

**REQUEST FOR EARLY WARNING MEASURES**  
**AND URGENT ACTION PROCEDURE**

**To**  
**The United Nations Committee on the**  
**Elimination of Racial Discrimination**

**In Relation To**  
**The Government of Canada**

**Submitted by:**

**Anishinabek Nation, Bad River Band of the Lake Superior Tribe of Chippewa  
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**Together with:**

**The Center for International Environmental Law, EarthRights International,  
Environmental Defence Canada**

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\*See annex to this document for more information about the signatory organizations.

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## **I. Introduction**

The undersigned are Tribal and First Nations of Anishinaabe People whose traditional territories encompass the Upper Great Lakes, in regions now part of the United States (U.S.) and Canada. The Anishinaabe People maintain a reciprocal relationship with the natural environment where the waters, trees, animals, plants, and air are an extension of our community. This community is at the center of Anishinaabe culture and life. As Anishinaabe (also known as Anishinabek), we have a solemn responsibility to preserve our homeland, environment, culture, resources, and distinct lifeways for future generations; the Canadian and U.S. governments have committed to honoring First Nations' rights to hunt, fish, and gather in the Great Lakes region in multiple legally binding treaties. As part of this responsibility, the undersigned present this submission to the Committee on the Elimination of Racial Discrimination ("CERD" or "the Committee") to urge the Committee to examine the Government of Canada's compliance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ("the Convention").

We assert violations arising from Canada's support for the aging Line 5 crude oil pipeline, which is owned and operated by Enbridge, a Canadian corporation.<sup>1</sup> Line 5 poses a current and foreseeable threat to a broad range of human rights protected under the Convention. The continued operation of the pipeline risks a catastrophic oil spill and exacerbates climate change at a time when fossil fuel phase out is crucial. This threatens vital natural and cultural resources, disproportionately and discriminatorily endangering the culture, health, and property of dozens of Indigenous communities in Canada and the U.S.

Indigenous Peoples on both sides of the border and in the U.S. States of Michigan and Wisconsin have publicly expressed opposition to the pipeline and called for its decommissioning. A U.S. federal court has found Enbridge to be trespassing on Indigenous Peoples' land.<sup>2</sup> And earlier this year, the United Nations (U.N.) Permanent Forum on Indigenous Issues called for Canada and the U.S. to decommission Line 5 because the pipeline "presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada."<sup>3</sup>

The Convention requires Canada to prevent and rectify discriminatory practices – direct and indirect – committed by Canadian corporations at home and abroad.<sup>4</sup> The Committee has previously expressed concern over reports that transnational corporations registered in Canada, particularly in the extractive industries, impair the rights of Indigenous Peoples outside Canada.<sup>5</sup> In prior early warning and urgent action procedures about other projects threatening Indigenous rights, the Committee has recommended that Canada take appropriate measures to prevent these harms and hold corporations accountable. Canada has repeatedly ignored these recommendations despite the threat of grave harm.

Canada has continued this pattern of human rights violations by failing to properly regulate Enbridge to ensure that Enbridge's operations respect Indigenous rights, even though future spills from Line 5 pose significant threats. Canada has ignored the U.N. Permanent Forum's recommendation to decommission Line 5. Instead, it is actively advocating for the continued operation of Line 5 despite the opposition of affected Indigenous communities and the foreseeable threat that it poses to human rights. Canada has pursued diplomatic interventions, invoked its 1977 Transit Pipeline Treaty ("Pipeline Treaty") with the U.S., and made submissions to U.S. courts

supporting Line 5, without the consent or even consultation of affected Indigenous communities. Sovereign Indigenous Nations have been excluded from ongoing negotiations between the United States and Canada regarding the fate of the Line 5 pipeline and its continued operation.

Through its support for Line 5, failure to adequately regulate Enbridge, and exclusion of Indigenous Peoples from negotiations under the Pipeline Treaty, Canada has repeatedly violated its Convention and human rights obligations. It has violated its obligations to respect and protect Indigenous Peoples' right to participation and free, prior and informed consent (FPIC), contributed to the foreseeable risk of discriminatory impacts on Indigenous Peoples' rights to a healthy environment, health, property, culture, and myriad other rights affected by climate change, and has failed to interpret its international agreements consistently with its human rights obligations. This pattern of conduct violates Articles 2, 5(c), (d)(v) and 5(e)(iii)(iv)(vi) of the Convention.

The actions of the Canadian government are a continuation of its historical discrimination against the Anishinaabe, and other Indigenous Peoples. Canada's dereliction of its human rights responsibilities with respect to Line 5 is consistent with its history of supporting extractive industries operating in Indigenous Peoples' territories without regard for FPIC, environmental harms, and climate change.

#### **A. Requests to the CERD Committee**

The undersigned respectfully request action under the CERD early warning and urgent action procedures regarding Canada's support of the continued operation of the Line 5 pipeline. CERD intervention is needed to ensure Indigenous communities' right to participate in the ongoing Treaty negotiations regarding the future of Line 5, and to prevent further discriminatory impacts on other human rights.

The situation around Line 5 falls within the Committee's guidelines. The guidelines explain that CERD "shall act under its early warning and urgent action procedure when it deems it necessary to address serious violations of the Convention in an urgent manner."<sup>6</sup> The Committee has identified that urgent action may be necessary due to the "[p]resence of a significant and persistent pattern of racial discrimination," "[e]ncroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources," as well as "[p]olluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups."<sup>7</sup> This is precisely the case here.

Accordingly, the undersigned are seeking CERD's engagement under the early warning and urgent action procedures to recommend that Canada:

- a. Withdraw support for Line 5, a project threatening the human rights and ways of life of Indigenous Peoples;
- b. Implement the recommendation of the U.N. Permanent Forum on Indigenous Issues to re-examine support for, and decommission, the Line 5 pipeline;
- c. Cease advocacy before U.S. courts in support of Enbridge's operation of Line 5;
- d. Withdraw its invocation of the Pipeline Treaty, and pending such withdrawal, cease any negotiations under the Pipeline Treaty until it ensures that affected Indigenous Nations, who are sovereigns and human rights holders, can effectively participate in any and all

- discussions regarding Line 5's future, including the negotiations, in accordance with their right to free, prior and informed consent; and,
- e. Interpret all international treaties, including the Pipeline Treaty, consistently with its human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights obligations.

## **II. Factual Background**

Line 5 transports up to 23 million gallons of crude oil and natural gas liquids daily from Enbridge lines principally originating in Alberta, Canada, through Wisconsin and Michigan, to Ontario.<sup>8</sup> It crosses the Straits of Mackinac (“the Straits”) between Lakes Huron and Michigan, and runs over and alongside rivers, streams, and wetlands.<sup>9</sup>

### **A. Line 5 poses a foreseeable risk of a catastrophic oil spill and contributes to the climate crisis.**

Line 5 poses real risks of catastrophic oil spills at multiple points as forewarned in its documented failures, aged infrastructure, and previous spill history. The stretch of Line 5 that “lie[s] exposed in the Straits below . . . busy shipping lanes” poses a risk of an oil spill to an ecologically vulnerable waterway.<sup>10</sup> Indeed, Enbridge vessels struck *their own* pipeline with anchors or cables at least three times in 2018 and 2019.<sup>11</sup> In 2020, the pipeline was damaged so severely that a court ordered Enbridge to temporarily shut it down.<sup>12</sup>

While the stretch under the Straits is particularly vulnerable, an oil spill could occur anywhere along the pipeline.<sup>13</sup> The pipeline is 70 years old; according to an engineer who worked on the pipeline installation, during construction Enbridge's predecessor stated that it would “last 50 years.”<sup>14</sup> Operating an aging pipeline risks infrastructure failure, because pipelines degrade over time due to corrosion, pressure, and use.<sup>15</sup>

Natural changes in the surrounding landscape exacerbate these issues. For example, after the Bad River Band, one of the signatories to this petition, sued Enbridge for nuisance and trespass, a U.S. federal court found that the migration of the Bad River towards the pipeline on the Bad River Reservation in Wisconsin exposes the pipeline to “an actual risk of a significant rupture.”<sup>16</sup> In May 2023, erosion of the Bad River increased, and the Bad River Band reported that at four separate locations, less than 15 feet of river bank remained between the Bad River and the Line 5 pipeline.<sup>17</sup> Such rapid erosion is alarming considering that in a November 2022 opinion, a court noted that “there still remains approximately 26 or 27 feet of riverbank between the Bad River shoreline and Line 5 at its nearest point.”<sup>18</sup> The Bad River Band filed an emergency motion for injunctive relief to shut down Line 5 due to significant riverbank erosion “present[ing] an imminent threat” to the Bad River Band.<sup>19</sup> The U.S. Pipeline and Hazardous Materials Safety Administration has warned that pipelines exposed in this manner are in danger of rupture, with several devastating ruptures occurring this century.<sup>20</sup> The State of Michigan and its Attorney General have also supported the shutdown of Line 5 at the Bad River, stating in a recent amicus brief, that “[t]he alarming erosion at the Bad River meander poses an imminent threat of irreparable harm to Lake Superior which far outweighs the risk of impacts associated with a shutdown of the

Line 5 pipeline.”<sup>21</sup> In June 2023, a U.S. federal court ordered Enbridge to establish a more stringent shutdown and purge protocol to address the risk from the ongoing erosion.<sup>22</sup>

Government agencies have also documented Enbridge’s persistent violations of safety protocols.<sup>23</sup> One database contains 32 U.S. federal enforcement actions for Enbridge’s violations of environmental regulations over the last thirteen years,<sup>24</sup> including failing to inspect its pipelines for vulnerabilities.<sup>25</sup> Michigan’s Department of Natural Resources found that Enbridge ignored requirements to physically support and maintain a protective coating around the pipeline, and that “threats to pipeline integrity from incorrect operations and procedural errors . . . present[ ] a substantial, inherent and unacceptable risk of a catastrophic oil spill with grave ecological and economic consequences.”<sup>26</sup>

Line 5 and similar Enbridge pipelines have experienced multiple oil spills with catastrophic consequences. One study found that since 1953, Line 5 itself has spilled over 1 million gallons of oil over 33 incidents.<sup>27</sup> According to a news report, one such incident occurred around 1980 when Enbridge reported that a 3-inch crack in the pipeline led to a spill in the Hiawatha National Forest in the Upper Peninsula of Michigan. The news report indicates that high levels of harmful chemicals remained in the area for more than 30 years after the spill.<sup>28</sup> In 1991, Enbridge’s Line 3 spilled 1.7 million gallons of crude oil into Minnesota’s Prairie River.<sup>29</sup> Greenpeace calculated that Enbridge spilled 2.8 million gallons of oil across the U.S. between 2002 and 2018.<sup>30</sup> This includes the largest U.S. inland oil spill during that period: the Line 6B pipeline released nearly a million gallons of heavy crude oil into Michigan’s Kalamazoo River in 2010 after what federal investigators called a “complete breakdown of safety.”<sup>31</sup> The Line 6B spill caused irreversible damage to the environment and trauma to Indigenous Peoples, especially the Match-E-Be-Nash-She-Wish and Nottawaseppi Huron Bands of the Potawatomi (both signatories to this request).<sup>32</sup>

These examples are just the documented spills; advocates question whether other spills have gone unreported, or if Enbridge has underreported the quantity of oil spilled. Regarding the 1980 spill in the Hiawatha National Forest, one researcher concluded that, “[e]ither Enbridge knew about the extent of the contamination in the national forest for more than 30 years and didn’t clean it up; or it didn’t know about the spill’s effects for more than three decades.”<sup>33</sup>

The U.N. Permanent Forum on Indigenous Issues concluded that Line 5 “jeopardizes the Great Lakes.”<sup>34</sup> An oil spill from Line 5 could contaminate more than 375,000 acres of land and wetlands, 450 lakes, and thousands of kilometers of shorelines and rivers.<sup>35</sup> The Straits are the “worst possible place” for an oil spill in the Great Lakes because of their strong, shifting currents,<sup>36</sup> and their location between two of the Great Lakes, which contain 20 percent of the world’s fresh surface water.<sup>37</sup> One analysis cited by the International Joint Commission – the binational commission the U.S. and Canada charged with monitoring the Great Lakes’ environmental protection – estimated that a one million-gallon leak from Line 5 into the Straits, similar in size to previous Enbridge pipeline spills in the region, would affect approximately 15 percent of Lake Michigan’s open waters and 60 percent of Lake Huron’s open waters.<sup>38</sup> A court concluded that after a spill at the Bad River, “the negative impact . . . on the Bad River watershed and even Lake Superior itself could be catastrophic.”<sup>39</sup> Oil pollution in the Great Lakes would jeopardize access to drinking water for more than 48 million people.<sup>40</sup>



The ongoing operation of Line 5 also exacerbates the climate crisis at a time when countries must transition away from fossil fuels.<sup>41</sup> Line 5's upstream and downstream greenhouse gas (GHG) emissions amount to approximately 87 million metric tons of carbon dioxide equivalent annually.<sup>42</sup> That equals the annual GHG emissions of nearly 19 million gasoline-powered passenger vehicles.<sup>43</sup> Accordingly, Line 5 contributes to significant climate-induced harm to the Great Lakes and the treaty-protected natural resources vital to Indigenous communities.<sup>44</sup> Experts expect climate change to cause increased precipitation and flooding around the Great Lakes.<sup>45</sup> Flooding causes soil runoff and erosion, which contributes to the excess nutrient pollution responsible for toxic algal blooms and "dead zones."<sup>46</sup> Lake Erie has already experienced multiple algal blooms which cause drinking water emergencies.<sup>47</sup> The warming of the Great Lakes also threatens Anishinaabe communities' treaty-protected culturally vital natural resources, including miin (blueberry), ziinzibaakwadwaatig (sugar maple), adikamegwag (whitefish), and manoomin (wild rice).<sup>48</sup>

### **B. Enbridge is currently operating Line 5 without Indigenous Peoples' FPIC and without required easements across tribal and state lands.**

The Line 5 pipeline traverses traditional Anishinaabe territories surrounding the Great Lakes, including the undersigned's territories in Canada and the U.S., such as the treaty ceded territory of Bay Mills Indian Community and the Bad River Band Reservation.<sup>49</sup> Yet, in some areas, Enbridge is operating the pipeline without legal permission to cross tribal and state lands. In 2013, Enbridge's easements on parcels of land on the Bad River Band's Reservation expired, and were not renewed.<sup>50</sup> Rather than removing the pipeline in accordance with the easement's terms and the Band's demands, Enbridge continues to operate the pipeline.<sup>51</sup> In 2019, after years of negotiations regarding removal of the pipeline, the Bad River Band sued Enbridge for trespass and nuisance.<sup>52</sup> A U.S. court held that Enbridge is "a conscious or willful trespasser" on the Band's property.<sup>53</sup> In June 2023, the court ordered Enbridge to decommission the stretch of the pipeline on the Band's property, but gave Enbridge up to three years to re-route the pipeline - primarily due to Canada's unsupported assertions that decommissioning would cause economic harm.<sup>54</sup> This was despite the court's recognition that the ongoing trespass would cause "irreparable harm" to the Band's "sovereign right to control its own land" and protect tribal resources.<sup>55</sup> Enbridge is appealing this order.<sup>56</sup> Similarly, in November 2020, Michigan terminated the easement that allowed Enbridge to operate in the Straits, based on threats to the environment and Indigenous Peoples.<sup>57</sup> Litigation over the matter remains pending.<sup>58</sup>

Additionally, Indigenous communities have not given their consent to the continued operation of Line 5. Far from granting consent, Tribes in the U.S. and Canada, including the undersigned, have worked for years to decommission Line 5 given the risk a catastrophic oil spill poses to their health, culture, and environment.<sup>59</sup> In 2015 and 2016, Michigan's twelve federally recognized Tribes passed resolutions calling to decommission Line 5.<sup>60</sup> In 2017, the Bad River Band ordered Enbridge to remove all infrastructure from the Bad River watershed.<sup>61</sup> In 2021, the Bay Mills Indian Community formally banished Line 5 from its territory, including the Straits.<sup>62</sup> The Midwest Alliance of Sovereign Tribes<sup>63</sup> and the Anishinabek Nation in Canada<sup>64</sup> have issued similar orders. Despite the Tribal resolutions calling for the decommissioning of Line 5, Tribal orders banishing Enbridge from indigenous territory, a court order calling for Enbridge to decommission the pipeline on the Bad River Band Reservation, and Michigan terminating

Enbridge's easement to operate in the Straits, as explained above, Enbridge has continued its operations in total disregard of the right to free, prior, and informed consent.

