

# EVAP Ep. 21\_ Tomàs Ojea Quintana

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## SUMMARY KEYWORDS

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## SPEAKERS

Jaclyn Streitfeld-Hall, Tomàs Ojea Quintana

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### Jaclyn Streitfeld-Hall 00:00

Welcome to Expert Voices on Atrocity Prevention, by the Global Centre for the Responsibility to Protect. I'm Jaclyn Streitfeld-Hall, Research Director at the Global Center. This podcast features one on one conversations with practitioners from the fields of human rights, conflict prevention and atrocity prevention. These conversations will give us a glimpse of the personal and professional side of how practitioners approach human rights protection and atrocity prevention, allowing us to explore challenges, identify best practices, and share lessons learned on how we can protect populations more effectively. Today, I'm joined by Tomàs Ojea Quintana, former UN Special Rapporteur on the situation of human rights and the Democratic People's Republic of Korea. Thank you for joining us today.

### Tomàs Ojea Quintana 00:58

It is my pleasure to be with you, thank you.

### Jaclyn Streitfeld-Hall 01:00

You've served in numerous positions across the UN system, including Special Rapporteur on the human rights situation in Myanmar, and as I mentioned most recently, as a Special Rapporteur on the situation of human rights and DPRK. What is your perspective on your most recent role in North Korea? And how would you view that role in comparison to previous positions?

### Tomàs Ojea Quintana 01:25

Okay, so for the special procedures of the United Nations Human Rights Council, which usually we call it Special Rapporteurs, then one of the main and most important resources that we have is to engage with the authorities of the concerned country. And if you engage, then you

have the chance to go to the ground, to walk throughout the country, to meet a authorities, but also to try to go to prisons and to meet prisoners claiming human rights abuses. And you also go to different regions, trying to meet with any minorities. So that's a very important element of this mechanism of the Human Rights Council, engaging the counterpart. And unfortunately, with regard to the Democratic Republic of Korea, it has been the case since the establishment of this mandate in 2004, since that time, even with other Rapporteurs, the government of the DPRK has been completely closed to any kind of engagement and cooperation and conversation with the Special Rapporteurs. And that's a problem because we have to report to the Human Rights Council. The Human Rights Council, which is integrated with 47 countries, we definitely look into our reports and check the reliability, the credibility, how the reports are sustained in terms of evidence, and so on and so forth. So it has been very challenging for me throughout the six years holding the mandate of the DPR Korea reporting about the situation of human rights on the ground. Fortunately, we have many organizations working on the DPRK human rights agenda. Back in 2014, the Human Rights Council established a Commission of Inquiry for DPR Korea, an important initiative. They issued a groundbreaking report where they found a number of human rights abuses, serious human rights abuses that the Commission qualified them as crimes against humanity. And they hold hearings with different parties around the world, collecting evidence and information, giving the background necessary to basically make that conclusion, that a series of international crimes were committed in DPRK. So that was very important for my mandate, but also all the testimonies that I collected throughout the six years, talking to those who left North Korea, you know, ordinary citizens, most of them women who crossed the border with China and took a very dangerous journey to finally arrive to South Korea. And I had the chance to speak with many of these escapees, as I call them, who were basically escaping a number of situations, including human rights abuses. So that gave me the chance to report to the United Nations with it serious evidence of what I was saying. This status quo, let's say it like that, the status quo about the neglect of North Korea to engage with the human rights agenda of the United Nations continues. Now, a new Special Rapporteur has been appointed, my colleague Elizabeth Salmone, and she's facing the same trouble. Which is lack of possibility, at least have a diplomatic encounter with North Korean diplomats, let's say in New York, or Geneva or somewhere else. So the situation is extremely different from my experiences in Myanmar as a rappourtuer. As the Myanmar Rappourtuer I engage with the military at that time in 2008. And I had the chance to visit 10 times Myanmar and travel all over the country. The experience with DPR Korea continues the same. From my opinion, together with the necessity to address the seriousness of the human rights abuses in North Korea. The other challenge is to see how to open channels of communication with the government, that will be a very important achievement for the human rights of the people living in North Korea. The alternative is complete isolation of the country from the outside world, very heavy sanctions regime against the system of North Korea. And that's a problem really, for those like us who are advocating for improvement of the human rights of the people living inside the country.



