OFFICE OF THE
CHIEF AND COUNCIL

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Kitchenuhmaykoosib Inninuwug

CHIEF DONNY MORRIS

PRESS STATEMENT

ON

THE ONTARIO MINING ACT REFORM

MEDIA STUDIO QUEEN'S PARK
TORONTO, ONTARIO CANADA
OCTOBER 10TH, 2008

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Chief Donny Morris
On the Ontario Mining Act
Toronto, Ontario, Canada
October 10th, 2008

Introduction

First of all I would like to acknowledge and thank the Mississauga peoples for allowing me to hold this Press Conference in their traditional territory. It is important to acknowledge the Indigenous Peoples whose lands we are enjoying.

Chief and Council Incarcerated

Today is a very important day for us. We are going to table our Report on mining. Our efforts to stop Platinex from establishing a strip mine resulted in my Council and I being sentenced to 6 months in jail. I would like to publicly thank my Council for giving up their own personal freedom for the freedom of our peoples and to protect our land. I would also like to thank all our many indigenous and non-indigenous supporters who stood up for our Human and Indigenous Rights. I want to thank Gilles Bisson, Mining Critic for the NDP for co-hosting this press-conference today.

Mining is a threat to our existence as Indigenous Peoples because we are one with the land. We went to prison because we believe and are committed to the protection of our environment. We were incarcerated because we stood up to protect our Inherent Laws and Aboriginal and Treaty Rights. It is important for the government and people of Ontario to understand the cultural, environmental, economic and human rights dilemma we are in.

Submission Overview

The province of Ontario is in the process of amending the Mining Act. The province unilaterally established a consultation process to address some very specific questions regarding Indigenous Peoples and the amendments to the Mining Act. Today KI is presenting a Report to the Ministry of Northern Development and Mines on our position regarding this process.

As I address you here in Toronto, members of KI are in Sioux Lookout to officially submit our Report to the Ontario government in the course of the hearings on reforming the Ontario Mining Act. We are here to give Public Notice that KI is determined to protect our lands against unsustainable mining and corporate exploitation from the local to the international level.

Our Report covers several broad areas, namely,

1. The Fundamental Principles and Philosophies of the KI
2. International Law – namely the minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples and how they need to be respected and implemented on the ground
3. How Current Federal and Provincial Policies violate our Indigenous Rights and the constitution of Canada
4. Issues with Ontario's current Mining Act
5. Specific Comments of Ontario's Mining Review which are not to be construed as consent to operate within the narrow confines proposed
6. And finally: KI Principles Regarding Mining Exploration

I will not go into these matters in detail but highlight some of our key areas. I suggest that the Ontario government consider our position very carefully.

KI Report is Not Consultation

We do not want our Report to be considered as us consenting to participate within the very narrow confines of the current part of the ongoing consultation process. The Ministry of Northern Development and Mines does not have the mandate nor the capacity to address our concerns. The reason we are making this presentation is to raise our objections to the Ministry's entire process and because we do not want have our silence be taken as consent. Clearly there is no consent on the part of KI peoples for mineral exploration on our land.

The present consultation process does not have the capacity to recognize our Aboriginal and Treaty Rights. Recognition of Aboriginal and Treaty Rights is primarily a federal responsibility and only involves provincial jurisdiction because they claim jurisdiction over resource extractive industries, which in turn are

subject to Aboriginal and Treaty Rights. The concerns raised by KI require the highest-level political negotiations that involve British Crown and its successor state Canada and KI as signatories of our Treaty.

Colonial Doctrines of Discovery

The Canadian economy has always been based on the "Colonial Doctrines of Discovery". The Ontario Mining Act is no exception. In fact all Canadian and provincial legislation is based on the claim of mutually exclusive jurisdiction, meaning that all decisions regarding our lands and resources are to be made in either Ottawa or in the provincial capital without any recognition of our Aboriginal and Treaty Rights. The Colonial Doctrines of Discovery *purported* to shift all the wealth and control to federal and provincial governments and do not recognize Indigenous Peoples as having Human Rights.

Indigenous peoples are the poorest people in Canada, not because our land is poor but because we have been marginalized and alienated from benefiting from our land. The reduction and elimination of poverty in indigenous communities cannot be achieved through increasing government welfare programs, but based on the recognition and implementation of our Aboriginal and Treaty Rights on the ground.

In Canada the courts have rejected the Colonial Doctrines of Discovery. Internationally all United Nations Human Rights Bodies have rejected the Colonial Doctrines of Discovery. It is only the Canadian and provincial governments that cling to this out-dated and internationally rejected dehumanizing concept. We were never discovered. We have always been who we are.

Canada Voted NO to the UN Declaration on the Rights of Indigenous Peoples

Canadians have always been proud of the human rights work Canada does at the international level. Canada in fact sits on the newly established United Nations Human Rights Council. Yet Canada is the only country in the world to have voted twice against the United Nations Declaration on the Rights of Indigenous Peoples. It voted against the Declaration in June 2006 at the United Nations Human Rights

Council and September 2007 at the United Nations General Assembly. Canada said they voted against the Declaration because it was too broad and was basically not in line with Canada's domestic policies. What they failed to mention is that their current policies violate not only international law, but also the Canadian constitution.