**C. Indigenous communities have not provided their free, prior, and informed consent to proposed new stretches of the pipeline.**

In an effort to extend the life of Line 5 rather than decommissioning it, Enbridge has proposed building a tunnel beneath the Straits to house a replacement pipeline.<sup>65</sup> Affected Indigenous communities, including the Bay Mills Indian Community, have not provided their free, prior, and informed consent for the proposed project, and oppose any new construction in a place of ongoing spiritual, cultural, and economic significance to the Tribes.<sup>66</sup>

The U.S. Environmental Protection Agency (EPA) also raised concerns that tunnel construction could “likely significant[ly] impact:” “(1) waters that are essential to the exercise of Tribal treaty rights and continuation of Tribal traditional lifeways; (2) high-quality surface waters that serve as vital drinking water supplies and wetlands with valuable ecological and habitat functions; (3) our global climate; and (4) [] a wide range of natural resources, should a spill occur.”<sup>67</sup> Environmental organizations and Tribal Nations have also expressed serious concerns about the construction's environmental impacts, including the danger of an oil spill and the pipeline's contribution to climate change.<sup>68</sup>

In a permitting process currently pending before the Michigan Public Service Commission, Enbridge failed to demonstrate that its project was reasonably routed or safely designed so as to prevent a potential oil spill from reaching the Straits of Mackinac. Experts retained by Bay Mills, an intervenor in the proceeding, highlighted the explosion risk of placing a hazardous liquid pipeline in an enclosed underground tunnel; an explosion that would cause oil to seep into the surrounding geology and become a long-term source of pollution in the Great Lakes.<sup>69</sup>

Enbridge has also applied for permits to reroute the pipeline along the borders of the Bad River Reservation and across rivers, streams, wetlands, and drinking water aquifers immediately upstream of the Reservation and located in the heart of the Band's treaty-protected ceded territory.<sup>70</sup> The EPA, environmental organizations, and tribal groups have raised substantial concerns regarding the environmental impact of the proposed Wisconsin pipeline, with the EPA stating that the reroute “will affect” key water resources on the Reservation.<sup>71</sup> The Bad River Band has not given its free, prior, and informed consent for the rerouting, which crosses its traditional territories and poses a grave threat to its watershed.

Based on the broad opposition to the new projects, there is no guarantee they will ever be permitted. Indeed, the U.S. Army Corps of Engineers recently announced that it would not finalize the permitting process on the tunnel for another 18 months, so even if a permit is granted, Enbridge would likely not complete construction until 2030.<sup>72</sup> Nonetheless, Enbridge intends to continue operating its aging pipeline during the many years of (uncertain) permitting and construction.<sup>73</sup>

#### **D. The Canadian Government has supported Line 5, including by invoking the 1977 Pipeline Treaty.**

Canada is advocating for Line 5 on a variety of fronts, despite Indigenous opposition and environmental and human rights concerns. Canada has supported the pipeline through diplomatic negotiations with “high-level U.S. decisionmakers, including the U.S. President.”<sup>74</sup> As explained below, Canada has also invoked the 1977 Pipeline Treaty. The Treaty is a bilateral treaty between the United States and Canada that aims to ensure the uninterrupted transmission of oil and natural gas through pipelines that start in one country, traverse the other country, and reenter the original country, but with clear exceptions for environmental protection and other key governmental concerns (which would include protection of sovereign tribal rights).<sup>75</sup> Notably under Article IV of the Treaty, these pipelines are “subject to regulations by the appropriate governmental authorities having jurisdiction over such Transit Pipeline in the same manner as for any other pipelines or the transmission of hydrocarbons by pipeline subject to the authority of such governmental authorities.”<sup>76</sup> Regulations that fall within the scope of this Article include, “pipeline safety and technical pipeline construction and operation standards” and environmental protection.<sup>77</sup>

In February 2021, the Canadian House of Commons created a Special Committee to report on Line 5 and craft recommendations to “safeguard Canadian interests.”<sup>78</sup> The Committee held hearings where Enbridge, industry officers, and government officials (primarily from energy and natural resources departments) presented testimony; Indigenous Peoples and environmental groups or officials did not participate, and among dozens of affected groups, only the Bad River Band was invited.<sup>79</sup> Canada’s Minister of Natural Resources admitted that he was “not aware of any direct [or planned] engagement with [I]ndigenous communities on Line 5.”<sup>80</sup> The Committee’s April 2021 report recommended that the government “gather input” from Indigenous communities.<sup>81</sup> Canada has not consulted us.

Even if there were consultation, the report recommended that Canada act to ensure the pipeline “operate without interruption,”<sup>82</sup> without regard to any “input” from Indigenous Peoples. It failed to mention the risk of oil spills or Canada’s human rights obligations.<sup>83</sup> It focused on energy security,<sup>84</sup> ignoring studies showing alternatives to Line 5<sup>85</sup> and the need to reduce reliance on fossil fuels<sup>86</sup> and instead, transition to renewable energy.<sup>87</sup>

In October 2021 and August 2022, Canada’s Foreign Affairs Minister formally invoked the dispute resolution provision of the Pipeline Treaty in response to the Michigan and Wisconsin lawsuits, and issued statements supporting Line 5<sup>88</sup> (again, without any consultation with Indigenous communities). Canada and the United States have engaged in at least three rounds of bilateral negotiations under the Treaty.<sup>89</sup> Sovereign Indigenous Nations have been excluded from the ongoing negotiations, despite their requests to participate because negotiations directly affect their rights.<sup>90</sup>

Without consulting any affected Indigenous groups, Canada filed a letter and three briefs in the Michigan lawsuits, arguing that the court must delay ordering decommissioning and defer to the negotiations under the Treaty.<sup>91</sup> Canada’s submissions disregard the pipeline’s impact on Indigenous rights. In the Wisconsin lawsuit, Canada recently issued a statement reiterating its

support for the continued operation of the pipeline<sup>92</sup> – directly opposing the views of the most-affected Indigenous Nation (the Bad River Band). Canada’s position, developed without any consultation or consent from affected Indigenous Peoples, has affected the willingness of the federal court to issue an injunction immediately requiring Enbridge to cease its trespass on the Bad River Band’s territory.<sup>93</sup>

**E. The UN Permanent Forum on Indigenous Issues recognizes the grave danger Line 5 poses to Indigenous communities.**

In April of 2023, leaders from the Bay Mills Indian Community and the Anishinabek Nation attended the UN Permanent Forum on Indigenous Issues to raise their concerns about Line 5 at the Forum and with the Canadian and U.S. governments. Tribal leaders spoke with representatives of the Canadian government, and raised concerns about the rights violations and risks that the pipeline and Canada’s support poses. Tribal leaders asked to be included in the ongoing negotiations, but did not receive further communications from the government of Canada. The Permanent Forum concluded that Line 5 “jeopardizes the Great Lakes” and “presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada.” Accordingly, the Permanent Forum “call[ed] on Canada to re-examine its support for the Enbridge Line 5 oil pipeline” and “recommend[ed] that Canada and the U.S. decommission Line 5.”<sup>94</sup>

**III. Canada’s ongoing support for Line 5 and failure to regulate Enbridge disproportionately impacts the Anishinaabe People’s rights to health, property, culture, participation, and free, prior, and informed consent, in violation of the Convention.**

The Convention defines discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”<sup>95</sup> This includes discrimination in effect arising from acts, even unintentional acts, that impose a disadvantage or have a disproportionate impact on a racial or ethnic group.<sup>96</sup>

Line 5 threatens and causes a disproportionate and unique harm to the Anishinaabe People. An oil spill from Line 5 threatens to: harm Anishinaabe land; impact the health of the Anishinaabe; destroy Anishinaabe property and cause forced displacement; and endanger the cultural and religious practices of the Anishinaabe. This negatively impacts the rights to property, culture, and health, protected by Articles 5(d)(v) and 5(e)(iii)(iv)(vi) of the Convention. Anishinaabe People will experience these harms disproportionately compared to non-Indigenous populations, because they maintain a historic and unique economic, religious, and cultural connection with the land and waters Line 5 threatens.

Additionally, the Canadian government has acted against the vocal opposition of Indigenous groups, excluded Indigenous voices from the formation of its policy in relation to Line 5, and shut the doors on Indigenous community participation in the transnational negotiations over the fate of the pipeline. This uniquely impacts the Anishinaabe People’s rights to participation and free, prior, and informed consent, pursuant to article 5(c) of the Convention.

The Convention imposes both positive and negative duties on States parties, and these duties apply extraterritorially.<sup>97</sup> Through the Convention, States parties commit not to “engage in,” “sponsor,” or “support” racial discrimination.<sup>98</sup> Additionally, the Convention requires States to prohibit and end racial discrimination, including that arising from the conduct of non-state or private actors.<sup>99</sup> To fulfill this obligation, States must regulate businesses within their jurisdiction to prevent them from violating rights at home and when operating abroad.<sup>100</sup> To achieve this objective, States parties should take appropriate means, including adopting legislative measures, as required by the circumstances.<sup>101</sup> States parties are further required to guarantee equality before the law with respect to civil and political rights,<sup>102</sup> as well as “economic, social, and cultural rights,” without distinction as to race, colour, or national, or ethnic origin.<sup>103</sup> When discrimination occurs, States parties are required to ensure access to effective remedies against discrimination, as well as the right to seek just and adequate reparations for damages suffered as a result of discrimination.<sup>104</sup>

By supporting Enbridge’s continued operation of Line 5, the Canadian government enables discriminatory practices that violate and pose foreseeable risks to the Anishinaabe People’s rights, including, to a healthy environment, culture, property, health, free, prior and informed consent, and effective participation of Indigenous Peoples’ in decisions that affect them. Canada’s actions violate its international human rights obligations, including under the Convention, and are part of Canada’s pattern of failing to adequately regulate the conduct of Canadian businesses, within and outside of Canada, at the expense of Indigenous Peoples’ rights.<sup>105</sup>

**A. Canada’s support for Line 5 violates its obligation to respect and protect Indigenous Peoples’ rights to FPIC and participation.**

Canada’s actions to ensure Line 5’s continued operations despite vocal opposition by affected Indigenous groups in Canada and the U.S., disregard, and actively interfere with, our rights to FPIC and participation. Canada should not have formed a policy position and intervened to support Line 5 without the effective participation and consent of communities that disproportionately experience Line 5’s harmful impacts. Canada must ensure that corporations within its jurisdiction, like Enbridge, obtain FPIC from Indigenous Peoples, including the undersigned, whose lands and rights are affected by their projects.

- i. Canada’s closed-door decision-making and disregard for Indigenous communities’ opposition to Line 5 violates Indigenous Peoples’ right to participate in decisions that affect them.

Indigenous Peoples have political rights under the Convention, including the right under Article 5(c) to “take part in the Government as well as in the conduct of public affairs at any level.”<sup>106</sup> These rights are also protected under other instruments and treaties, including the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP), which CERD has recommended “be used as a guide to interpret the State party’s obligations under [the Convention] relating to [I]ndigenous [P]eoples.”<sup>107</sup> UNDRIP enshrines Indigenous Peoples’ right to participate in government decisions that “may affect them” or “their rights.”<sup>108</sup>

The Committee has determined that States have a duty to ensure that Indigenous Peoples have “effective participation in public life.”<sup>109</sup> The Special Rapporteur on Indigenous Peoples called on Canada “to consult with Indigenous Peoples to address [climate change] challenges including support for Indigenous led initiatives to conserve biodiversity and prevent environmental disasters and degradation.”<sup>110</sup>

In forming its position on Line 5 without the participation of Indigenous Peoples, Canada violated affected Indigenous communities’ right to participate in decisions affecting our rights.<sup>111</sup> The Canadian Parliamentary Committee conducted Line 5 hearings without the participation of Indigenous Peoples, and its report does not consider Indigenous communities’ opposition to the pipeline.<sup>112</sup> In invoking the Pipeline Treaty’s dispute resolution provision, Canada initiated a closed-door process that has excluded sovereign Indigenous communities who have a right to participate.<sup>113</sup> The fate of the pipeline should not be determined without our participation and FPIC. In failing to consult with Indigenous Peoples prior to determining its position on Line 5, Canada is violating our right to participate in decision-making processes that affect us, including decisions involving climate change and its impacts.<sup>114</sup>

ii. Canada’s support for Line 5 violates Indigenous Peoples’ right to withhold consent for Line 5, a project which affects our territories and rights.

As this Committee has recognized, Indigenous Peoples have a right requiring States to consult and cooperate in order to obtain their FPIC prior to the approval of “any measure, such as large-scale development projects, that may cause irreparable harm to indigenous peoples’ rights, culture, lands, territories, and way of life.”<sup>115</sup> In its General Recommendation No. 23 on the rights of Indigenous Peoples, the Committee reaffirmed the “rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources,” as well as the obligation of the States to “take steps to return those lands and territories where [Indigenous Peoples] have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent.”<sup>116</sup> The Committee has found that FPIC builds upon Article 5(c), which ensures that Indigenous Peoples have “equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.”<sup>117</sup> As this Committee and other U.N. bodies recognize, FPIC is required for extractive industry projects within the territories of Indigenous Peoples and projects with a significant, direct impact on Indigenous Peoples<sup>118</sup> —for instance, “when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.”<sup>119</sup>

FPIC processes must allow Indigenous Peoples to “influence the outcome of decision-making,” suggest alternatives, and withhold consent.<sup>120</sup> As the Expert Mechanism on the Rights of Indigenous Peoples explains, FPIC must be continuous; “consent must be ongoing with express opportunities for review and renewal,” and can be revoked.<sup>121</sup> States should consult with Indigenous Peoples at each step of the process, as an ongoing obligation.<sup>122</sup>

The Committee has previously called on Canada to “take the necessary steps to incorporate [FPIC] in domestic legislation” and “freeze present and future approval of large-scale development projects affecting indigenous peoples that do not enjoy [FPIC].”<sup>123</sup> The Committee has specifically

urged Canada to “establish preconditions for achieving effective free, prior and informed consent, including building trust, good faith and culturally appropriate methods of negotiation and recognition and respect for indigenous peoples’ inherent rights.”<sup>124</sup> The Committee has similarly called on the United States to “desist from all activities planned and/or conducted on the ancestral lands of” Indigenous Peoples, “or in relation to their natural resources, which [were] being carried out without consultation with and despite protests of” the affected Indigenous Peoples.<sup>125</sup> The Committee has also issued letters to the United States expressing concern about the expansion of Line 3, a tar sands pipeline opposed by the Anishinaabe peoples in Minnesota. The CERD’s April 29, 2022, letter to the U.S. requested information, among other topics, related to measures taken by the U.S. to “consider suspending the activities of the Line 3 pipeline until free, prior and informed consent is granted by the affected Anishinaabe indigenous peoples.”<sup>126</sup>

The Indigenous communities in Canada and the U.S. directly affected by Line 5—including the undersigned—have a right to FPIC. The pipeline traverses our land.<sup>127</sup> Additionally, treaties between the U.S., Canada, and Indigenous Peoples enshrine our rights to hunt, fish, and gather in our traditional territories on both sides of the border.<sup>128</sup> An oil spill could destroy these lands and waters.<sup>129</sup> As set out below, we rely on these resources for our livelihood, sustenance, and culture.

Accordingly, Line 5 has a direct, significant impact on our rights. But Canada has backed Enbridge’s continued operation of the pipeline despite affected Indigenous communities’ clear opposition and calls for the pipeline to be decommissioned.<sup>130</sup> Enbridge is trespassing on the Bad River Band’s Reservation, and the Bay Mills Indian Community has banished Line 5 from “their reservation and the lands and waters of our ceded territory—including the Straits.”<sup>131</sup> Canada should have acted to prevent Enbridge from operating without FPIC of directly affected Indigenous communities in Canada.<sup>132</sup> These obligations apply extraterritorially and also requires respecting FPIC of Indigenous communities in the United States.<sup>133</sup> Instead, Canada supported Enbridge through diplomatic intervention and participation in U.S. legal proceedings to keep Line 5 operating, without considering the opposition from directly affected Indigenous communities.<sup>134</sup>

**B. Canada’s support for Line 5 violates its anti-discrimination obligation under the Convention to guarantee the Indigenous Communities’ rights to a healthy environment, health, property, and culture.**

Enbridge’s continued operation of Line 5 and proposed construction of new stretches of pipeline poses foreseeable risks of severe oil spills, which would cause harm to water quality and sensitive ecosystems and threaten Indigenous Peoples’ rights to a healthy environment, health, culture, and property. Indigenous Peoples will disproportionately and uniquely bear the burden of the destruction of the lands, waters, and natural resources that our communities rely on for sustenance, culture, and religion. By failing to properly regulate Enbridge and actively promoting Line 5’s operation, Canada is enabling discrimination against our communities and failing to protect our rights.