Jaclyn Streitfeld-Hall 06:58

Now, you mentioned the UN Commission of Inquiry Report, which you know, historically documented crimes against humanity in North Korea and also said that the government was manifestly failing to uphold its responsibility to protect. During your term as Special Rapporteur, what crimes did you witness remained ongoing?





Iomaj's Ujea Quintana 07:22

That's a very important question because the mandate of the Commission of Inquiry include until I think to the year of 2012 even 2014. Many of the findings of the COI referred to policies from the old leaders in North Korea, including Kim Il-sung. And then Kim Jong-Il. The COI though, reached out to Kim Jong Un basically making a very strong point that according to their information, some of those crimes were ongoing. And then it was his responsibility to stop the continuation of these crimes. And I should say that during my tenure as a Rapporteur during these six years, I had the chance to reconfirm that some of those crimes were continuing. First, you have the situation of the enforced disappearance of persons, a large number of people who were kidnapped during and in the aftermath of the Korean War, and the families continued to hope for a response about their whereabouts, what happened to them. All rights that are ensured in a number of international treaties, and that's continuing. The Government of North Korea up to date denies any information about including the abduction of the Japanese and other foreigners by North Korea. That's something that continues, and the principle behind crime of enforced disappearance of persons is that it continues until the government provides information about what happened to these people. So that's an ongoing crime and will not stop until the Government of North Korea, the current authorities, open the files, the records they have in their hands and show what happened to these people. But then you have the situation inside the country with people, North Korean people who suffer the crime of arbitrary detention attention also enforced disappearance including torture. In [this respect](#) was one of the most serious concerns that I had, and that the Human Rights Council has about the human rights in North Korea is the existence of prisons that we call political prison camps. These facilities were those people who had any disagreement, any problems, political problems with the government in any actions that the government perceives as threatening the system, the political system of North Korea, are sent to these facilities with no longer any contact with the outside world, with their families. And this is a very extreme situation that I had the chance to confirm about its continued existence, while talking to these escapees that I told you before. Every time that I had the chance to exchange and to listen to the stories of these escapees, I asked them about their knowledge, or where and whether they know someone who has been sent to these political prison camps. And all of them, they say that they know about their existence, and that they fear, very much, chances to be sent, them or any family member, to these political prison camps. So this also represents a human rights violation that qualifies as a crime against humanity. And then you have a number of human rights abuses that continues in the country, because you have patterns of discrimination amongst the population, where the population is separated according to their background, the political background or the social background, and then you have different status in North Korea that entails a pattern of discrimination, which is a human rights violation. And then you have a lack of freedoms. I can qualify this regime in North Korea as a totalitarian regime where the state controls every aspect of the individual in the country. Actually, the individual itself, doesn't seem to exist, other than us, being a part of the community and having to offer all his or her livelihood to the system, which is represented by the Workers Party of Korea. Therefore, freedoms are completely restricted. And talking about freedom of expression, where you have all the media controlled by the government. And then you have no freedom of movement. It is very difficult for the population to move from one township to another. Of course, if you want to leave the country, you have to go through a whole process where the government decides whether or not to give you permission to leave the country. So all of this is controlled, but the issue of political prison camps has been, for me, the most serious concern in the country. And it has always been included in all my reports to the Human Rights Council.



Inlyn Streitfeld Hall 12:42

J Jaclyn Streitfeld-Hall 15:45

Thank you. And did you witness anything improve over the six years of your mandate, or did it continue to deteriorate?

