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DEUTSCHE WELLE

GERMAN INTERNATIONAL RADIO
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NORTH KOREA COMMISSION OF
INQUIRY

INTERVIEW WITH HON. MICHAEL KIRBY,
CHAIR

The Hon. Michael Kirby AC CMG

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Deutsche Welle: After almost one year of in-depth-research: Would you say that the overall picture of the every day atrocities in the secretive country is pretty much complete – or are there still important pieces missing?

Well, first, it is true that the commission was set up in March 2013. But in fact we didn't really get running until July. So it is more like seven months, and I think it is a good result in such a relatively short time. The report is very comprehensive. It contains answers to the eight-point-mandate that was given to the commission by the Human Rights Council. That eight-point-mandate itself was trying to cover the main points that had come to international attention concerning the abuses of human rights. To that extent, the report is a good resumé, and the great advantage is that it is all in the one document. Admittedly, it is a document of 350 pages. But given the extent, the seriousness and the duration of the human rights violations, it is a remarkably short report that gives anybody, who reads it with an open mind, an understanding of the reason why there has to be accountability and a response.

Are there still things that we don't know? How much of what is going on behind the North Korean borders is still guesswork?

Yes, of course, we in the commission of inquiry asked for permission to go into North Korea to inspect the places that our witnesses said were prison camps; but which were denied by the North Koreans. Yet satellites tend to suggest they ARE prison camps. Because we couldn't get in, we had to receive testimony from witnesses in Tokyo, in Seoul, in London and in Washington, D.C. I am sure that there are still a number of matters on which we haven't got the full picture. But we have got a pretty full picture. And we have certainly got enough to demonstrate that many human rights violations have occurred and are occurring; that crimes against humanity have occurred and are occurring; that people can be identified who are responsible for

those crimes against humanity; and that there should be accountability before the international community. There is plenty there, and if there is a will to act, there is a good basis upon which a prosecutor could consider bringing proceedings against those responsible for the serious international crimes which we have provisionally found.

How difficult was the investigation given the fact that – as you mentioned - North Korea refused to cooperate at all and the UN-experts weren't allowed to visit the country?

It is true that it would have been better if we had been allowed in. But simply by not-cooperating North Korea can't prevent the scrutiny of the international community, which is a part and parcel of the international system established by the *Charter of the United Nations*. Therefore, when we looked for how to overcome this impediment, we thought we would adopt the system of public hearings. That is not the normal system used by United Nations inquiries. However, I believe it was a very good system in the circumstances of North Korea. We had no difficulty getting witnesses. In the end, we had to cut off the number of witnesses when we were running out of time for the production of our report. But the report covers all of the matters in the mandate, and it does so by illustrating the findings that we make by reference to the actual testimony of the witnesses. Often, an individual witness who has been through the experience, can in a very vivid phrase illustrate what they have experienced and show how wrong it is that they have been subjected to such serious crimes. That is what we have put in our report, and I think it brings the report to life. It makes it speak to ordinary readers and listeners. I think that is a good way to bring home the enormity of what is reported in this analysis of the situation in North Korea.

Were you "prepared" for what you found out during your investigation or did the extent of human rights abuses in North Korea exceed even your worst imagination?

To be honest, I didn't really know a lot about North Korea. I am not a professional North Korea expert. I was therefore able to come, as judges do in their own countries ordinarily, without a great deal of background and with an open mind. I have no hostility against North Korea. I never have had and didn't have during my inquiry. I inquired with an open mind, willing to seek to understand. I did understand the suffering that was experienced by both North Korea, and by South Korea, in the

Korean War. The carpet bombing and the terrible devastation left a tremendous psychological scar on both of the Koreas. But I didn't expect the baseness of the conduct that was revealed by the testimony. Certainly not the intensity of the suffering which was brought to our notice, especially in relation to the prison camps, but also in relation to starvation, to the fact that, even today, about 27 percent of babies born in North Korea are seriously stunted, seriously malnourished. And that is going to have an impact on them life-long. I didn't expect the extent of discrimination against women, discrimination against Christians, discrimination against anybody who has even the slightest suspected disagreement with the politics of the government. And the caste system called *Songbun*, whereby from birth, people are assigned to a particular category on the basis of whether they are thought to be supporters or enemies of the regime. A lot of the testimony was very upsetting. It took a lot of discipline for the commission of inquiry to complete its report and, as dispassionately as it could, to present its conclusions succinctly and to reach findings and to express recommendations.

What do you hope your report will achieve? Do you think the international awareness will increase the pressure on the North Korean regime so much that it might be forced to take steps to actual changes in the long run?

I certainly hope that that would be the outcome. The commission was established by the Human Rights Council. I don't believe that would have been done, as it was, without a vote [if it had not been serious]. There wasn't a call for a vote. Such was the degree of concern in the international community. That wouldn't have been done if there hadn't been a general feeling in the international community that enough is enough and that steps now have to be taken to secure change in North Korea. I would like to emphasize that some aspects of the report have not really been much picked up in the international media. For example, there is a strong emphasis on the need for people-to-people-contact. Now, in recent days, there has been a reunion of lost and separated families across the Korean border. This has been arbitrarily refused in the past, although there are much sought after slots in which are balloted for in a lottery to win the opportunity to meet long-lost-relatives. This is a shocking and wicked thing that families are separated although they are only living within a very short space of each other. There should be a rapid increase in cross-border-

communications. There should also be other initiatives such as sister-city-arrangements, the taking of apprentices into different parts of the Korean peninsula. Educational exchanges, exchanges between professional organizations. All of these people-to-people-changes should happen, whilst the politicians are trying to work out longer-term political arrangements.