- i. An oil spill from Line 5 would devastate the environment, posing a foreseeable threat to several civil, economic, social, and cultural rights.

Article 5 of the CERD prohibits racial discrimination in the enjoyment of civil, political, economic, social, or cultural rights.<sup>135</sup> The list of rights in Article 5 is non-exhaustive.<sup>136</sup> Line 5 poses a foreseeable threat of disproportionate adverse impacts on affected Indigenous Peoples' rights to a healthy environment, health, property, and culture. As the Committee has stated, "in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized."<sup>137</sup> Similarly, the Committee on Economic, Cultural and Social Rights has recognized that Indigenous Peoples are often "disproportionately affected by the adverse impact of business activities ... particularly in relation to the development, utilization or exploitation of lands and natural resources."<sup>138</sup>

In the Convention, the right to a "safe, clean, healthy, and sustainable environment" intersects with, and is encompassed within, various rights of Indigenous Peoples including the right to health and property free from discrimination.<sup>139</sup> Indeed the Committee has recognized that activities threatening the environment of Indigenous Peoples threaten the right to health under Article 5(e)(iv), which includes access to clean water.<sup>140</sup> In its 2014 Concluding Observation for the U.S., the Committee expressed concerns that "indigenous peoples, continue to be disproportionately affected by the negative health impact of pollution caused by the extractive ... industries."<sup>141</sup> Article 5(d)(v) of the Convention recognizes the right to own property without discrimination, which the Committee has explained encompasses the "imperatives of safeguarding the environment with respect to land use."<sup>142</sup> The Committee has expressed concern that "the grant of licenses to private companies for activities such as ... the construction of pipelines . . . leads to privatization and ecological depletion of territories traditionally inhabited by indigenous peoples."<sup>143</sup>

Harms to the natural environment are inextricably linked to Indigenous Peoples' right to culture, which is protected under Article 5(e)(vi). The Committee has affirmed that States parties have a duty to respect Indigenous Peoples' distinct culture and way of life,<sup>144</sup> to provide Indigenous Peoples with sustainable economic and social development compatible with their culture,<sup>145</sup> and to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources."<sup>146</sup> The Committee has also specifically recognized that States should protect Indigenous communities' historical sites of cultural significance from harm by extractive industries.<sup>147</sup> In another Concluding Observations, the Committee has stated that support should be withdrawn for projects that threaten the traditional lifestyle of Indigenous Peoples.<sup>148</sup> The Human Rights Committee has recognized that, "in the case of indigenous peoples, the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting."<sup>149</sup> The right to culture is also woven throughout UNDRIP, which recognizes the rights to "[p]ractice," "revitalize,"<sup>150</sup> "maintain, control, protect,"<sup>151</sup> "develop and teach"<sup>152</sup> cultural customs and ceremonies, "cultural heritage, traditional knowledge and traditional cultural expressions."<sup>153</sup>



The continued operation of Line 5 disproportionately endangers our environment, water, land, and resources, posing a foreseeable threat to our right to a healthy environment, and the associated rights to health, water, property, and culture. Moreover, an oil spill would cause substantial harm to the environment, and Enbridge's proposed tunnel under the Straits and re-routed pipeline in Wisconsin threaten additional harms to water, biodiversity, and land.<sup>154</sup> This would impact the health and wellbeing of millions of people who rely on the Great Lakes for drinking water, agriculture, fishing, and other subsistence activities. It could jeopardize access to drinking water for more than 48 million people.<sup>155</sup> Additionally, any oil spill would contaminate the shorelines of the Great Lakes and surrounding wetlands and rivers,<sup>156</sup> including Ramsar Sites like the Kakagon and Bad River Sloughs.<sup>157</sup>

Presently, the pipeline is trespassing on the Bad River Band's Reservation in Wisconsin<sup>158</sup>—violating sovereign property and treaty rights. An oil spill at any point along Line 5 could also destroy Indigenous Peoples' land, and affect their rights in the fish, animals, and plants in their traditional territory. Oil pollution would irreversibly destroy many sacred sites around the Great Lakes, which are traditional cultural property.<sup>159</sup>

The Anishinaabe People's relationship with the environment, including the waters, animals, plants, and air, is at the center of Anishinaabe culture, religion, health, economy, identity, and life.<sup>160</sup> An oil spill would pollute the waters that are critical for our way of life, risking the continuity of Anishinaabe culture for future generations. The Great Lakes contain many sacred sites for Anishinaabe People, which would be destroyed by an oil spill.<sup>161</sup> According to the Anishinaabe origin story, the Straits are the center of creation of Turtle Island (North America) and hold an ongoing spiritual significance.<sup>162</sup> By completely “destroy[ing] a sacred cultural landscape central to Anishinaabe life,”<sup>163</sup> an oil spill poses an irreversible threat to our ability to practice, teach, and protect our culture and way of life.

An oil spill would also impact animal and plant species on which many of us rely for subsistence and cultural practices. Water, plants, and animals are necessary for Anishinaabe cultural ceremonies and traditions.<sup>164</sup> Many Anishinaabe women are water keepers and pray and care for water during ceremonies.<sup>165</sup> Wild rice (manoomin) is “an irreplaceable cultural, spiritual, nutritional, and commercial resource and sacred relative to ... Tribal Nations in the Upper Midwest and Great Lakes region.”<sup>166</sup>

A spill in the Straits would wipe out fisheries that have provided a food source and lain at the heart of tribal way of life for millennia, and that still form the core of the Tribal treaty-protected fisheries.<sup>167</sup> For example, the Bay Mills community uses Lake Whitefish and Lake Trout for naming, feasting in celebration of children, ghost suppers, and burial ceremonies.<sup>168</sup> Bay Mills scholars have identified that “the right to fish [is] an essential part of what it mean[s] to be Indian – what it mean[s] to be a part of the Bay Mills community.”<sup>169</sup> This right is so important that it was enshrined in treaties with the U.S.<sup>170</sup> Likewise, fishing, ricing, gathering, and hunting provide sustenance and livelihood for the Bad River Band, and its practices and stewardship—passed on for generations—are part of “its social fabric,” and “central premise of its identity.”<sup>171</sup>

- ii. Canada is violating its Convention obligation to guarantee the enjoyment of Indigenous Communities' rights to a healthy environment, health, property, and culture without discrimination.

Canada's obligations to refrain from, prohibit, and prevent discriminatory impacts on the above-outlined rights are both substantive and procedural, and include broad obligations to protect members of groups that are vulnerable to environmental harm, including Indigenous Peoples. On a procedural level, the Convention requires States to assess environmental impacts on human rights in a transparent manner and provide remedies for environmental harms.<sup>172</sup> Substantive obligations require states to "adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors."<sup>173</sup> As the Committee recommended to Canada in its 2017 Concluding Observations, States should "[p]rohibit the environmentally destructive development of the territories of indigenous peoples."<sup>174</sup> Additionally, States must prevent, remediate, and provide remedy for environmental harms.<sup>175</sup>

The Committee has called on States to take appropriate action to prevent companies from adversely affecting Indigenous Peoples' rights. For instance, the Committee recommended that the U.S. take adequate measure to "undertake prompt, independent and thorough investigations into all cases of environmentally polluting activities affecting the rights of racial and ethnic minorities and indigenous peoples, bring those responsible to account and provide effective remedies for the victims."<sup>176</sup> This includes "tak[ing] appropriate measures to prevent situations in which the economic activities by transnational corporations registered in the State party have an adverse effect on the human rights and way of life of minority groups and indigenous peoples in other countries."<sup>177</sup> In its Concluding Observations to Canada, the Committee has expressed concerns over the adverse effects of economic activities of Canadian extractive companies operating outside of Canada on the rights to land, health, living environment, and the way of life of Indigenous Peoples. The Committee has called on Canada to take the appropriate measures "to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada."<sup>178</sup> Similarly in its Concluding Observations to France, the Committee recommended taking measures, in consultation with the affected Indigenous Peoples in overseas territories, to remedy the health and environmental consequences of extractive activities.<sup>179</sup>

By failing to regulate Enbridge's conduct within and outside of Canada, despite the substantial, imminent risk of a catastrophic spill from Line 5 and previous oil spills connected to Enbridge, and seeking to ensure Line 5's continued operation, Canada is prioritizing business interests over the human rights of our communities.<sup>180</sup> Canada is thus violating its obligations under Articles 2 and 5 of the Convention by enabling Enbridge to threaten our environment, health, culture, and property in a manner that has a discriminatory effect on Indigenous Peoples who have a sacred and unique relationship with the environment. By advocating for the continued operation of the pipeline, Canada is actively interfering with the enjoyment of our rights, and pushing forward a project with foreseeable disproportionate, adverse, and irreversible impacts on Indigenous Peoples.

### **C. Canada’s support for Line 5 violates its duty to respect and protect the human rights threatened by climate change.**

Canada’s support for Line 5 contradicts its obligations to mitigate climate change and protect against its adverse human rights impacts, particularly when such impacts disproportionately affect Indigenous Peoples. To comply with its human rights obligations, Canada must phase out fossil fuels. Advocating to extend the operation of an aging pipeline does just the opposite—locking in fossil fuel production and consumption for another century.<sup>181</sup>

- i. Line 5 contributes to climate change, which poses a foreseeable threat to a broad range of human rights, particularly for Indigenous Peoples.

The world is experiencing an accelerating climate emergency. The adverse impacts of climate change endanger communities globally and are projected to worsen with every fraction of a degree increase in average global temperature.<sup>182</sup>

Climate change constitutes one of “the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.”<sup>183</sup> In 2022, the Committee expressed concern “at the disproportionate health, socioeconomic and cultural impact of climate change ... on ... Indigenous Peoples.”<sup>184</sup> The Committee also noted with concern the “negative effects that climate has on the traditional way of life of indigenous peoples.”<sup>185</sup> Five other U.N. Treaty Bodies expressed, in a joint statement, that the adverse impacts of climate change “threaten, among others, the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights.”<sup>186</sup>

Indigenous Peoples’ rights to life, food, health, and water are “disproportionately vulnerable to climate change,”<sup>187</sup> because they “often live in marginal lands and fragile ecosystems which are particularly sensitive to alterations in the physical environment.”<sup>188</sup> By fundamentally changing ecosystems, undermining traditional agricultural practices, and causing climate-forced displacement, climate change makes it difficult for Indigenous communities to continue practices that define and sustain their way of life, threatening their rights to self-determination and cultural identity.<sup>189</sup> Moreover, as stewards of their land, Indigenous Peoples play a vital role in mitigating and adapting to climate change by protecting carbon stores, preventing GHG emissions, and conserving biodiversity.<sup>190</sup>

Line 5’s continued operation has the foreseeable effect of increasing GHG emissions and worsening the impacts of climate change.<sup>191</sup> Line 5 exacerbates significant climate-induced harm to the Great Lakes and the treaty-protected natural resources vital to the undersigned Indigenous communities.<sup>192</sup> Experts expect climate change to cause increased precipitation and flooding around the Great Lakes.<sup>193</sup> Flooding causes soil runoff and erosion, which contributes to the excess nutrient pollution responsible for toxic algal blooms and “dead zones.”<sup>194</sup> Lake Erie has already experienced multiple algal blooms which cause drinking water emergencies.<sup>195</sup>

The Anishinaabe People feel the effects of climate change more directly because of our direct connection to the land and reliance on it. For example, the Anishinaabe People rely on harvesting wild rice from our lands for much of our sustenance and even economic security. Climate-induced

ecosystem changes put the Anishinaabe People at risk, because there is a very real possibility that the rise in temperature and increased volatility of storms will destroy the wild rice ecosystem. Since the Anishinaabe People rely on the wild rice for much of our food, the loss of this resource will have a devastating impact on the health—and culture—of the Anishinaabe People. The warming of the Great Lakes also threatens Anishinaabe communities' other culturally vital natural resources, including miin (blueberry), ziinzibaakwadwaatig (sugar maple), and adikamegwag (whitefish).<sup>196</sup>

- ii. Canada's support for fossil fuel projects like Line 5 represents an active dereliction of its duty to mitigate climate change, particularly for Indigenous Peoples and other vulnerable communities.

To meet Canada's human rights obligations stemming from the Convention and other international treaties, Canada must phase out fossil fuels. Canada accepts that fossil fuels are the main driver of anthropogenic climate change.<sup>197</sup> The U.N. Secretary General,<sup>198</sup> Human Rights Treaty Bodies,<sup>199</sup> Independent Experts,<sup>200</sup> and the Intergovernmental Panel on Climate Change all affirm that an urgent and rapid shift away from fossil fuels is required.<sup>201</sup> This includes retiring current fossil fuel infrastructure and refraining from new infrastructure, because “without early retirements, or reductions in utilization, the current fossil infrastructure will emit more GHGs than is compatible with limiting warming to 1.5°C.”<sup>202</sup>

Canada must take measures to mitigate the climate crisis, particularly its effects on Indigenous Peoples. For instance, in Concluding Observations, the Committee recommended that Cameroon “[a]dopt measures to mitigate the impact of climate change on the lands, territories and resources of indigenous peoples with a view to protecting their customs and traditional ways of life.”<sup>203</sup> In its Concluding Observations to France, the Committee recommended taking measures, in consultation with the affected Indigenous Peoples in overseas territories, to mitigate the effects of climate change on their territories and resources, in order to protect their way of living and subsistence.<sup>204</sup>

Canada's support for Line 5 is inconsistent with its obligations to prevent and mitigate the effects of climate change by phasing out fossil fuels, and to pay particular attention to the effects of climate change on Indigenous Peoples. Instead of recognizing this overdue moment to retire aging fossil fuel infrastructure, Canada is supporting Enbridge's proposal to build new stretches of pipeline, which will lock in Line 5's operation and resulting GHG emissions for decades.

Canada's advocacy for Line 5 is part of its pattern of support for the fossil fuel industry. Canada is behind schedule in mitigating its GHG emissions. A large gap remains between Canada's emissions trajectory based on current domestic policies, the Paris Agreement goals, and Canada's Nationally Determined Contribution.<sup>205</sup> In 2022, the Committee on the Rights of the Child expressed “concern[] about [Canada's] disproportionately high carbon footprint . . . particularly through investments made in fossil fuels.”<sup>206</sup> Among G20 countries, Canada provides one of the highest amounts of public financing for fossil fuels on a per-capita basis,<sup>207</sup> and in 2022 provided billions of dollars in subsidies and public financing for the oil and gas sector.<sup>208</sup>

#### **D. Canada's use of the Pipeline Treaty cannot enable it to violate the Convention.**

Canada's use of the Pipeline Treaty requires the Committee's urgent action. Canada's use of the Pipeline Treaty to enable Line 5's continued operations despite the threat to our rights, disregards and enables violations of its human rights obligations. The Treaty does not enable Canada to violate its international human rights obligations, including those under the Convention. When invoking the treaty, Canada stressed "the importance of fully respecting and implementing the international agreements that are in place between [the U.S. and Canada]."<sup>209</sup> Yet in supporting Line 5, Canada is disregarding its international human rights treaties and its treaties with First Nations that enshrine their rights to fish, hunt, and gather.<sup>210</sup> Canada must interpret the Pipeline Treaty harmoniously with its other treaty obligations.<sup>211</sup> As the U.N. Committee on Economic, Social, and Cultural Rights (CESCR) has affirmed, States cannot use their investment treaties as a justification to violate human rights.<sup>212</sup> The Committee has also highlighted this as an area of concern for Canada in its Concluding Observations.<sup>213</sup> As the negotiations under the Treaty are currently underway, urgent action to protect our rights is required.