T Tom̃s Ojea Quintana 13:54

Again, we face the question of access, access to information, access to patterns, access to new policies, new legislation. But, we know that is a challenge, but we try to face that challenge. I received information about, for example on the crime of torture, which some in the country call ill treatment of prisoners. I heard sometimes from escapees that in prisons, some, not even in the political prison camps, but in ordinary facilities where people are held, that some orders were issued by the authorities to prevent some instructions that, I remember he was sending instructions, to the guard community of prisons, not to ill treat prisoners. I haven't had the chance to, when I say that engagement is important it is because then you can discuss these possible improvements with the authorities. I haven't had the chance to do that. But we heard about that, for example, we heard that some prosecutors, order prosecutors to visit prisons to check on the fulfilment of these instructions, not to ill-treat prisoners. That was a very specific development that was of my interest. At some point, there were some progress at the beginning of my mandate in 2016, 17 and 18. On the access to food, right to access to adequate food that which has been in the past during the 1990s, a very catastrophic situation in the country that faced famine where thousands of people died of starvation. During those years that I mentioned, 2016, 17 and 18, there was some improvement in this respect with an economic situation inside the country progressing and therefore allowing ordinary North Koreans to access more food. So I would say that regrettably when the pandemic of COVID-19 started to hit everywhere in the world and also North Korea, the government took a number of decisions to prevent the outbreak in the country and the beginning of the pandemic that made you know, this good trend towards guaranteeing more access to adequate food to go on the other side. Since then, and up to date, we are receiving information that the situation of access to food has been aggravating. Your audience should know that, due to the pandemic, most of the embassies in Pyongyang in the capital city of North Korea closed. Most of foreigners left the country, the United Nations humanitarian agencies have left and the possibilities to provide humanitarian assistance is very complicated. And therefore the extreme isolation of North Korea at this point in time is very concerning. There have been recent reports about the exacerbation of the food insecurity in some regions of North Korea, especially in the provinces in the north - Hamgyong, and Ryanggang provinces in the north - and that's very concerning. By the way, the COI, the Commission of Inquiry, did include in their report allegations of the use of starvation against people and which might qualify as a crime against humanity. I haven't reached to that conclusion myself, the problem of food insecurity in North Korea, which affects almost 40% of the population, in my view, it is structural. It is very endemic. And it has also a number different angles and causes. And one of these points, and I mentioned that before, it is the sanctions regime from the Security Council that basically impacts the whole economy of North Korea and therefore impacts the lives, the economy of the people of North Korea.

J Jaclyn Streitfeld-Hall 19:00

Thank you for that, I was just about to turn to the international response to the situation in North Korea. So it's an excellent segue into that. You know, there have been a few things you've mentioned and emphasized already in terms of the isolation of the country. You know, obviously some of that is a choice on the part of the North Korean government to isolate itself

from the international community. But the international community has certainly created many barriers to working with the DPRK government. And a large part of that comes from Security Council action and practice. We know that the Security Council frequently deals with DPRK exclusively from the lens of nuclear non-proliferation, and that's sort of the heart of that sanctions regime that you just mentioned. What do you think can be done to shift the status quo of either lack of political will to do anything, to leverage human rights in the country or just complete focus on the nuclear issues and security issues at the expense of addressing the human rights crisis and addressing how these measures are exacerbating that crisis?

