings and the size of the audience suggest that the dissemination of the discussions was intended to be limited to the 130 participants. Nevertheless, the combination of the authors’ respective roles in the organization and development of the meetings and their remarks, including in particular their discussions of the necessity of making military preparations and of ways of procuring weapons and destroying infrastructure, together with the positions of authority held by Seok-ki Lee and Hong-yeol Kim and the overall context, support the Supreme Court’s conclusion that these remarks were capable of substantially affecting the behaviour of the participants, and of justifying a restriction of freedom of expression to protect national security.

7.8 Noting the authors’ argument that the State party could have requested the Unified Progressive Party to apply its internal discipline mechanisms, the Committee is not convinced that such measures would have had the same protective effect as a criminal prosecution and sanction relating to the specific and serious facts in this case, which affect national security and the fundamental democratic order of the State, as they involved incitement to insurrection, and the existence of materials and speeches advocating for violent struggle and attack on sensitive infrastructures such as for railway transport, communications and fuel supplies.

Recalling its concern about prosecutions under article 7 of the National Security Act,<sup>10</sup> the Committee is nonetheless mindful of the specific circumstances of the case, including the particularly serious nature of the authors' utterances on different occasions, their leadership role, the specific context in which the State party found itself at the time of the various events and the State party's obligations under article 20 of the Covenant relating to suppression of propaganda for war. In light of the information before it, the Committee cannot conclude that the State party has not demonstrated sufficiently that the authors' convictions were necessary in the circumstances of the case, adequate to achieve their protective function and proportionate to the interest to be protected, and accordingly finds no breach of the authors' rights under article 19 (2) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation of article 19 of the Covenant.

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<sup>10</sup> CCPR/C/KOR/CO/4, para. 48.

## Annex I

### **Joint opinion of Committee members Furuya Shuichi, Andreas Zimmermann and Gentian Zyberi (partially dissenting)**

1. We are generally in agreement with the conclusion as expressed in the Views that as authors' convictions were necessary in the circumstances of the case and proportionate to the interest to be protected, they do not constitute a violation of the authors' rights under article 19 (2) of the Covenant. However, we are unable to concur with it in regard to the authors' convictions under article 7 of the National Security Act for having sung a song called "Comrades in the Revolution".

2. According to the facts submitted by the authors, they were tried and convicted not only for their conduct and utterances in two meetings held on 10 and 12 May 2013, but also for singing the song on 8 March 2012, 3 May 2012, 21 June 2012 and 10 August 2012. As is pointed out in paragraph 7.3 of the Views, when a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.<sup>1</sup> Nevertheless, the Views adopted by the Committee do not provide an individualized assessment of whether the State party has satisfied the necessity and proportionality tests concerning the specific events of singing the song in 2012.

3. While the tensions between the State party and the Democratic People's Republic of Korea have existed since the end of the Korean War, the seriousness of such tensions has been different depending on the time. We agree with the State party's submission that the May 2013 meetings took place in the context of the brink of war, in light of the fact that the Democratic People's Republic of Korea had threatened to turn "the five West Sea islands into a sea of fire" three days before the meeting of 10 May 2013 and then launched five rockets between 18 and 20 May 2013. In light of this particular context, we support the conclusion in the Views that the criminal punishment of the authors was necessary and proportionate to the interest to be protected. However, in our view, the tension between both States in 2012 was less serious than in May 2013, and the threat to the national security of the State party was less imminent. In this regard, the Committee should have examined the compatibility of the criminal prosecution and punishment of the authors with the Covenant in this specific context of 2012 separately from the May meetings in 2013.

4. In light of the overall situation existing in the State party in 2012, it seems that the prosecution and punishment of the authors for having sung the specific song was not necessary for maintaining the security of the State party nor proportionate to this purpose. In any event, as the State party did not provide the Committee with any particular information to justify its prosecution and punishment of the authors for having sung the song in 2012,<sup>2</sup> this leads us to the conclusion that the State party has failed to demonstrate sufficiently that the measures taken were within the scope of permissible restrictions under article 19 (3). For this reason, we have to conclude that the prosecution and punishment of the authors for these specific events that took place in 2012 constitutes a violation of article 19 (2).

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<sup>1</sup> Human Rights Committee, general comment No. 34 (2011), para. 35.

<sup>2</sup> See also *Sohn v. Republic of Korea* (CCPR/C/54/D/518/1992), para. 10.4; and *Shin v. Republic of Korea*, communication No. 926/2000, para. 7.3.

## Annex II

[Original: Spanish]

### **Individual opinion of Hernán Quezada Cabrera (partially dissenting)**

1. With regard to communication No. 2809/2016 (*Seok-ki Lee et al. v. Republic of Korea*), I regret that I am unable to join the majority of the Committee in concluding that the facts before it do not disclose a violation of article 19 of the Covenant, since that decision does not take into account one of the elements that formed the basis, except in one case, for the authors' convictions.
2. While the Committee's conclusion that there was no violation of article 19 of the Covenant might be appropriate purely in terms of the facts that it took into account, the failure to examine another fact relevant to the case prevented it from disclosing a specific violation of article 19 (2). My individual opinion is, then, partially dissenting, as I will explain below.
3. The conviction of all the authors, except Dong-kun Han, under article 7 of the National Security Act was based, inter alia, on the fact that they had sung a song entitled "Comrades in the Revolution" on 8 March 2012, 3 May 2012, 21 June 2012 and 10 August 2012 during meetings of the Provincial Committee of the party to which they belonged. The State party submits that the song glorifies the ideology, leadership, nuclear tests and military of the Democratic People's Republic of Korea and its plan to attack the State party, and that, by singing it, the authors had committed the offences of praising, propagandizing for and acting in concert with an anti-State organization.
4. In my view, in the light of the translation of the lyrics provided by the authors, it has not been established that the song calls for any conduct that might threaten national security. Nor is it clear what the nature and extent of the claimed risk was, or whether the State party's judicial authorities indeed defined these elements beyond referring generally to the intended instilment of a revolutionary spirit, the glorification of the Democratic People's Republic of Korea and criticism of the United States of America. Moreover, other than indicating that the song was sung at defining moments of assemblies and was intended to instil the spirit of revolution in the attendees' hearts, the State party has not established that the specific contexts of the four occasions on which the song was sung were such as to show a direct and immediate connection between the singing and the claimed threat. In this regard, the Committee's general comment No. 34 (2011) explicitly states that: "When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat" (para. 35).
5. Having examined all the particulars of the case, I find that the State party has not shown that this restriction on the authors' freedom of expression was necessary for any of the reasons set out in article 19 (3) of the Covenant.
6. It may therefore be concluded that the rights of Seok-ki Lee, Hong-yeol Kim, Sang-ho Lee, Soon-seog Hong, Yang-won Cho and Keun-rae Kim under article 19 (2) of the Covenant have been violated insofar as their conviction under article 7 of the National Security Act was based, inter alia, on their singing "Comrades in the Revolution" on the specified occasions.