#### **IV. Canada's actions disregard previous CERD recommendations to Canada**

Canada's behavior illustrates a pattern of prioritizing extractive projects over Indigenous rights and failing to regulate or hold accountable Canadian corporations that ignore Indigenous rights. Despite clear opposition and lack of FPIC from affected Indigenous groups, reported human rights violations, and CERD's interventions, Canada persists in supporting other projects, including the Trans Mountain, Coastal GasLink, and Line 3 pipelines.<sup>214</sup> Line 5 is another example of Canada's failure to respect and protect Indigenous Peoples' rights, and as such warrants urgent action on behalf of the Committee.

##### **A. CERD has repeatedly voiced concerns about Canada's failure to properly regulate the extraterritorial conduct of its corporations.**

Canada's support for Enbridge, despite the foreseeable human rights risks, highlights how Canada fails to properly regulate its corporations to prevent and protect against these threats. The Committee and other Treaty bodies have repeatedly expressed concern over reported human rights violations associated with Canadian corporations and called on Canada to properly regulate its companies to ensure their activities do not adversely impact human rights.<sup>215</sup> In its last three sets of Concluding Observations on Canada, the Committee expressed concerns over the allegations that Canadian corporations' operations outside Canada are violating the rights of Indigenous Peoples.<sup>216</sup> The U.N. Special Rapporteur on the Rights of Indigenous Peoples recently reiterated his longstanding "concern that Indigenous Peoples around the world are suffering negative, sometimes devastating consequences from Canadian extractive industries."<sup>217</sup> Canada's support for Line 5, despite its foreseeable disastrous impact on human rights, disregards these obligations.

**B. CERD has repeatedly articulated concerns regarding Canada’s treatment of Indigenous Peoples, especially with regard to Canada’s obligations to respect and protect Indigenous Peoples’ rights to FPIC.**

In its Concluding Observations and early warning and urgent action procedure, the Committee has repeatedly expressed concerns over Canada’s failure to guarantee Indigenous Peoples’ FPIC and ensure their participation in policies and decisions that impact them, and to protect them from the adverse impacts of extractive and other projects. The Committee has called on Canada to suspend other pipeline projects and a hydroelectric dam to ensure the guarantee of FPIC rights. Yet Canada continues to disregard these rights.

In its 2017 Concluding Observations about the hydroelectric dam, the Committee recommended that Canada, “Immediately suspend all permits and approvals for the construction of the Site C dam. Conduct a full review in collaboration with indigenous peoples of the violations of the right to free, prior and informed consent, of treaty obligations and of international human rights law from the building of this dam and identify alternatives to irreversible destruction of indigenous lands and subsistence, which will be caused by this project.”<sup>218</sup>

Following the Committee’s 100<sup>th</sup> Session, the CERD issued a decision in December 2019 under its early warning and early action procedure with concerns regarding Canada’s failure to guarantee rights in the context of the Site C dam and pipeline projects.<sup>219</sup> For instance, the Committee was concerned:

- *by the refusal to consider free, prior and informed consent as a requirement for any measure, such as large-scale development projects, that may cause irreparable harm to indigenous peoples’ rights, culture, lands, territories and way of life;*
- *by the continuation of construction of the Site C dam and the approval of the Trans Mountain Pipeline Extension project without free, prior and informed consent by all the indigenous peoples affected . . .*
- *by the approval of new large-scale development projects on indigenous peoples traditional lands and territories without the free, prior and informed consent of affected indigenous peoples...*<sup>220</sup>

Given these concerns, the Committee called on Canada to cease construction and cancel the permits of the Trans Mountain Pipeline Extension until it could ensure full and adequate consultation with affected Indigenous groups and obtain their free, prior and informed consent.<sup>221</sup> The Committee similarly called on Canada to “halt the construction and suspend all permits and approvals for the construction of the Coastal Gas Link pipeline in the traditional and unceded lands and territories of the Wet’suwet’en people, until they grant their free, prior and informed consent” and to suspend the construction of the Site C dam, once again.<sup>222</sup> The Committee further urged Canada “to freeze present and future approval of large-scale development projects affecting indigenous peoples that do not enjoy free, prior and informed consent from all indigenous peoples affected” and seek technical advice from the United Nations Expert Mechanism on the Rights of Indigenous Peoples.<sup>223</sup>

Canada has failed to adequately respond to these recommendations and continues to violate Indigenous Peoples' rights with respect to Line 5. Like the construction of the Site C dam and the approval of the Trans Mountain Pipeline Extension, Line 5 has proceeded without FPIC, in the face of vocal opposition from Indigenous groups to the continued operation of the pipeline, and in certain cases, without easements or legal authority to operate. Canada has intervened in support of the pipeline's continued operation without informed consent and without consultation of affected Indigenous Peoples. In fact, Canada continues to engage in ongoing negotiations with the U.S. without any participation of Indigenous groups, which flies in the face of Canada's obligations under CERD and the Committee's clear concerns and recommendations in prior early warning and urgent action letters and decisions.

While some issues relating to Line 5 are currently under review in U.S. courts, this Committee has recognized in its Concluding Observations on Canada that litigation can be ineffective, and a costly and lengthy process.<sup>224</sup> Moreover, advocacy and engagement efforts with the Canadian government asking them to withdraw their invocation of the Pipeline Treaty and for inclusion in the negotiations, to the extent they continue, have gone unheeded.<sup>225</sup> While the negotiations are ongoing and litigation remains pending, Line 5 is already beginning to damage and impact these rights. The Anishinaabe People's cultural and natural resources are continually at risk of being destroyed.

## **V. Conclusion and Request for Urgent Action**

As detailed above, Line 5 represents an ongoing and serious threat to the cultural and environmental resources of the Great Lakes and to Indigenous communities' fundamental rights and way of life. Furthermore, the project poses an unacceptable risk to the international effort to mitigate climate change's adverse human rights impacts. Recognizing these risks, the U.N. Permanent Forum on Indigenous Issues has called for Canada to decommission Line 5. By continuing to advocate for the ongoing operations of the pipeline, and failing to properly regulate Enbridge's Line 5 operations, Canada has disregarded the Permanent Forum's recommendation and continues to violate its obligation to protect human rights, including those under the Convention. More egregiously, Canada's active interventions to protect Line 5, over our expressed opposition as affected Indigenous communities, and through decision-making processes that exclude us, violates our human rights. Canada cannot rely on the Pipeline Treaty to flout these human rights obligations.

As outlined above, the Committee has used early warning and urgent action procedures in analogous cases raising concerns about the free, prior, and informed consent of Indigenous Peoples impacted by pipelines and other large-scale development projects. Accordingly, the undersigned are seeking CERD's engagement under the early warning and urgent action procedures to ensure that Canada complies with its Convention obligations. The negotiations under the Pipeline Treaty are ongoing, so urgent action is needed to ensure the protection of our rights. More specifically, the undersigned seek the CERD to recommend that Canada:

- i. Withdraw support for Line 5, a project threatening the human rights and ways of life of Indigenous Peoples;

- ii. Implement the recommendation of the U.N. Permanent Forum on Indigenous Issues to re-examine support for, and decommission, the Line 5 pipeline;
- iii. Cease advocacy before U.S. courts in support of Enbridge's operation of Line 5;
- iv. Withdraw its invocation of the Pipeline Treaty, and pending such withdrawal, cease any negotiations under the Pipeline Treaty until it ensures that affected Indigenous Nations, who are sovereigns and human rights holders, can effectively participate in any and all discussions regarding Line 5's future, including the negotiations, in accordance with their right to free, prior and informed consent; and
- v. Interpret all international treaties, including the Pipeline Treaty, consistently with its human rights obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights obligations, and consistent with the sovereign treaty rights of Tribal and First Nations.



## **Annex: Submitting Organizations**

*Note: The Tribal signatories do not include their date of establishment, as the UN guidelines request, because our Nations have existed for generations.*

**Anishinabek Nation** represents 39 First Nations throughout the province of Ontario from Golden Lake in the east, Sarnia in the south, Thunder Bay and Lake Nipigon in the north. The 39 First Nations have an approximate combined population of 65,000 citizens, one third of the province of Ontario's First Nation population. The Anishinabek Nation is the oldest political organization in Ontario and can trace its roots back to the Confederacy of Three Fires, which existed long before European contact. Anishinaabe traditional territory surrounds the Great Lakes, and would be devastatingly affected by a spill from Line 5.

Contact Person: Grand Council Chief Reg Niganobe  
Address: 1 Migizii Miikan, North Bay, ON, Canada P1B 8J8

**Bad River Band of the Lake Superior Tribe of Chippewa Indians** is a federally recognized tribe in Northern Wisconsin, located wholly within the Lake Superior Basin and mainly within the sub-basin of the Bad River – Mashkiiziibii – for which our Tribal Nation is named. The Bad River Reservation lies directly adjacent to Lake Superior, and is the largest Chippewa reservation in Wisconsin at 124,459 Acres. Line 5 runs the entire 12.1 mile length of the Bad River Band reservation, crossing numerous rivers and streams and posing a grave threat to the Mashkiiziibii watershed.

Contact Person: Tribal Chairman Mike Wiggins, Jr.  
Address: 72682 Maple St., Odanah, WI, U.S. 54806

**Bay Mills Indian Community** or Gnoozhekaaning, “Place of the Pike,” is a federally recognized Tribal Nation in Northern Michigan, and is a signatory to the March 28, 1836 Treaty of Washington by which the right to fish, hunt, and gather within the ceded territory and ceded waters of lakes Superior, Huron and Michigan - including the Straits of Mackinac - was expressly reserved for all time. The Line 5 dual pipelines run through our treaty-ceded territory and waters and pose serious threats to the exercise of our reserved treaty rights, our ability to preserve cultural resources, our cultural and religious interests in the Great Lakes, our economy, and the health and welfare of our tribal citizens.

Contact Person: President Whitney Gravelle  
Address: 12140 W. Lakeshore Dr., Brimley, MI, U.S. 49715

**Grand Traverse Band of Ottawa & Chippewa Indians** is a federally recognized Tribal Nation located in northwest Michigan on the Leelanau Peninsula in the United States. It is one of three federally recognized tribes of Ottawa peoples in Michigan. The Grand Traverse Band homelands are located on the shores of Lake Michigan, in an area a Line 5 spill at the Straits of Mackinac would quickly contaminate.

Contact Person: Tribal Chairman David Arroyo  
Address: 2605 N. West Bay Shore Dr., Peshawbestown, MI, U.S. 49682

**Hannahville Indian Community** is a federally recognized Potawatomi Tribal Nation residing in Michigan's Upper Peninsula. The people of Hannahville are descendants of Potawatomi people who refused to leave Michigan in 1834 for Indian Territory during the great Indian removal. The Potawatomi Indians are responsible for keeping the "Sacred Fire" alive, as it is the symbol of light and must be kept alive. Line 5 is only 30 miles from Hannahville's reservation, which is located just south of the Hiawatha National Forest, where an unreported Line 5 spill caused 30 years of contamination.

Contact Person: Tribal Chairperson Kenneth Meshigaud  
Address: N14911 Hannahville B-1 Rd., Wilson, MI, U.S. 49896

**The Keweenaw Bay Indian Community of the Lake Superior Band of Chippewa Indians** is located approximately 65 miles north of Marquette, Michigan in the L'Anse/Baraga Michigan area and has dual land bases on both sides of the Keweenaw Bay Peninsula in Baraga County. Their service area includes within the boundaries of the reservation in Baraga County, as well as members Ontonagon, Gogebic, Marquette, Houghton and Keweenaw Counties. The L'Anse Reservation is both the oldest and the largest reservation in Michigan. It was established under the treaty of 1854. Their constitution, by-laws and corporate charter were adopted on November 7, 1836 pursuant to the terms of the 1934 Indian Reorganization Act that established tribal governments as we know them today.

Contact Person: Tribal Council President Doreen Blaker  
Address: 16429 Bear Town Rd., Baraga MI 49908

**Lac Vieux Desert Band of Lake Superior Chippewa Indians** is a federally recognized Tribal Nation, one of twelve historic bands in the Lake Superior Band of Chippewa Indians. The tribe originally lived on South Island in Lac Vieux Desert until they moved to the south shore of the lake around 1880. The Lac Vieux Desert Reservation is known as Gete-gitigaaning in the Anishinaabe language. Line 5 runs less than two miles south of their reservation.

Contact Person: Tribal Chairman James Williams Jr.  
Address: N4698 US Hwy 45, Watersmeet, MI, U.S. 49969

**Little River Band of Ottawa Indians** is a federally recognized Tribal Nation of the Ottawa people in the United States. They descend from members of certain Grand River Ottawa Bands who lived in villages located on the Manistee River, Pere Marquette River, and at villages on the Grand River system in Michigan. The Little River Band is located on the shores of Lake Michigan, in an area that could be affected by pollution from a spill in the Straits of Mackinac.

Contact Person: Tribal Ogema Larry Romanelli  
Address: 2608 Government Center Dr., Manistee, MI, U.S. 49660

**Little Traverse Bay Bands of Odawa Indians** is a federally recognized Tribal Nation located in the northern portion of the Lower Peninsula of Michigan, with headquarters centered in Petoskey. The majority of the tribal population lives in the towns of Petoskey, Harbor Springs

and Charlevoix. A spill in the Straits of Mackinac would directly and immediately affect their community.

Contact Person: Tribal Chairperson Regina Gasco-Bentley  
Address: 7500 Odawa Circle, Harbor Springs, MI, U.S. 49740

**Match-e-be-nash-she-wish Band of Pottawatomi Indians** is a federally recognized Tribal Nation of Pottawatomi people in Michigan named for a 19th-century Ojibwe chief. They are headquartered in Shelbyville, Michigan in Allegan County, about 25 miles south of Grand Rapids in the southwestern part of the Lower Peninsula of Michigan. Ancestors of this mixed band belonged to the Ojibwe, Ottawa, and Pottawatomi peoples, who lived around the Great Lakes in what became Canada and the United States. They continue to suffer the devastating effects of Enbridge's Line 6B spilling one million gallons of oil in their territory.

Contact Person: Tribal Chairman Bob Peters  
Address: 2872 Mission Dr., Shelbyville, MI, U.S. 49344

**Nottawaseppi Huron Band of Potawatomi** is a federally recognized Tribal Nation with more than 1,500 enrolled members. The Nottawaseppi Huron Band of the Potawatomi resides on the Pine Creek Indian Reservation in Fulton, Michigan. They continue to suffer the devastating effects of Enbridge's Line 6B spilling one million gallons of oil in their territory.

Contact Person: Tribal Chairperson Jamie Stuck  
Address: 1485 Mno-Bmadzewen Way, Fulton, MI, U.S. 49052

**Saginaw Chippewa Indian Tribe** is a federally recognized Tribal Nation of Chippewa (or Ojibwe) located in central Michigan in the United States. The tribe is comprised of three bands of Ojibway (Saginaw, Black River, Swan Creek), who lived primarily in the Eastern region of what is now Michigan. Line 5 lies less than 50 miles away from their reservation, and in their traditional territory.

Contact Person: Tribal Chief Theresa Jackson  
Address: 7500 Soaring Eagle Blvd, Mount Pleasant, MI, U.S. 48858

**Sault Ste. Marie Tribe of Chippewa Indians** is a federally recognized Tribal Nation in what is now known as Michigan's Upper Peninsula. Sault Tribe's ancestors were Anishinaabeg fishing tribes whose settlements dotted the upper Great Lakes around Lake Superior, Lake Michigan and Lake Huron, throughout the St. Marys River system and the Straits of Mackinac. A spill in the Straits of Mackinac would directly and immediately affect their community, treaty rights, and cultural rights.

Contact Person: Tribal Chairman Austin Lowes  
Address: 523 Ashmun St., Sault Ste. Marie, MI, U.S. 49783

**The Center for International Environmental Law (CIEL)** uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL seeks a world where the law reflects the interconnection between humans and the environment, respects the limits of the planet, protects the dignity and equality of each person, and encourages all of earth's inhabitants to live in balance with each other. It was founded in 1989.

Contact Person: Upasana Khatri

Address: 1101 15th Street NW, 11th Floor, Washington, DC, U.S. 20005

**EarthRights International** is a non-governmental, non-profit organization that combines the power of law with the power of people in defense of human rights and the environment, which we define as "earth rights." We take legal action against perpetrators of earth rights abuses, train activists, and work with communities to demand meaningful and lasting change. It was founded in 1995.