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Tomás Ojea Quintana 20:32

Okay, thank you Jaclyn. These are no easy questions. But those like me, who decide to basically take these roles, we are obliged, at least to think or reflect about possible answers. First, you are right when you say that the issue of isolation is a choice by the Government of North Korea. I would say it's a choice because this is a policy. It is more than a policy even, it is a doctrine, it has been a doctrine, elaborated by the authorities of North Korea since Kim Il Sung, which is represented in an idea which is called a *juche* idea. Difficult to translate into our own language, but you can say that represents an idea that you are going to rely on your own resources, you are going to develop your life relying on yourself. You're basically self-reliant, you're going to produce your food, you are going to build your household, you are going to provide your education, you are going to build a health system that gives health care to everyone. You're going to assure life, happy life to everyone, you're going to protect your children. And you're not going to request any help from anyone. The doctrine of the *juche* doctrine, which is quite present in the mindset of North Koreans, and it is being used by the government basically, to keep the system as it is. You know, a system that has all these serious human rights violations. It is a political system, that in the core of the political system, you will find human rights abuses, that the system is not willing to change, to revert. When you speak about other political systems around the world. And you can speak about democracies, democracies around the world had a lot of human rights problems, even human rights violations. But the essence of the democratic system is to try to overturn those human rights abuses. When this political system in North Korea, in the core of the system has an idea of human rights violations, which of course they don't accept as a human rights violation. The government, the authorities, you know, people also living in North Korea, they will not accept that all the things that we're talking about entail human rights violations. I always wanted to be, of course, serious about my approaches and reports of human rights of North Korea, but also trying to be as objective as possible, try to understand how they live, what is in their minds, and how do they perceive the world and their system and other systems. So they do not accept that there are human rights violations, not because they are dictators. Or let's say not only the leader Kim Jong Un, that basically he is not accountable to their own people at all. I'm not talking about accountable to the international system. The people of North Korea can not ask Kim for any accountability of what he's doing. But what I'm saying is not because they are these kind of dictators, but because they really believe that this is a system and therefore, we need to have a dialectic debate with them about it. We cannot just drop to them the ideas, general ideas we need, especially if we are committed to try to get some improvements on the ground, like the one that I told you, trying to improve the treatment of prisoners. And there was this great example about a delegation of North Koreans agents who traveled to Geneva to attend the hearing at the Committee of the Elimination of Discrimination Against Women. You know, there was this hearing where they presented their report. And that hearing was really interesting, because the members of the committee noted the disconnection that was between their own human rights discourse, and I would say our own discourse, and what is it that these ordinary agents of

different ministers in North Korea have in their mind. For example, there was a discussion about marital rape. Members of the committee, of course, deal with this serious issue of marital rape and the issue of consent and all that. And these North Korean agents were in Geneva, reporting and telling the members of the committee what they were doing about the rights of the women, they didn't understand. And they asked them, why don't you explain us what marital rape means. Genuinely, they weren't in the opposition to deny everything, they wanted to know. So that's what I'm saying. Now, as you also rightly said, Jaclyn, the isolation, it's also triggered by a number of actions taken by the international community. And you mentioned the status quo. The status quo in North Korea is something that is being pursued by all parties. In my opinion, it is in favor of the regime of North Korea, but it is also in favor of the other parties. And let me be very clear, or as clear as possible. I'm talking about the Chinese government, the US government, and basically those players. For them, according to my point of view, the status quo it is perfectly well. They don't, anyone of them, want change in the Korean Peninsula. There is no really intention to revert anything that's happening in the Korean Peninsula. Not even the denuclearization, which is paradoxical because what the Security Council wants and the United States wants is the denuclearization of the Korean Peninsula. But not even that. So ultimately, the status quo affects, according to our view as human rights advocates, the human rights of the people because you don't see any channel where you can do something to improve the situation or discuss to improve the situation. So that's unfortunately my point of view of what's happened in the Korean Peninsula. You know, the geopolitics in the Asia Pacific, is so strong that impedes tangible work for improving the human rights situation. Now, the connection between the nuclear issue in North Korea and human rights, it's quite clear, but has different implications. The first implication has been argued by the Security Council and actually is written in the Security Council resolutions. That according to their view, according to the view of the Security Council of the United Nations, North Korea is diverting all resources necessary to attend the necessities of their people to develop a nuclear and ballistic missile program. And that's a clear implication, where if you are not really having a balance in the use of your resources to attend the necessities of your people, then that is an issue, human rights issue. But at the same time, another implication, which has been part of my struggle throughout the mandate, it is that the stalemate on the nuclear agenda is so extreme that you don't have chances to really address human rights issues in the real world. One strong recommendation of the Commission of Inquiry was for the Security Council of the United Nations to send the case to the International Criminal Court. And nothing has happened in this aspect since 2014. So, I have been advocating as a human rights Rappporteur at the Security Council, two things: One, sent the case to the International Criminal Court, then it will be for the International Criminal Court on the Prosecutor's office, to see if there is evidence to build a case, you know, it's gonna be a lawsuit, basically that is another question - please, try to build a consensus, the same consensus that you have when imposing sanctions. Because don't forget that the Security Council of the United Nations sanctions regime towards North Korea has been approved by all the five permanent members, including China and Russia. So what I'm saying is North Korea is suffering the consequences of sanctions approved, not only by the regulars, meaning the US and others, but also by China and Russia. So my point was: First reach to the same kind of consensus, to send the case to International Criminal Court, it is your responsibility to do that according to the UN Charter, but at the same time, please review your sanctions regime to see to what extent this is affecting the lives of the people in North Korea. And that's also part of their responsibility. And during my tenure, in the second point, I should say that, Security Council Sanctions Committee always received me, I had the chance to meet them many times, discussing this point of view, and some decisions were taking speeding up the process of exemptions, and so on. So it was a good reception from the Security Council on this point, but more needs to be done in this respect, but also the issue of accountability. I am an individual who is from Argentina. And in Argentina, we experienced a very interesting