Canada cannot pick and choose what human rights Canada will recognize or not recognize. Human rights are universal and indivisible, Canada is subject to the Charter of the United Nations and international customary law, and therefore Canada is bound by the minimum standards that the Declaration establishes regarding Indigenous Peoples. The Declaration established that Indigenous Rights are human rights and that state governments should implement them at the domestic level. Canada claims to be a developed country and is constitutionally obligated to recognize existing Aboriginal and Treaty Rights. Canada cannot change our treaty without our consent, it must simply implement it. The UN Declaration on the Rights of Indigenous Peoples must be the minimum standard for the treatment of Indigenous Peoples in Canada. The KI in our Report endorses the UN Declaration on the Rights of Indigenous Peoples and require it as the minimum standard to be met in regard to any mining activity in KI territory.

United Nations Declaration on Rights of Indigenous Peoples

In our Report we elaborate on the fact that indigenous laws, traditional knowledge and resource development all are based on our long-standing KI philosophies. These values, knowledge, language, culture and activities are the essence of our nationhood as Indigenous Peoples. The United Nations has accepted the position that “indigenous peoples have a right to self-determination”. Under this provision the international community recognizes that we have the right to freely determine our political status and freely pursue our economic, social and cultural development.

Furthermore, the United Nations recognizes that indigenous peoples need to be consulted through our own representative institutions in order to obtain our “free prior informed consent” before adopting and implementing legislative or administrative measures that may affect us. The principle of free prior informed

consent also applies to any mining activity in KI traditional territories which can only go forward with our consent.

KI accepts the United Nations Declaration on the Rights of Indigenous Peoples as the minimum standard to which Canada and the provinces have to subscribe in dealing with us as Indigenous Peoples. *KI views the Declaration as a very important instrument constituting the international recognition that Indigenous Rights are Human Rights.* We know that this is extremely hard for Canada and Ontario to accept because it is contrary to the status quo. KI understands that the Declaration sets new and higher standards that countries like Canada must learn to adopt, especially when considering Aboriginal and Treaty Rights.

Court of Appeal

The Ontario Court of Appeal admonished the Ontario government in the KI and Ardoch Algonquin ruling because it was obvious that the province was acting like an old colonial master and wanted to just put us in jail and throw away the key. We decided to challenge this position and we did go to jail on March 17, 2008 and were released on appeal on May 28, 2008. The Ontario Court of Appeal made it very clear that the Ontario government must not enforce injunctions through imprisonment thereby further adding to the estrangement of Indigenous Peoples from the mainstream justice system. They ruled it was important to consider the impact provincial government activities are having on our Aboriginal and Treaty Rights.

The Ontario Court of Appeal said Canada and the provinces must consult and accommodate us because of Section 35 in the Canadian Constitution 1982. Section 35 recognizes the existing Aboriginal and Treaty Rights and thereby constitutes constitutional protection for our inherent rights. KI is a signatory to Treaty 9 with the Crown. Treaty 9 triggers the duty on the part of the Crown to include us in the decision making process on mining activity in our traditional territory. This is the reason why the Ontario Court of Appeal released my Council and me from prison.

The Ontario Court of Appeal stated that the Ontario government has a duty to participate in a complex consultation process in good faith with indigenous

peoples. The Ontario Court of Appeal said that the Ontario Mining Act is a "remarkably sweeping law. It establishes a 'free entry' system whereby all crown lands, including those subject to aboriginal land claims, are for prospecting and staking without any consideration or permitting required." The Court of Appeal admonished that "there is nothing in the Mining Act about considering Aboriginal Land Claims or interests."

Procedural and Substantive Consultation Process

As KI we know that the provincial government is trying to limit their duty to consult to the procedural level, where they merely send us information, but the provincial government takes the ultimate decision regarding mining activities. They do not want to address substantive matters that impact our Aboriginal and Treaty Rights. In addition to controlling the agenda the province is also trying to limit the time frame for submissions to October 15th. This is not acceptable.

The Ontario Court of Appeal talked about a complex consultation process. A complex consultation process must encompasses health, environmental and traditional land use planning, because mining activities lead to problems in these areas, and we do not want to accept those costs. KI feels that a complex consultation process must be Multi-Ministerial, involve the federal government and must be mutually agreed to. This new process must deal with procedural and substantive consultation and Aboriginal and Treaty Right matters. KI is the ultimate authority in decision making regarding any activities that impact KI territory.

We do not agree with consultation being limited to the mandates of provincial ministries. To accept this would allow each ministry to filibuster and ignore the overall impact mining activities have on our Aboriginal and Treaty Rights. The province must be held accountable to address the full depth and scope of the impact mining is going to have on KI.

Conclusion

In conclusion Canada and the province of Ontario must sit down with KI to establish a mutually agreeable consultation process. Any engagement with KI must happen at the highest political level and involve the British Crown and Canada as its successor and KI as signatories of our treaty. The government must sit down and talk to our leadership about our principles regarding mining exploration. Only through jointly working out these concerns will we be able to ensure investment in the north. Only then will Ontario really modernize their mining strategy. The Ontario government needs to consider the full scope of what we are saying in our Report because we need to learn to work together. If we don't then mining operations are going to get tied up in a long term struggle for recognition of Aboriginal and Treaty rights. When and if we need to go back to court we will let the court know we tried to engage at a substantive level. We ask you to stand strong with KI in supporting the KI principles and the minimum standards set out in the UN Declaration on the Rights of Indigenous Peoples.

[16 Minutes]