Contact Person: Marco Simons

Address: 1612 K St NW #800, Washington, DC, U.S. 20006

**Environmental Defence Canada** is a leading Canadian environmental advocacy organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities. Environmental Defence works at the municipal, provincial and federal level to safeguard our freshwater, create livable communities, decrease Canadians' exposure to toxic chemicals, end plastic pollution, tackle climate change and build a clean economy. It was founded in 1984.

Contact Person: Michelle Woodhouse

Address: 33 Cecil St, 1st Floor, Toronto, ON, Canada M5T 1N1

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- <sup>1</sup> Enbridge refers to the group of companies operating under that name, including Enbridge Energy, L.P.; Enbridge Energy Company, Inc.; Enbridge Energy Partners, L.P.
- <sup>2</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, \*45 (W.D. Wis. Sep. 7, 2022).
- <sup>3</sup> United Nations Permanent Forum on Indigenous Issues, Report on the Twenty-Second Session (17-28 April 2023), U.N. Doc. E/2023/43-E/C.19/2023/7, para. 65 (2023).
- <sup>4</sup> International Convention on the Elimination of All Forms of Racial Discrimination, arts. 1.1, 2.1, 5, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter “ICERD”]; Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations of the CERD: Canada*, U.N. Doc. CERD/C/CAN/CO/18, para. 17 (2007) [hereinafter “CERD, 2007 Canada COB”]; CERD, *Concluding observations of the CERD: Canada*, U.N. Doc. CERD/C/CAN/CO/19-20, para. 14 (2012) [hereinafter “CERD, 2012 Canada COB”]; CERD, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, U.N. Doc. CERD/C/CAN/CO/21-23, paras. 19-20 (2017) [hereinafter “CERD, 2017 Canada COB”].
- <sup>5</sup> See CERD, 2007 Canada COB, para. 17; CERD, 2012 Canada COB, para. 14.
- <sup>6</sup> CERD, Guidelines for the Early Warning and Urgent Action Procedures, in U.N. Doc. A/62/18, Annex III, para. 12 (2007) [hereinafter, “CERD, Guidelines for the EWUAP”].
- <sup>7</sup> *Id.* at para. 12(h)-(i).
- <sup>8</sup> Michigan Dept. of Env’t, Great Lakes, and Energy, *Line 5 in Michigan, Overview*, <https://www.michigan.gov/egle/about/featured/line5/overview#Details> (last visited July 14, 2023); Enbridge Inc., *Infrastructure Map*, <https://www.enbridge.com/map#map:infrastructure> (last visited July 24, 2023).
- <sup>9</sup> See Enbridge, *About Line 5*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/about-line-5> (last visited April 3, 2023).
- <sup>10</sup> State of Michigan, Office of the Governor, Dept. of Natural Resources, *Notice of Revocation and Termination of Easement*, pages 5-9 (Nov. 13, 2020), [https://content.govdelivery.com/attachments/MIEOG/2020/11/13/file\\_attachments/1600920/Notice%20of%20%20Evocation%20and%20Termination%20of%20%20Easement%202811.13.20%29.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/11/13/file_attachments/1600920/Notice%20of%20%20Evocation%20and%20Termination%20of%20%20Easement%202811.13.20%29.pdf) [hereinafter, “Michigan Easement Revocation”] (citing Dynamic Risk Assessment Systems, *Alternatives Analysis for the Straits Pipeline* (June 27, 2017), <https://mipetroleumpipelines.org/document/alternatives-analysis-straits-pipeline>; Michigan Technological University, *Independent Risk Analysis for the Straits Pipelines* (Sept. 15, 2018), <https://mipetroleumpipelines.org/document/independent-risk-analysis-straits-pipelines-final-report>); National Wildlife Federation, *Enbridge Over Troubled Water*, pages 14-15 (2016), <https://www.nwf.org/-/media/PDFs/Global-Warming/Tar-Sands/Enbridge-Over-Troubled-Water-Report-Final.ashx>; see also Great Lakes Science Advisory Board, *Potential Ecological Impacts of Crude Oil Transport in the Great Lakes Basin*, pages 6, 37 (Oct. 2018), <https://ijc.org/sites/default/files/2018-12/Potential%20Ecological%20Impacts%20of%20Crude%20Oil%20Transport%20in%20the%20Great%20Lakes%20Basin%20-%20Oct%202018.pdf> (noting that the Straits are particularly vulnerable); see generally Environmental Defence Canada, *Enbridge’s Line 5: Media Backgrounder* (June 2021), <https://environmentaldefence.ca/wp-content/uploads/2021/08/Environmental-Defence-Line-5-backgrounder.pdf>.
- <sup>11</sup> Michigan Easement Revocation, pages 6–7.
- <sup>12</sup> See Temporary Restraining Order, *Nessel v. Enbridge Energy*, No. 19-474-CE (Ingham Cnty. Cir. Ct. Mich. June 25, 2020), [https://www.michigan.gov/documents/ag/Order\\_Granteeing\\_Motion\\_for\\_TRO\\_in\\_Nessel\\_v\\_Enbridge\\_Energy\\_et\\_al\\_19-474-CE\\_695012\\_7.pdf](https://www.michigan.gov/documents/ag/Order_Granteeing_Motion_for_TRO_in_Nessel_v_Enbridge_Energy_et_al_19-474-CE_695012_7.pdf).
- <sup>13</sup> Bay Mills Indian Community, *Bay Mills Indian Community’s Comments On The Scope Of The Environmental Impact Statement For The Enbridge Line 5 Tunnel Project, Submitted to U.S. Army Corps of Engineers*, pages 28-35, 42-60 (Oct. 14, 2022), [https://earthjustice.org/wp-content/uploads/bmic\\_scoping\\_comments\\_on\\_line\\_5\\_eis.pdf](https://earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf) [hereinafter, “Bay Mills Tunnel Comments”].
- <sup>14</sup> Environmental Defence Canada, *Enbridge’s Line 5: Media Backgrounder* (June 2021), <https://environmentaldefence.ca/wp-content/uploads/2021/08/Environmental-Defence-Line-5-backgrounder.pdf>; see also Spencer Chumbley, Vice Media, LLC, *The Dirty Secret at the Bottom of the Great Lakes: Oil & Water*, at 9:11 (Sept. 1, 2015) (interview with retired Engineer Bruce Trudgen who recalls that “at that time, they said . . . this pipe’s gonna last 50 years”); Midwest Environmental Advocates et. al, *Comments on Draft EIS for Enbridge Line 5 in Northern Wisconsin*, page 1 (April 15, 2022), <https://midwestadvocates.org/assets/resources/MEA-L5-DEIS-Comments.pdf> (arguing that Line 5 has “exceed[ed] it’s designed life expectancy”) [hereinafter, “MEA Rerouting Comments”]; Earthjustice, *How a Shoddy Environmental Review Could Cause a Catastrophic Oil Spill in Wisconsin*

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(Jan. 31, 2022), <https://earthjustice.org/article/line-5-pipeline-wisconsin-bad-river-explainer> (Line 5 is “increasingly likely to rupture in the Lake due to its age and a heightened frequency of severe storms brought on by climate change”).

<sup>15</sup> See Pipeline & Hazardous Materials Safety Administration, *Fact Sheet: Pipe Defects and Anomalies* (Dec. 1, 2011), <https://primis.phmsa.dot.gov/comm/FactSheets/FSPipeDefects.htm?nocache=7250>. Multiple actors have expressed concerns over the age of Line 5. See, e.g., U.S. Env. Protection Agency, *Comments on the State Draft Environmental Impact Statement for the Proposed Enbridge Line 5 Relocation Project in Ashland, Bayfield, Douglas, and Iron Counties, Wisconsin*, page 6 (March 21, 2022), [https://widnr.widen.net/s/wpx8fhcpg7/el5\\_deis-comments\\_federal\\_usepa](https://widnr.widen.net/s/wpx8fhcpg7/el5_deis-comments_federal_usepa) [hereinafter, “EPA Rerouting Comments”]; Kenny Bruno et. al., National Wildlife Federation, *Enbridge Over Troubled Water*, pages 14–15 (2016), <https://www.nwf.org/-/media/PDFs/Global-Warming/Tar-Sands/Enbridge-Over-Troubled-Water-Report-Final.ashx>; Jeff Alexander & Beth Wallace, National Wildlife Federation, *Sunken Hazard: Aging Oil Pipelines Beneath the Straits of Mackinac an Ever-Present Threat to the Great Lakes* (2012), <https://www.documentcloud.org/documents/472338-nwfsunkenhazardline5.html>; Bad River Band, *Comments on the Section 404 and Section 10 Permit Application for the Enbridge Line 5 Pipeline Segment Relocation Project*, Army Corps of Engineers, St. Paul District, File No. MVP-2020-00260-WMS, page 19 (March 22, 2022), [http://www.badriver-nsn.gov/wp-content/uploads/2022/03/bad\\_river\\_band\\_comment\\_letter\\_to\\_usace\\_03.22.2022\\_2.pdf](http://www.badriver-nsn.gov/wp-content/uploads/2022/03/bad_river_band_comment_letter_to_usace_03.22.2022_2.pdf) [hereinafter, “Bad River Band Rerouting Comments”]; MEA Rerouting Comments, page 1.

<sup>16</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 213368, at pages \*5–9 (W.D. Wis. Nov. 28, 2022; see also Expert Opinion of Hamish Weatherly, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co.*, et al., No. 3:19-cv-00602-wmc (W.D. Wis. June 10, 2022); Engineering Evaluation of the Bad River Meander Adjacent to Enbridge Line 5 and Related Water Resources Issues, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co.*, et al., No. 3:19-cv-00602-wmc (W.D. Wis. June 10, 2022) (Dkt. 268); EPA Rerouting Comments, page 24; Mashkiiziibii Natural Resources Department, *Enbridge Line 5 Issues Within the Bad River Band Reservation* (Feb. 2020), [http://www.badriver-nsn.gov/wp-content/uploads/2020/02/202002\\_NRD\\_EnbridgeLine5\\_Brochure.pdf](http://www.badriver-nsn.gov/wp-content/uploads/2020/02/202002_NRD_EnbridgeLine5_Brochure.pdf).

<sup>17</sup> See Bad River Band of the Lake Superior Tribe of Chippewa Indians’ Memorandum of Law in Support of Emergency Motion for Injunctive Relief, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc (W.D. Wis. May 9, 2023) (Dkt. 629) at page 1.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> See *id.* at 1; Bad River Band of the Lake Superior Tribe of Chippewa Indians’ Emergency Motion for Injunctive Relief, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc (W.D. Wis. May 9, 2023) (Dkt. 628).

<sup>20</sup> Pipeline and Hazardous Materials Safety Administration, Department of Transportation, *Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding, River Scour, and River Channel Migration*, 84 Fed. Reg. 15, 715 (April 11, 2019), <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2020-03/2019-07132.pdf>.

<sup>21</sup> Amicus Brief of the State of Michigan and Dana Nessel, Attorney General of the State of Michigan, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc (W.D. Wis. May 17, 2023) (Dkt. 665) at page 3.

<sup>22</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2023 U.S. Dist. LEXIS 105397, at pages \*40–48 (W.D. Wis. June 16, 2023).

<sup>23</sup> See, e.g., National Transportation Safety Board, *Pipeline Accident Report: Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan July 25, 2010*, page xii (Jul. 10, 2012), <https://www.nts.gov/investigations/AccidentReports/Reports/PAR1201.pdf>; *Michigan Petroleum Pipeline Task Force Report* (July 2015), <https://mipetroleumpipelines.org/sites/mipetroleumpipelines.org/files/document/pdf/Michigan%20Petroleum%20Pipeline%20Task%20Force%20Report.pdf>; see also Amicus Brief of the Great Lakes Business Network, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co.*, et al., No. 3:19-cv-00602-wmc, (W.D. Wis. June 16, 2022) at 11–4.

<sup>24</sup> Greenpeace, *Dangerous Pipelines*, page 11 (Nov. 14, 2018), <https://www.greenpeace.org/usa/reports/dangerous-pipelines/> (citing Violation Tracker, *Parent Company Summary: Enbridge*, <https://violationtracker.goodjobsfirst.org/prog.php?parent=enbridge>).

<sup>25</sup> Stipulation and Agreement Regarding Assessment and Payment of Stipulated Penalties Relating to Timeliness of Certain in-Line Inspections, *United States v. Enbridge Energy Limited Partnership*, No. 1:16-cv-914 (W.D. Mi. May 2, 2018) (Dkt. 17), <https://www.documentcloud.org/documents/4451281-Enbridge-May-2018.html>; see also David

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Hasemyer, *Enbridge Fined for Failing to Fully Inspect Pipeline After Kalamazoo Oil Spill*, INSIDECLIMATE NEWS (May 3, 2018), <https://insideclimatenews.org/news/03052018/enbridge-fined-tar-sands-oil-pipeline-inspections-kalamazoo-michigan-dilbit-spill>.

<sup>26</sup> Michigan Easement Revocation, pages 13–17.

<sup>27</sup> National Wildlife Federation, *Line 5*, <https://www.nwf.org/Line5>.

<sup>28</sup> Keith Matheny, *30 Years Later, Contamination Remained at Site of Pipeline Spill*, DETROIT FREE PRESS (May 7, 2016), <https://www.freep.com/story/news/local/michigan/2016/05/07/enbridge-line5-oil-spill-hiawatha-national-forest/83507228/>.

<sup>29</sup> Greenpeace, *Dangerous Pipelines*, page 9 (Nov. 14, 2018), <https://www.greenpeace.org/usa/reports/dangerous-pipelines/> (citing NOAA Incident News, *Lakehead Pipeline Company, Grand Rapids, Minnesota, 1991 Mar-03*, <https://incidentnews.noaa.gov/incident/6793>); *see also* Dan Kraker & Kirsti Marohn, *30 years later, echoes of largest inland oil spill remain in Line 3 fight*, MPR NEWS (March 3, 2021), <https://www.mprnews.org/story/2021/03/03/30-years-ago-grand-rapids-oil-spill>.

<sup>30</sup> Greenpeace, *Dangerous Pipelines* (Nov. 14, 2018), <https://www.greenpeace.org/usa/reports/dangerous-pipelines/>.

<sup>31</sup> U.S. Env't Prot. Agency, *Enbridge Clean Water Act Settlement*, <https://www.epa.gov/enforcement/enbridge-clean-water-act-settlement>; *see also* Lisa Song & Elizabeth McGowan, *Federal Agency Blames 'Complete Breakdown of Safety at Enbridge' for 2010 Oil Spill*, INSIDECLIMATE NEWS (July 10, 2012), <https://insideclimatenews.org/news/10072012/national-transportation-safety-board-ntsb-kalamazoo-enbridge-6b-pipeline-marshall-michigan/>.

<sup>32</sup> *See* Nottawaseppi Huron Band of the Potawatomi, *The Great Stain: 10 Years After the Kalamazoo River Oil Spill*, <https://nhbp-nsn.gov/media/the-great-stain-10-years-after-the-kalamazoo-river-oil-spill/>; Letter to President Biden, Re: Administration Support for Michigan Tribal Nations and Governor Whitmer to Decommission the Enbridge Line 5 Pipeline (Nov. 4, 2021), [https://www.baymills.org/\\_files/ugd/869f65\\_f8e5288d82084540a9f0e7d5d6c0921f.pdf](https://www.baymills.org/_files/ugd/869f65_f8e5288d82084540a9f0e7d5d6c0921f.pdf).

<sup>33</sup> Keith Matheny, *30 years later, contamination remained at site of pipeline spill*, DETROIT FREE PRESS (May 7, 2016), <https://www.freep.com/story/news/local/michigan/2016/05/07/enbridge-line5-oil-spill-hiawatha-national-forest/83507228/>.

<sup>34</sup> United Nations Permanent Forum on Indigenous Issues, Report on the Twenty-Second Session (17-28 April 2023), U.N. Doc. E/2023/43-E/C.19/2023/7, para. 65 (2023).