You compared the crimes in North Korea with those committed by the Nazis in World War II. Why? Where do you see parallels?

The parallels are not exact, because a feature of the Nazi atrocities was – at least in many cases – the foundation on the aspect of race and religion. There is discrimination against Christians in North Korea; but there is relatively little evidence of discrimination on the basis of race. There is testimony of notions of racial purity in North Korea, such that, if a woman who has fled into China is sent back by China and has a baby or is pregnant to a Chinese father, there is great prejudice against that child – to the extent that in one case the woman described how she saw a woman required to put her child into a bucket of water upside-down. So the child would drown, as the baby in question did. So, although there are some similarities, they are not exact. But the essential similarity was brought home to me by the testimony of one witness who told of the conditions in a political prison, where his job had been to dispose of the bodies of the emaciated prisoners who had died from lack of food. And he had to get rid of the bodies. But he didn't have efficient equipment. So they were burned in a vat, and the ashes and the unburned body parts were then taken and used in nearby fields as fertilizer. He described them as good fertilizer. And I thought then of the images which, in my childhood, I saw of the opening-up of the concentration camps at the end of the Second World War and how we had thought we had gone beyond that and moved away from that ever being repeated. Yet the testimony which we received showed that similar scenes would be seen today if we could go to the political prison camps in DPRK. As I hope, in due cause, the international community will do.

The UN commission you chaired recommended that the International Criminal Court in the Hague take up North Korea's case. But before that could happen, the UN Security Council would have to approve. China as a permanent member has a veto

power and – after its initial reaction – seems likely to block such an approach. Do you see ways to act upon the People's Republic and make them change their mind and participate in a joint international effort to bring the case to the Hague?

China is of course a very great country with a very long and great civilization. China is also – as you have said – a permanent member of the Security Council. It is a most important economic power. And its economic advancement has itself contributed to human rights in China and to concern about issues about human rights. Interestingly, the first response given by the spokesperson for the Minister of Foreign Affairs of China was against referral to the International Criminal Court, which is necessary because North Korea is not a party to the *Rome Statute* setting up the jurisdiction of that court. But the second quote which was made by the spokesperson for China, was more non-committal. It simply gave the answer "no comment" in response to a question as to whether China would in any circumstances contemplate referral to the International Criminal Court. The report of the commission of inquiry is extremely detailed. It provides ample evidence of the very great wrongs that have occurred and are occurring in North Korea. We hope that that would bear upon the decision of the People's Republic of China. If it does, then referral to the International Criminal Court is possible. If it does not do so immediately, perhaps it will do so in due course, and we shall continue in the international community to collect the testimonies; to record the evidence, so that, as in Germany after World War II, the evidence is available to bring to justice those who have been responsible for grave international crimes. The Human Rights Council would not have referred this matter to the commission of inquiry if it had not had a point. And the point was: Are there crimes against humanity? And, if so, who is accountable and what should we do? Well, the commission of inquiry has answered those questions. Now it is up to the nation states and the United Nations system to deliver an effective response.

Before publishing your report, you sent a copy to the North Korean regime. You also personally wrote to Kim Jon Un. So far, he hasn't replied. Did you expect to actually get a reaction from him – or was it merely a symbolical letter?

We haven't received a reply. We wrote many times to the North Korean regime and to the Supreme Leader in North Korea. We did this out of a sense of obligation to due process. When, at the end of the process, we had completed our report, due process required that we should supply a copy of it to the North Korean administration. We therefore did so through the hand of the Supreme Leader Kim Jong Un. He has not yet replied, and he may not do so. The North Korean regime has said that the report is a pack of lies, depending upon the testimony of “human scum”. Anyone in the world except in North Korea can go to the internet and have a look at the testimony of the witnesses. Their evidence is available, it can be judged everywhere. Everyone can make up their own mind as to its truthfulness. It was our duty to warn the Supreme Leader of North Korea of the terms of international criminal law, that those who aid and abet the international crime of crimes against humanity when they could have stopped such crimes, will themselves be guilty of having aided and abetted the international crime concern. So that in giving this notice to him, we were doing no more than observing the obligations of due process. We have done our part. Now it is the responsibility of the Supreme Leader and of his administration to do his part. And if North Korea does not safeguard the human rights of its citizens, it is in international law the obligation of the international community to step in and do so.

When you look back on the interviews with more than 300 witnesses, survivors and experts – which particular stories touched you most (if possible to tell)?

It is very hard to isolate the particular stories, because so many of them were very powerful. One of the stories was by a Mrs. Kim who gave evidence in Seoul. She had been with her husband in their home, which was close to the then border between North and South Korea. They were fearful that the North Korean troops that were retreating to North Korea from the advancing United Nations force would seize and carry off the husband. And so they found a hiding-place in their home. And he was there and was overlooked by the North Korean soldiers when they first arrived. He then made the mistake of coming out of the hiding-place, and the soldiers returned. He was seized, he was taken away, presumably to North Korea. And she has never heard from him from that day. She said not a day goes by but she thinks of him and of those last moments with him. That she wishes she could throw herself

upon him and embrace him. And tell him how she loved him. And these simple stories, told in simple language by people who have no political hostility but simply have suffered human loss, depravation and human rights violations. These are the stories that had an impact on me, and I believe they will have an impact on humanity. And that is the test. A “crime against humanity” is one that causes revulsion and horror in human beings and there is plenty of evidence, in the report of the United Nations commission of inquiry on North Korea, to cause those emotions of revulsion and horror. And to demand that they be a resolution and a response.