process of accountability for crimes committed during a dictatorship that we had during the 1970s. And I know, from my own experience, how important it is, accountability, in terms of ratifying our conviction about what should not be done by anyone, like torture and other crimes - but also preventing future crimes, you know, like a deterrence for future crimes, and also finally, to assure the rights of the victims to be heard, the rights of the victims for justice. That's why I have always been very clear with the Security Council members that the recommendation to send the case in North Korea to the ICC will always remain in reports until they make a decision in this respect.

**J** Jaclyn Streitfeld-Hall 33:55

In the absence of an ICC referral, what would justice and accountability look like for populations in North Korea?

**T** Tomás Ojea Quintana 34:05

There are nongovernmental organizations and victims that, during the years, have been trying different accountability processes in domestic courts and with different results. I can mention for example, the case of Otto Warmbier. Otto was a US student who was as a tourist in North Korea, and he was taken by the authorities and subject to an arbitrary trial. This is another important point to mention. There is no, of course, an independent judiciary in DPR Korea. There is no due process guarantees, basically you are convicted if the authorities decide to do it. And that's what happened with the Otto Warmbier. He was convicted without fair trial. And he was convicted and applied a very disproportionate penalty. And in prison, he suffered a health problem and went into a coma and the Government of North Korea never explained what happened to him. He finally was returned to the US and died some days afterward. So, it is clear that the Government of North Korea again, because of the issue of accountability, needs to respond and explain what happened to Otto Warmbier. His parents sue North Korea and Kim Jong Un in the US, for example, and won a number of rulings. And they are trying to see how to execute those rulings. And there are other families and victims of human rights abuses of North Korea that are trying different courts, even in South Korea. Some others tried in Japan as well. And then there is a UN human rights office in Seoul, who is mandated to basically explore, together with the victims, explore possibilities of accountability. And that process, it is ongoing. In my point of view, the international system of accountability, meaning the ICC, but also the Prosecutor's office of the ICC, especially the Prosecutor's office. I think there are chances for the Prosecutor's office of the International Criminal Court to open a case, with regards to North Korea. It requires very fine technical analysis. But I think there are chances and I think it has to be done. In one of my last reports, I've said that there is a need to take concrete action on the accountability agenda. Something needs to be done. Since the 2014 Commission of Inquiry next year, 10 years will have passed and the international community did not react after the report in terms of accountability, action, and something needs to be done, especially at the Office of the Prosecutor of the ICC. And for that we need the commitment of member states of the United Nations, and then that should be the message from those who are advocating human rights improvement in North Korea. And that should be the message also to the system, to the authorities, to the regime of North Korea, that there is a case file being investigated somewhere about human rights abuses. I think also everything needs to be done at the same time Jaclyn. Go for actions to pursue accountability, but also to change the status quo and decide to open engagement with North Korea. And here the role of

the US government is critical. And we don't want to see the North Korean human rights agenda and the overall North Korean agenda is forced into the competition that we are seeing now between the US and China. But let me tell you, I started to see a number of different opportunities on how to discuss human rights at some point. Something that at this point in time, this discussion about human rights in North Korea, it's only among us member states. But we don't have other members of the international community come in this kind of discussion. And this is leading us to nowhere for the time being.



Jaelyn Streitfeld-Hall 38:56

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