<sup>35</sup> *See* Bay Mills Tunnel Comments, page 34 (citing Esteban Chiriboga, Great Lakes Indian Fish & Wildlife Commission, *Cumulative Environmental Risk of Crude Oil and Natural Gas Pipelines in the 1837, 1837, 1842, and 1854 Ceded Territories*, Administrative Report 22-04 (April 2022), <http://data.glifwc.org/download/archive.bio/Administrative%20Report%2022-04.pdf>); *see also* David Schwab, *Statistical Analysis of Straits of Mackinac Line 5: Worst Case Spill Scenarios*, page 10, <http://glenarborsun.com/wp-content/uploads/2016/03/Mackinac-Line-5-Worst-Case-Spill-Scenarios.pdf> (concluding more than 1,000 km of shoreline could be impacted); Michigan Technological University, *Independent Risk Analysis for the Straits Pipelines* (Sept. 15, 2018), <https://mipetroleumpipelines.org/document/independent-risk-analysis-straits-pipelines-final-report>.

<sup>36</sup> *See* University of Michigan, *Straits of Mackinac 'worst possible place' for a Great Lakes oil spill, U-M researcher concludes* (July 10, 2014), <https://news.umich.edu/straits-of-mackinac-worst-possible-place-for-a-great-lakes-oil-spill-u-m-researcher-concludes/>.

<sup>37</sup> *See* U.S. Env. Protection Agency, *Facts and Figures About the Great Lakes*,

<https://www.epa.gov/greatlakes/facts-and-figures-about-great-lakes> (last visited April 3, 2023).

<sup>38</sup> Great Lakes Science Advisory Board, *Potential Ecological Impacts of Crude Oil Transport in the Great Lakes Basin*, page 43 (Oct. 2018) (citing Schwab 2016).

<sup>39</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 213368, at pages \*5–9 (W.D. Wis. Nov. 28, 2022).

<sup>40</sup> Mich. Dept. Env't, Great Lakes, and Energy, *State of the Great Lakes Report*, page 3 (Jul. 2020), <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Reports/OGL/State-of-the-Great-Lakes/Report-2019.pdf?rev=f911f70978404e9d9758914a0b96c9ad>; *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 213368, at \*5–9 (W.D. Wis. Nov. 28, 2022); *see also* Expert Opinion of Hamish Weatherly, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. June 10, 2022); Engineering Evaluation of the Bad River Meander Adjacent to Enbridge Line 5 and Related Water Resources Issues, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. June 10, 2022) (Dkt. 268); EPA Rerouting Comments, page 24; Mashkiiziibii

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Natural Resources Department, *Enbridge Line 5 Issues Within the Bad River Band Reservation* (Feb. 2020), [http://www.badriver-nsn.gov/wp-content/uploads/2020/02/202002\\_NRD\\_EnbridgeLine5\\_Brochure.pdf](http://www.badriver-nsn.gov/wp-content/uploads/2020/02/202002_NRD_EnbridgeLine5_Brochure.pdf).

<sup>41</sup> See Intergovernmental Panel on Climate Change (IPCC), *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, Summary for Policymakers (SPM), page 14 (fig. SPM.3b, para. C.2) (2018), [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM\\_version\\_report\\_LR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SPM_version_report_LR.pdf) [hereinafter, “IPCC, WGI 1.5”]; IPCC, *Climate Change 2022: Mitigation of Climate Change, Working Group III (WGIII) contribution to the Sixth Assessment Report (AR6) of the IPCC*, pages 85, 89, 1742 (2022), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/> [hereinafter, “IPCC, WGIII A6”]; IPCC, *Synthesis Report of the IPCC Sixth Assessment Report (AR6)*, SPM, pages 20 (para. B.5), 22-23 (fig. SPM.5) (2023), [https://report.ipcc.ch/ar6syr/pdf/IPCC\\_AR6\\_SYR\\_SPM.pdf](https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf) [hereinafter, “IPCC, Synthesis Report AR6”].

<sup>42</sup> Earthjustice, *Line 5 Media Backgrounder* ([https://earthjustice.org/wp-content/uploads/2023/06/line-5-media-backgrounder\\_v3.pdf#:~:text=Line%20s%20upstream%20and%20downstream,to%20phase%20out%20fossil%20fuels](https://earthjustice.org/wp-content/uploads/2023/06/line-5-media-backgrounder_v3.pdf#:~:text=Line%20s%20upstream%20and%20downstream,to%20phase%20out%20fossil%20fuels))).

<sup>43</sup> *Id.*

<sup>44</sup> See generally Great Lakes Indian Fish and Wildlife Commission, *Aanji-bimaadiziimagak o’ow aki, Climate Change Vulnerability Assessment Version 2* (Jan. 2023), [http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak\\_o\\_ow\\_aki\\_digital\\_02212023.pdf](http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf); Bay Mills Tunnel Comments, pages 35–42; Bad River Band Rerouting Comments, pages 21–24, 47.

<sup>45</sup> Env’t Law and Policy Center, *An Assessment of the Impacts of Climate Change on the Great Lakes* (2019) <https://elpc.org/wp-content/uploads/2020/04/2019-ELPCPublication-Great-Lakes-Climate-Change-Report.pdf>.

<sup>46</sup> *Id.*

<sup>47</sup> NCCOS, *Study Identifies Causes of Toledo’s Unprecedented 2017 Maumee River Algal Bloom* (Aug 26, 2020), <https://coastalscience.noaa.gov/news/study-identifies-causes-of-toledos-unprecedented-2017-maumee-river-bloom/>; Alliance for the Great Lakes, *Five Years Later: Lessons From the Toledo Water Crisis* (Aug. 1, 2019), <https://greatlakes.org/2019/08/five-years-later-lessons-from-the-toledo-water-crisis/>.

<sup>48</sup> Great Lakes Indian Fish and Wildlife Commission, *Aanji-bimaadiziimagak o’ow aki, Climate Change Vulnerability Assessment Version 2*, pages 39-40 (Jan. 2023), [http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak\\_o\\_ow\\_aki\\_digital\\_02212023.pdf](http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf); see also Native American Rights Fund, *Enbridge’s Line 5 Pipeline (Bay Mills Indian Community)*, <https://narf.org/cases/enbridges-line-5-pipeline/> (last visited Aug. 8, 2023).

<sup>49</sup> For a map of Anishinaabe territory in the United States, see United States Environmental Protection Agency, *Indian Lands in US EPA Region 5*, <https://www.epa.gov/tribal/indian-lands-us-epa-region-5>. For a map of Anishinaabe territory in Canada, see *Anishinabek Nation*, <https://www.anishinabek.ca/who-we-are-and-what-we-do/>.

<sup>50</sup> Bad River Band of Lake Superior Tribe of Chippewa Indians, *Mashkiziibi (Bad River) Band Denies Renewal of Line 5 Grant of Easement* (Jan. 5, 2017).

<sup>51</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, page \*15 (W.D. Wis. Sep. 7, 2022).

<sup>52</sup> *Id.* at pages \*14–15.

<sup>53</sup> *Id.* at page \*45.

<sup>54</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2023 U.S. Dist. LEXIS 105397, pages \*63-66 (W.D. Wis. June 16, 2023).

<sup>55</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, pages \*56-57 (W.D. Wis. Sep. 7, 2022).

<sup>56</sup> Notice of Appeal, *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 3:19-cv-602 (W.D. Wis. June 30, 2023) (Dkt. 692).

<sup>57</sup> See generally Michigan Easement Revocation.

<sup>58</sup> The parties are litigating federal jurisdiction in Michigan’s 2019 claim seeking a declaration voiding the Straits easement. See *Nessel v. Enbridge Energy Limited Partnership*, 1:21-cv-01057 (W.D. Mi. Feb. 21, 2023) (Dkt. 32). Michigan voluntarily dismissed its 2020 suit to enforce the easement revocation. Notice of Voluntary Dismissal, *Michigan v. Enbridge*, 1:20-cv-01142 (W.D. Mi. Nov. 30, 2021) (Dkt. 83). Enbridge’s claims seeking to invalidate



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Michigan’s easement revocation are pending. See *Enbridge v. Whitmer*, 1:20-cv-01141-JTN-RSK (W.D. Mi., filed Nov. 24, 2020).

<sup>59</sup> See Oil and Water Don’t Mix, *Federally-Recognized Indian Tribes are Speaking Out to Protect this Vital and Sacred Water*, [https://www.oilandwaterdontmix.org/tribal\\_supporters](https://www.oilandwaterdontmix.org/tribal_supporters) (last visited April 3, 2023).

<sup>60</sup> See Bay Mills Indian Community, *Line 5 Information Portal*, <https://www.baymills.org/enbridge-information-portal> (last visited April 3, 2023); see also Michelle Woodhouse & Reg Niganobe, *Canada’s support of Line 5 violates Indigenous treaty rights and harms the natural world*, THE TORONTO STAR (Nov. 10, 2022), <https://www.thestar.com/opinion/contributors/2022/11/10/canadas-support-of-line-5-violates-indigenous-treaty-rights-and-harms-the-natural-world.html>.

<sup>61</sup> Press Release, Bad River Band of Lake Superior Tribe of Chippewa Indians, *Mashkizibi (Bad River) Band Denies Renewal of Line 5 Grant of Easement* (Jan. 5, 2017), <https://unitedindefenseofthewater.org/2017/01/05/bad-river-band-denies-renewal-of-enbridge-line-5-grant-of-easement/>.

<sup>62</sup> Bay Mills Indian Community, *Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded Territory, Waters of the Great Lakes, and the Straits of Mackinac*, 24 Res. 21-05-10A (May 10, 2021), [https://narf.org/narf/documents/20210510BayMills\\_banish\\_Enbridge.pdf](https://narf.org/narf/documents/20210510BayMills_banish_Enbridge.pdf).

<sup>63</sup> Midwest Alliance of Sovereign Tribes, *Midwest Alliance of Sovereign Tribes Opposes Continued Operation of Line 5 Across the Mackinac Straits*, Resolution No. 004-16 (April 27, 2017), <https://d3n8a8pro7vhmx.cloudfront.net/oilandwaterdontmix/pages/723/attachments/original/1487109966/MAST-resolution-004-16.pdf?1487109966> (representing all 35 federally recognized Tribes in the U.S. Great Lakes states).

<sup>64</sup> Anishinabek Nation, *Anishinabek Nation leadership supports shut down of Line 5 pipeline* (May 6, 2021), <https://www.anishinabek.ca/2021/05/06/anishinabek-nation-leadership-supports-shut-down-of-line-5-pipeline/> (representing 39 Anishinabek First Nations in Canada).

<sup>65</sup> See Enbridge, *The Great Lakes Tunnel Project*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/great-lakes-tunnel-project>; Enbridge, *Line 5 through the Bad River Reservation*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-wisconsin-segment-relocation-project/line-5-through-the-bad-river-reservation>; see generally Bad River Band Rerouting Comments, pages 10–11, 35–36.

<sup>66</sup> See generally Bay Mills Tunnel Comments.

<sup>67</sup> U.S. Env’t Prot. Agency, *EPA scoping comments – Notice of Intent to Prepare a Draft Environmental Impact Statement for the Enbridge Line 5 Tunnel Project, Mackinac and Emmet Counties, Michigan*, page 2 (Oct. 7, 2022).

<sup>68</sup> See generally Bay Mills Tunnel Comments; Bad River Band Rerouting Comments; MEA Rerouting Comments; Letter from Aurora Conley, et al., to U.S. Army Corps of Engineers (Apr. 27, 2022), [https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e\\_2ebc5e8b59c547a0847c7a7ed1831522.pdf](https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e_2ebc5e8b59c547a0847c7a7ed1831522.pdf).

<sup>69</sup> Michigan Public Service Commission, *Line 5*, <https://www.michigan.gov/mpsc/commission/line-5>.

<sup>70</sup> Enbridge, *Line 5 through the Bad River Reservation*, <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-wisconsin-segment-relocation-project/line-5-through-the-bad-river-reservation>; see generally Bad River Band Rerouting Comments, pages 10–11, 35–36.

<sup>71</sup> See EPA Rerouting Comments, page 2; Bad River Band Rerouting Comments; MEA Rerouting Comments; Letter from Aurora Conley, et al., to U.S. Army Corps of Engineers (Apr. 27, 2022), [https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e\\_2ebc5e8b59c547a0847c7a7ed1831522.pdf](https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e_2ebc5e8b59c547a0847c7a7ed1831522.pdf).

<sup>72</sup> Carol Thompson, *Army Corps extends Line 5 tunnel review, delaying project at least 18 months*, THE DETROIT NEWS (March 23, 2023), <https://www.detroitnews.com/story/news/local/michigan/2023/03/23/army-corps-extends-line-5-tunnel-review-delaying-project-18-months/70017972007/>.

<sup>73</sup> See Complaint, *Enbridge v. Whitmer*, 1:20-cv-01141-JTN-RSK (W.D. Mi. Nov. 24, 2020) (Dkt. 1) (opposing Governor’s order to close pipeline); see also Beth LeBlanc, *Enbridge says it won’t comply with easement revocation, plans to continue operating Line 5*, THE DETROIT NEWS (Jan. 12, 2021), <https://www.detroitnews.com/story/news/local/michigan/2021/01/12/enbridge-not-comply-easement-revocation-continue-line-5-operation/6630978002/>.

<sup>74</sup> Raj Saini, Special Committee on the Economic Relationship between Canada and the United States, *Enbridge’s Line 5: An Interim Report*, page 11 (2021), <https://www.ourcommons.ca/Content/Committee/432/CAAM/Reports/RP11234513/caamrp01/caamrp01-e.pdf> [hereinafter, “Canada Line 5 Report”]; see also Global Affairs Canada, *Departmental Results Report 2021-22*, <https://www.international.gc.ca/transparency-transparence/departemental-results-reports-rapport-resultats-ministeriels/2021-2022.aspx?lang=eng>; Global Affairs Canada, *Minister Ng speaks with United States Secretary of Commerce Gina Raimondo* (May 11, 2021), <https://www.canada.ca/en/global-affairs/news/2021/05/minister-ng-speaks-with-united-states-secretary-of-commerce-gina-raimondo.html>.

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<sup>75</sup> Agreement Between the Government of the United States and the Government of Canada Concerning Transit Pipelines, preamble, Jan. 28, 1977, 28 U.S.T. 7449, 1977 WL 181731, (“Convinced that measures to ensure the uninterrupted transmission by pipeline through the territory of one Party of hydrocarbons not originating in the territory of that Party, for delivery to the territory of the other Party, are the proper subject of an agreement between the two Governments”).

<sup>76</sup> *Id.* at Article IV.

<sup>77</sup> *Id.*

<sup>78</sup> Canada Line 5 Report, page 3.

<sup>79</sup> *Id.* at pages 3–4; Appendix A (list of witnesses).

<sup>80</sup> Testimony of Glenn Hargrove, Special Committee on The Economic Relationship Between Canada and The United States, Number 003, 2nd Session, 43rd Parliament, Evidence (March 4, 2021), <https://www.ourcommons.ca/DocumentViewer/en/43-2/CAAM/meeting-3/evidence#Int-11166021>.

<sup>81</sup> Canada Line 5 Report, page 12.

<sup>82</sup> Canada Line 5 Report, pages 9–10.

<sup>83</sup> *Cf.* Canada Line 5 Report, Supplementary Opinion of the New Democratic Party of Canada, pages 27–29 (discussing the “climate crisis,” and the needed transition; this is not part of the Committee’s report or analysis).

<sup>84</sup> Canada Line 5 Report, pages 3–11.

<sup>85</sup> Environmental Defence Canada, *Closing Line 5* (Feb. 2021), <https://environmentaldefence.ca/report/closing-line-5/> (relying on Meyers Energy Consulting, Potential Enbridge Line 5 Closure: Alternatives for Crude Oil Supply to Ontario and Quebec Refineries and Associated Impacts on Ontario and Quebec Refined Products Markets (Jan. 2022), <https://environmentaldefence.ca/wp-content/uploads/2022/02/Potential-Enbridge-Line-5-Closure-Meyers-Energy-Consulting-LLC-FINAL.pdf>); Environmental Defence Canada, *Enbridge’s Line 5: Media Backgrounder*, pages 5–9 (June 2021), <https://environmentaldefence.ca/wp-content/uploads/2021/08/Environmental-Defence-Line-5-backgrounder.pdf> (citing London Economics International LLC, *Michigan Refining Sector: Alternatives to Enbridge Line 5 for Transportation* (Sept. 12, 2018), [http://blog.nwf.org/wp-content/blogs.dir/11/files/2018/09/LEI-Enbridge-Line-5-Michigan-Refining\\_9\\_12\\_2018.pdf](http://blog.nwf.org/wp-content/blogs.dir/11/files/2018/09/LEI-Enbridge-Line-5-Michigan-Refining_9_12_2018.pdf)); Bay Mills Tunnel Comments, pages 18–20 (citing, *inter alia*, Laina G. Stebbins, *Study: Partial Line 5 Shutdown has Not Impacted Gas Prices, Despite Enbridge Warnings*, Mich. Advance (Aug. 10, 2020), <https://michiganadvance.com/2020/08/10/study-partial-line-5-shutdown-has-not-impacted-gas-prices-despite-enbridge-warnings/>; Expert Report of Neil K. Earnest, page 12, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. May 27, 2022) (Dkt. 262); Direct Testimony of Dr. Elizabeth A. Stanton at 14–17, Appl. for Auth. To Replace and Relocate Segment of Line 5 Crossing the Straits of Mackinac (MPSC No. U-20763), <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/0688y000001qFWcAAM>); Declaration of Sarah Emerson, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. May 27, 2022) (Dkt. 265); Amicus Brief of the Great Lakes Business Network, pages 4–10, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. June 16, 2022) (Dkt. 295).

<sup>86</sup> *See* Section III.C.ii, *infra*.

<sup>87</sup> International Renewable Energy Agency, Renewable Power Generation Costs in 2020, page 11 (2021); IPCC, WGIII A6, pages 1742 (sec. 17.3.2.2), 332 (sec. 3.3.2.4); Special Rapporteur on Extreme Poverty and Human Rights, *Climate Change and Poverty*, U.N. Doc. A/HRC/41/39, para. 44 (June 25, 2019); United Nations, *Secretary-General’s video message to the Sixth Austrian World Summit* (June 14, 2022), <https://www.un.org/sg/en/content/sg/statement/2022-06-14/secretary-generals-video-message-the-sixth-austrian-world-summit>.

<sup>88</sup> Global Affairs Canada, *Statement by Minister Garneau on Line 5 Transit Pipeline* (Oct. 4, 2021), <https://www.canada.ca/en/global-affairs/news/2021/10/statement-by-minister-garneau-on-line-5-transit-pipeline.html>; Global Affairs Canada, *Statement by Minister Joly on Line 5 Transit Pipeline* (Aug. 29, 2022), <https://www.canada.ca/en/global-affairs/news/2022/08/statement-by-minister-joly-on-line-5-transit-pipeline.html>.

<sup>89</sup> Beth LeBlanc, U.S., *Canadian delegates continue Line 5 treaty negotiations in D.C.*, THE DETROIT NEWS (April 19, 2023), <https://www.detroitnews.com/story/news/local/michigan/2023/04/19/u-s-canada-delegates-continue-line-5-treaty-negotiations-in-d-c/70129795007/>.

<sup>90</sup> Letter to President Biden, Re: Administration Support for Michigan Tribal Nations and Governor Whitmer to Decommission the Enbridge Line 5 Pipeline (Nov. 4, 2021), [https://www.baymills.org/\\_files/ugd/869f65\\_f8e5288d82084540a9f0e7d5d6c0921f.pdf](https://www.baymills.org/_files/ugd/869f65_f8e5288d82084540a9f0e7d5d6c0921f.pdf).

<sup>91</sup> Brief of Amicus Curiae the Government of Canada in Support of Defendants, *Michigan v. Enbridge*, 1:20-cv-01142 (W.D. Mi. June 1, 2021) (Dkt. 45); Letter from Attorney Gordon Davies Griffin for Amicus Government of

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Canada Regarding Invocation of Article IX of the 1977 Treaty, *Michigan v. Enbridge*, 20-cv-1142 (W.D. Mich. October 4, 2021) (Dkt. 69); Supplemental Brief by Amicus Government of Canada, *Michigan v. Enbridge*, 1:20-cv-01142 (W.D. Mi. Nov. 16, 2021) (Dkt. 82); Brief of Amicus Curiae the Government of Canada in Partial Support of Plaintiffs, *Enbridge v. Whitmer*, 20-cv-01141 (W.D. Mi. April 5, 2022) (Dkt. 70).

<sup>92</sup> Government of Canada Statement on the 1977 Canada-U.S. Transit Pipelines Treaty as it relates to Line 5 on the Bad River Band Reservation in Wisconsin (May 16, 2023), [https://www.international.gc.ca/country\\_news-pays\\_nouvelles/2023-05-16-us-eu.aspx?lang=eng](https://www.international.gc.ca/country_news-pays_nouvelles/2023-05-16-us-eu.aspx?lang=eng).

<sup>93</sup> See *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, \*58–61 (W.D. Wis. Sep. 7, 2022).

<sup>94</sup> United Nations Permanent Forum on Indigenous Issues, Report on the Twenty-Second Session (17-28 April 2023), E/2023/43-E/C.19/2023/7, para. 65 (2023).

<sup>95</sup> ICERD, art. 1.1.

<sup>96</sup> ICERD, art 1.3; CERD, *General Recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination*, U.N. Doc. CERD/C/GC/32, pages 7-8 (Sept. 24, 2009) [hereinafter, "CERD, GR No. 32"].

<sup>97</sup> CERD, 2007 COB Canada, para. 17; CERD, 2012 COB Canada, para. 14; CERD, 2017 COB Canada, paras. 19-20.

<sup>98</sup> ICERD, art. 2.1(a)(b).

<sup>99</sup> ICERD, art 2.1(d).

<sup>100</sup> See Letter from Anastasia Crickley, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Rosemary McCarney, Permanent Representative of Canada to the United Nations Office, Reference CERD/89th/EWUAP/GH/MJA/ks (May. 27, 2016); Letter from Anastasia Crickley, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Rosemary McCarney, Permanent Representative of Canada to the United Nations Office, Reference CERD/91<sup>st</sup>/EWUAP/SW/ks (Dec. 13, 2016) [hereinafter, "Dec. 2016 CERD letter, Canada"]; CERD, 2012 Canada COB, para. 14.

<sup>101</sup> ICERD, arts. 2.1(d), 4(a); CERD, *General Recommendation XV (15) on article 4 of the Convention*, 5, U.N. Doc. CERD/C/GC/15, para. 2 (Mar.17, 1993); CERD, 2007 Canada COB, para. 17; CERD, 2012 Canada COB, para. 14; CERD, *General Recommendation XXIII (23), Rights of indigenous peoples (Fifty-first session, 1997)*, Annex V at 122, U.N. Doc. A/52/18, para. 1 (1997) [hereinafter, "CERD, GR No.23"].

<sup>102</sup> ICERD, art 5(c)(d).

<sup>103</sup> ICERD, art 5(e).

<sup>104</sup> ICERD, art 6.

<sup>105</sup> See, e.g., CERD, 2007 Canada COB, para. 17; CERD, 2012 COB Canada, para. 14; CERD, 2017 COB Canada, paras. 19-20; Committee on Economic, Social, and Cultural Rights (CESCR), *Concluding observations on the sixth periodic report of Canada*, U.N. Doc. E/C.12/CAN/CO/6, paras. 13-14 (2016) [hereinafter "CESCR, 2016 Canada COB"]; Letter from Verene Shepherd, Chair, Comm. Elimination of Racial Discrimination to H.E. Mrs. Leslie Norton, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWIA/1-6<sup>th</sup> session/2022/MJ/CA/ks (Apr. 29, 2022) [hereinafter, "Apr. 2022 CERD Letter, Canada"].

<sup>106</sup> ICERD, art 5(c); see also Apr. 2022 CERD Letter, Canada.

<sup>107</sup> CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: United States of America*, U.N. Doc. CERD/C/USA/CO/6, para. 29 (2008).

<sup>108</sup> U.N. General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, U.N. Doc. A/RES/61/295 (Oct. 2, 2007), arts. 18, 19 [hereinafter, "UNDRIP"]; *accord Int'l Covenant on Civil and Political Rights* arts. 25, 27, Dec. 16, 1966, 999 U.N.T.S. 171; *International Covenant on Economic, Social and Cultural Rights* arts. 3, 15(1)(a), Dec. 16, 1966, 993 U.N.T.S. 3; *Convention on the Elimination of All Forms of Discrimination against Women* 1979, Art. 7(b), 1249 U.N.T.S. 13; see HRC, *Poma Poma v. Peru*, U.N. Doc. CCPR/C/95/D/1457/2006, para. 7.2 (Mar. 27, 2009); CESCR, GC No. 16, para. 37; CESCR, *General comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/21, paras. 16 (c), 55(e) (2009) [hereinafter, "CESCR, GC No. 21"]; CEDAW, *General recommendation No. 39 on the rights of Indigenous women and girls*, U.N. Doc. CEDAW/C/GC/39, paras. 44, 46(a), (f) (2022).

<sup>109</sup> CERD, GR No. 23, para. 4(d).

<sup>110</sup> United Nations Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada 1-10 March 2023, End of Mission Statement*, page 10, <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/sr/statements/eom-statement-canada-sr-indigenous-2023-03-10.pdf> [hereinafter, "SR on the Rights of Indigenous Peoples, Visit to Canada"].

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<sup>111</sup> Letter from Nouredine Amir, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Rosemary McCarney, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWUAP/98th session/Canada (Indigenous Framework)/JP/ks (May 10, 2019) [hereinafter, “May 2019 CERD Letter, Canada”]; Letter from Nouredine Amir, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Rosemary McCarney, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWUAP/Canada-Indigenous Framework/2018/JP/ks (Dec. 14, 2018); Letter from Verene Shepherd, Chair, Comm. Elimination of Racial Discrimination to H.E. Mrs. Leslie Norton, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWUAP/2022/MJ/CS/ks (Dec. 2, 2022).

<sup>112</sup> See Section II.D, *supra*.

<sup>113</sup> *Id.*

<sup>114</sup> CESCR, 2016 Canada COB, para. 54; CEDAW, 44<sup>th</sup> Session, *Statement of the CEDAW Committee on disaster risk reduction, gender and climate change* (Aug. 7, 2009); see also U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (vol. I), Principle 22 (1992).

<sup>115</sup> CERD, Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, *Decision 1 (100) Advance Unedited Version* (100<sup>th</sup> Sess. 2019) [hereinafter, “CERD, Decision 1 (100)”]; see also UNDRIP, art. 32(2).

<sup>116</sup> CERD, GR No. 23, para. 5.

<sup>117</sup> CERD, GR No. 23, para. 5.

<sup>118</sup> *Expert Mechanism on the Rights of Indigenous Peoples, Free, Prior and Informed Consent: a Human Rights-Based Approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/39/62, paras. 31-35 (2018) [hereinafter, “EMRIP, FPIC: a Human Rights-Based Approach”]; CERD, Decision 1 (100).

<sup>119</sup> CESCR, GC No. 21, para. 55(e).

<sup>120</sup> EMRIP, FPIC: a Human Rights-Based Approach, paras. 14-20, 24-30; CERD, GR No. 23, paras. 4(d), 5; Letter from Yanduan Li, Chair, Comm. Elimination of Racial Discrimination to H.E. Mrs. Leslie Norton, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWUAP/102nd session/2020/MJ/CS/ks (Nov. 24, 2020) [hereinafter, “Nov. 2020 CERD Letter, Canada”].

<sup>121</sup> EMRIP, FPIC: a Human Rights-Based Approach, para. 43. See also, *id.* paras. 15, 50, & Annex, para. 6; Food and Agriculture Organization of the U.N., *Free Prior and Informed Consent: An Indigenous Peoples’ Right and a Good Practice for Local Communities*, page 13 (2016), <https://www.fao.org/3/i6190e/i6190e.pdf>.

<sup>122</sup> EMRIP, FPIC: a Human Rights-Based Approach, para. 15, Annex para. 6.

<sup>123</sup> May 2019 CERD Letter, Canada.

<sup>124</sup> May 2019 CERD Letter, Canada.

<sup>125</sup> CERD, Early Warning and Urgent Action Procedure, *Decision 1(68): United States of America*, U.N. Doc. CERD/C/USA/DEC/1, para. 10(b) (2006) [hereinafter, “CERD, Decision 1(68): U.S.”].

<sup>126</sup> Letter from Verne Shepherd, Chair, Comm. Elimination of Racial Discrimination to H.E. Ms. Bathsheba Nell Crocker, Permanent Representative of the United States of America to the United Nations Office, Reference CERD/EWUAP/106thsession/2022/MJ/CS/ks; see also Letter from Verene Shepherd, Chair, Comm. Elimination of Racial Discrimination to H.E. Mr. Benjamin Moeling, Permanent Representative of the United States of America to the United Nations Office, Reference CERD/EWUAP/104th session/2021/CS/ks (Aug. 25, 2021)(asking for “information on steps taken to suspend the project until such consultations have taken place and free, prior and informed consent has been obtained”).

<sup>127</sup> See Section II.B, *supra*.

<sup>128</sup> *E.g.* Robinson-Superior Treaty, 1850, Treaty No. 60 and Robinson-Huron, 1850, Treaty No. 61; *Treaty with the Chippewa*, WL 4123(Trty.) 7 Stat., 536 (Jul. 29, 1837) (“The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States”); *Treaty with the Ottawa*, WL 4198(Trty.), 7 Stat. 491 (Mar. 28, 1836). See also, *U.S. v State of Michigan* (N.D. Mich.) 417 F. Supp 192, 213 (“When the Indians granted to the United States their ownership in the land and waters of the Great Lakes described in Article First of the 1836 Treaty, they retained all those rights not specifically conveyed. Among the retained rights was their aboriginal right to continue to fish in the ceded waters of the Great Lakes”).

<sup>129</sup> See Section II.A, *supra* ; Section III.B.i *infra*.

<sup>130</sup> See Section II.D, *supra*.

<sup>131</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, \*45 (W.D. Wis. Sep. 7, 2022); Bay Mills Indian Community, *Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded*

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*Territory, Waters of the Great Lakes, and the Straits of Mackinac*, 24 Res. 21-05-10A (May 10, 2021), [https://narf.org/nill/documents/20210510BayMills\\_banish\\_Enbridge.pdf](https://narf.org/nill/documents/20210510BayMills_banish_Enbridge.pdf).

<sup>132</sup> Beyond the Committee, other U.N. Human Rights Treaty Bodies have affirmed that the duty to protect applies extraterritorially *see* CESCR, *General comment No. 24 (2017) on state obligations in the context of business activities*, E/C.12/GC/24, paras. 30-32 (2017) [hereinafter, “CESCR, GC No. 24”]; Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 on the Rights of Rural Women*, U.N. Doc. CEDAW/C/GC/34, para. 13 (2016); Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)*, U.N. Doc. CRC/C/CAN/CO/3-4, paras. 28-29 (2012); Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, U.N. Doc. CCPR/C/CAN/CO/6, para. 6 (2015).

<sup>133</sup> The duty to respect requires that Canada refrain from conduct that causes or contributed to reasonably foreseeable harms to human rights. Office of the High Commissioner of Human Rights, *International Human Rights Law*, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>; Human Rights Committee (HRC), *General Comment No. 36 on Article 6: right to life*, CCPR/C/GC/36, para. 7 (2019) (hereinafter HRC, GC No. 36); Committee on the Rights of the Child (CRC), *General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights*, CRC/C/GC/16, para. 26 (2013) (hereinafter CRC, GC No. 16). This duty applies extraterritorially, and “requires States parties to refrain from interfering directly or indirectly with the enjoyment of the [] rights by persons outside their territories.... States must ensure that they do not obstruct another State from complying with its obligations.” CESCR, GC No. 24, para. 29; *see also* HRC, GC No. 36, paras. 22, 63; Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 on the Rights of Rural Women*, U.N. Doc. CEDAW/C/GC/34, para. 13 (2016) (hereinafter CEDAW, Gen. Rec. No. 34).

<sup>134</sup> *See* Section II.D, *supra*.

<sup>135</sup> ICERD, art. 5; CERD, *General Recommendation XX (20) on article 5 of the Convention*, 44<sup>th</sup> Sess. para. 1 (1996) [hereinafter, “CERD, GR No. 20”].

<sup>136</sup> CERD, GR No. 20, para. 1.

<sup>137</sup> CERD, GR No. 23, para. 3.

<sup>138</sup> CESCR, GC No. 24, para. 8.

<sup>139</sup> OHCHR, *Mapping Human Rights Obligations for a Health Environment: Report on ICERD*, paras. 14–18.

<sup>140</sup> CERD, Decision 1(68): U.S, paras. 7-10 (discussing, amongst other activities, privatization of indigenous ancestral lands for transfer to multinational extractive industries and energy developers and plans for open pit gold mining activities, geothermal energy leases on indigenous lands).

<sup>141</sup> CERD, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, para. 10 (2014) [hereinafter, “CERD, 2014 COB U.S.”].

<sup>142</sup> OHCHR, *Mapping Human Rights Obligations for a Health Environment: Report on ICERD*, para. 39 (citing *Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Seventy-second and Seventy-third sessions, Consideration of Reports, Comments and Information Submitted by States Parties: Togo*, 1 November 2008, U.N. Doc. A/63/18, para. 460).

<sup>143</sup> CERD, *Concluding observations of the CERD: Russian Federation*, U.N. Doc. CERD/C/RUS/CO/19, para. 24 (2008).

<sup>144</sup> CERD, No. GR 23, para. 4(a).

<sup>145</sup> CERD, No. GR 23, para. 4(c).

<sup>146</sup> CERD, No. GR 23, para 5.

<sup>147</sup> CERD, 2022 COB U.S., para. 46; *see also* CERD, 2014 COB U.S., para. 24(c).

<sup>148</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Mapping Human Rights Obligations Relating to the Enjoying of a Safe, Clean, Healthy and Sustainable Environment: Individual Report on the International Convention on the Elimination of All Forms of Racial Discrimination*, para. 42 (2013), [hereinafter, “OHCHR, Mapping Human Rights Obligations for a Health Environment: Report on ICERD”] (citing: *Report of the Committee on the Convention on the Elimination of All Forms of Racial Discrimination for the Seventy-second and Seventy-third sessions, Consideration of Reports, Comments and Information Submitted by States Parties: Russian Federation*, 1 November 2008, U.N. Doc. A/63/18, para. 374).

<sup>149</sup> HRC, *Daniel Billy et al. v. Australia*, U.N. Doc. CCPR/C/135/D/3624/2019, para. 8.13 (Sept. 22, 2022); *accord* CESCR, GC No. 21, paras. 36-37.

<sup>150</sup> UNDRIP, art. 11.

<sup>151</sup> UNDRIP, art. 31.

<sup>152</sup> UNDRIP, art. 12.

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<sup>153</sup> UNDRIP, art. 31.

<sup>154</sup> See Section II.C, *supra*.

<sup>155</sup> Mich. Dept. Env't, Great Lakes, and Energy, *State of the Great Lakes Report*, page 3 (Jul. 2020), <https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Reports/OGL/State-of-the-Great-Lakes/Report-2019.pdf?rev=f911f70978404e9d9758914a0b96c9ad>.

<sup>156</sup> Bad River Band Rerouting Comments, pages 11–14.

<sup>157</sup> Ramsar Sites Information Service, *Kakagon and Bad River Sloughs* (Feb. 2, 2012), <https://rsis Ramsar.org/ris/2001>.

<sup>158</sup> *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2022 U.S. Dist. LEXIS 161080, page \*45 (W.D. Wis. Sep. 7, 2022); *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsr. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2023 U.S. Dist. LEXIS 105397 (W.D. Wis. June 16, 2023).

<sup>159</sup> Bay Mills Tunnel Comments, pages 7–8; *see also* Bad River Band Rerouting Comments, page 1; *id.*, page 18; *id.*, pages 45–48.

<sup>160</sup> Bad River Band Rerouting Comments, page 1.

<sup>161</sup> Bay Mills Tunnel Comments, pages 7–8; *see also* Bad River Band Rerouting Comments, page 1; *id.*, page 18; *id.*, pages 45–48.

<sup>162</sup> Bay Mills Tunnel Comments, pages 2–3; Amicus Brief of Bay Mills Indian Community et. al., page 4, *Enbridge v. Whitmer*, Docket No. 11:120-cv-01141 (W.D. Mich. April 6, 2022) (Dkt. 75).

<sup>163</sup> Amicus Brief of Bay Mills Indian Community et. al., page 4, *Enbridge v. Whitmer*, Docket No. 11:120-cv-01141 (W.D. Mich. Apr. 6, 2022) (Dkt. 75); *see also* Bad River Band Rerouting Comments, pages 1, 3–5; Press Release, Bad River Band of Lake Superior Tribe of Chippewa Indians, *Mashkiziibi (Bad River) Band Denies Renewal of Line 5 Grant of Easement* (Jan. 5, 2017), 16118710\_10154145497292703\_2124816677\_n.jpg (d3n8a8pro7vhmx.cloudfront.net).

<sup>164</sup> Bay Mills Tunnel Comments, pages 3, 38–39.

<sup>165</sup> Bay Mills Tunnel Comments, page 3.

<sup>166</sup> Bay Mills Tunnel Comments, page 39; *accord* Complaint, paras. 37–38, 52, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. July 23, 2019) (Dkt. 1); Bad River Band of Lake Superior Tribe, *Kakagon and Bad River Sloughs recognized as a Wetland of International Importance* (Apr. 5, 2012), <http://www.badriver-nsn.gov/kakagon-and-bad-river-sloughs-recognized-as-a-wetland-of-international-importance/>; Ramsar, *Annotated List of Wetlands of International Importance*, [https://rsis Ramsar.org/sites/default/files/rsiswp\\_search/exports/Ramsar-Sites-annotated-summary-United-States-of-America.pdf?1491490956](https://rsis Ramsar.org/sites/default/files/rsiswp_search/exports/Ramsar-Sites-annotated-summary-United-States-of-America.pdf?1491490956).

<sup>167</sup> Bay Mills Tunnel Comments, pages 30–31; Charles E. Cleland, *The Place of the Pike (Gnoozhekaaning): A History of the Bay Mills Indian Community*, page 83 (U. Mich. Press, 2004); *see also* Complaint, paras. 40–42, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. July 23, 2019) (Dkt. 1); Bay Mills Indian Community, *Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded Territory, Waters of the Great Lakes, and the Straits of Mackinac*, 24 Res. 21-05-10A (May 10, 2021), [https://narf.org/nill/documents/20210510BayMills\\_banish\\_Enbridge.pdf](https://narf.org/nill/documents/20210510BayMills_banish_Enbridge.pdf).

<sup>168</sup> Bay Mills Tunnel Comments, page at 3.

<sup>169</sup> Cleland, page 83; *see also* Bay Mills Indian Community, *Banishment of Enbridge Energy, Inc. Line 5 Dual Pipelines from the 1836 Treaty of Washington Ceded Territory, Waters of the Great Lakes, and the Straits of Mackinac*, 24 Res. 21-05-10A (May 10, 2021), [https://narf.org/nill/documents/20210510BayMills\\_banish\\_Enbridge.pdf](https://narf.org/nill/documents/20210510BayMills_banish_Enbridge.pdf).

<sup>170</sup> *See, e.g.*, Robinson-Superior Treaty, 1850, Treaty No. 60 and Robinson-Huron, 1850, Treaty No. 61; *Treaty with the Chippewa*, WL 4123(Trty.) 7 Stat., 536 (Jul. 29, 1837) (“The privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States”); *Treaty with the Ottawa*, WL 4198(Trty.), 7 Stat. 491 (Mar. 28, 1836).

<sup>171</sup> Complaint, paras. 39–43, 52, *Bad River Band of the Lake Superior Tribe of Chippewa Indians v. Enbridge Energy Co., et al.*, No. 3:19-cv-00602-wmc (W.D. Wis. July 23, 2019) (Dkt. 1); Bad River Band Rerouting Comments, pages 3–6.

<sup>172</sup> OHCHR, *Mapping Human Rights Obligations for a Health Environment: Report on ICERD*, para. 5.

<sup>173</sup> *Id.*

<sup>174</sup> CERD, 2017 COB Canada, para. 20(b).

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<sup>175</sup> ICERD, art. 6; *see also* CERD, 2012 COB Canada, para. 14; CERD, 2017 COB Canada, paras. 20(g), 22; CERD, *Concluding observations on the combined tenth to twelfth reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022), para. 46 [hereinafter, “CERD, 2022 COB U.S.”].

<sup>176</sup> CERD, 2022 COB U.S., para. 46.

<sup>177</sup> CERD, 2022 COB U.S., para. 46.

<sup>178</sup> CERD, 2007 COB Canada, para. 17; *see also* CERD, 2012 COB Canada, para. 14.

<sup>179</sup> CERD, *Concluding Observations on the combined twenty-second and twenty-third periodic report of France*, U.N. Doc. CERD/C/FRA/CO/22-23, para. 16(e) (Dec. 14, 2022) [hereinafter, “CERD, 2022 COB France.”].

<sup>180</sup> CERD, *Concluding observations of the CERD: Chile*, U.N. Doc. CERD/C/CHL/CO/15-18, para. 23 (2009) (“The Committee further recommends that the State party . . . ensure that the protection of the rights of indigenous peoples prevails over commercial and economic interests.”); CESCR, GC No. 24, para. 12 (States violate their duty to respect human rights when they “prioritize the interests of businesses over [human] rights without adequate justification or when they pursue policies that negatively affect such rights.”)

<sup>181</sup> *See, e.g.*, Agreement between Enbridge and the Mackinac Straits Corridor Authority to design, construct, operate, and maintain a utility tunnel at the Straits to accommodate a replacement for the Dual Pipelines and other utilities, arts. 5.3 (Dec. 19, 2018), [https://www.michigan.gov/-/media/Project/Websites/MDOT/About-Us/Commissions/MSCA/Documents/MSCA\\_Tunnel\\_Agreement\\_Enbridge\\_Energy.PDF?rev=fc26f727ef02446081e65a510aee72b8](https://www.michigan.gov/-/media/Project/Websites/MDOT/About-Us/Commissions/MSCA/Documents/MSCA_Tunnel_Agreement_Enbridge_Energy.PDF?rev=fc26f727ef02446081e65a510aee72b8).

<sup>182</sup> *See* IPCC, WGI 1.5, page 9 (paras. B.5-B.5.4); IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, SPM, pages 8-9 (paras. A.3-A.3.5) (2021); IPCC, *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, SPM, pages 9-11 (paras. B.1-B.1.7) (2022); *see also* Joint Statement by CEDAW, CESCR, Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, CRC, and Comm. on the Rights of Persons with Disabilities, *Statement on Human Rights and Climate Change*, U.N. Doc. HRI/2019/1, para. 5 (2020) [hereinafter, “Joint Statement on Human Rights and Climate Change”].

<sup>183</sup> U.N., *Resolution adopted by the General Assembly on July 28, 2022, The human right to a clean, healthy and sustainable environment*, U.N. Doc. A/RES/76/300, pages 2-3 (2022); *see also, e.g.*, U.N. Human Rights Council, Res. 7/23: *Human rights and climate change*, U.N. Doc. A/HRC/RES/7/23 (2008); U.N. Human Rights Council, Res. 10/4: *Human rights and climate change*, U.N. Doc. A/HRC/RES/10/4 (2009); U.N. Human Rights Council, Res. 18/22: *Human rights and climate change*, U.N. Doc. A/HRC/RES/18/22 (2011); U.N. Human Rights Council, Res. 26/27: *Human rights and climate change*, U.N. Doc. A/HRC/RES/26/27 (2014); U.N. Human Rights Council, Res. 29/15: *Human rights and climate change*, U.N. Doc. A/HRC/RES/29/15 (2015); U.N. Human Rights Council, Res. 31/8: *Human rights and the environment*, U.N. Doc. A/HRC/RES/31/8, at pmb1., para. 4(a) (2016); U.N. Human Rights Council, Res. 32/33, *Human rights and climate change*, U.N. Doc. A/HRC/RES/32/33, at pmb1. (2016); U.N. Human Rights Council, Res. 35/20: *Human rights and climate change*, U.N. Doc. A/HRC/35/20 (2017); U.N. Human Rights Council, Res. 38/4: *Human rights and climate change*, U.N. Doc. A/HRC/RES/38/4, at pmb1. (2018); U.N. Human Rights Council, Res. 41/21: *Human rights and climate change*, U.N. Doc. A/HRC/RES/41/21 (2019); U.N. Human Rights Council, Res. 44/7: *Human rights and climate change*, U.N. Doc. A/HRC/Res/44/7 (2020); HRC, GC No. 36, para. 62.

<sup>184</sup> CERD, 2022 COB U.S., para. 45.

<sup>185</sup> CERD, 2022 COB France, para. 15.

<sup>186</sup> Joint Statement on Human Rights and Climate Change, para. 3.

<sup>187</sup> U.N. Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/36/46, para. 6 (2017); *see also* Directorate-General for External Policies of the European Union, *Indigenous Peoples and Climate Change*, U.N. Doc. EXPO/B/DROI/2009/03, page 12 (2009); Wayne S. Walker et al., *The Role of Forest Conversion, Degradation, and Disturbance in the Carbon Dynamics of Amazon Indigenous Territories and Protected Areas*, 117 PNAS 3015, 3015 (2020); FAO, *Forest Governance by Indigenous and Tribal Peoples: An Opportunity for Climate Action in Latin America and the Caribbean*, p. 31 (2021) (explaining that, even though indigenous territories cover 28% of the Amazon Basin, they generated only 2.6% of the region’s gross carbon emissions).

<sup>188</sup> U.N. Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61, para. 51 (2009) [hereinafter, “*Report of the OHCHR on the Relationship between climate change and human rights*”]; *see also* U.N. Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, *Preliminary Report*, U.N. Doc. A/HRC/22/43, para. 45 (2012); U.N. Independent

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Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, *Mapping Report*, U.N. Doc. A/HRC/25/53, paras. 76-78 (2013); CEDAW, Gen. Rec. No. 39, para. 7.

<sup>189</sup> U.S. Env't Prot. Agency, *Climate Change and the Health of Indigenous Populations*, <https://www.epa.gov/climateimpacts/climate-change-and-health-indigenous-populations> (last visited Apr. 3, 2023).

<sup>190</sup> U.N. Special Rapporteur on the Rights of Indigenous Peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/36/46, para. 7 (2017); *see also Report of the OHCHR on the Relationship between climate change and human rights*, para. 52; John E. Fa et al., *Importance of Indigenous Peoples' Lands for the Conservation of Intact Forest Landscapes*, 18 *Frontiers Ecology & Environment* 135 (2020); *see generally* Caleb Stevens et al., *World Resources Institute and Rights and Resources Initiative, Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change* (2014).

<sup>191</sup> *See* Section II.A, *supra*.

<sup>192</sup> *See generally* Great Lakes Indian Fish and Wildlife Commission, *Aanji-bimaadiziimagak o'ow aki, Climate Change Vulnerability Assessment Version 2* (Jan. 2023), [http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak\\_o\\_ow\\_aki\\_digital\\_02212023.pdf](http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf); Bay Mills Tunnel Comments, pages 35-42; Bad River Band Rerouting Comments, pages 21-24, 47.

<sup>193</sup> Env't'l Law and Policy Center, *An Assessment of the Impacts of Climate Change on the Great Lakes* (2019) <https://elpc.org/wp-content/uploads/2020/04/2019-ELPCPublication-Great-Lakes-Climate-Change-Report.pdf>.

<sup>194</sup> *Id.*

<sup>195</sup> NCCOS, *Study Identifies Causes of Toledo's Unprecedented 2017 Maumee River Algal Bloom* (Aug 26, 2020), <https://coastalscience.noaa.gov/news/study-identifies-causes-of-toledos-unprecedented-2017-maumee-river-bloom/>; Alliance for the Great Lakes, *Five Years Later: Lessons From the Toledo Water Crisis* (Aug. 1, 2019), <https://greatlakes.org/2019/08/five-years-later-lessons-from-the-toledo-water-crisis/>.

<sup>196</sup> Great Lakes Indian Fish and Wildlife Commission, *Aanji-bimaadiziimagak o'ow aki, Climate Change Vulnerability Assessment Version 2*, pages 39-40 (Jan. 2023), [http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak\\_o\\_ow\\_aki\\_digital\\_02212023.pdf](http://data.glifwc.org/download/archive.bio/Aanji-bimaadiziimagak_o_ow_aki_digital_02212023.pdf).

<sup>197</sup> Government of Canada, *Greenhouse Gas Emissions* (May 26, 2022), <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html>; *see also* IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, page 5 (2014); Heede, R., *Tracing Anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers*, 122 *Climatic Change* 229 (2014).

<sup>198</sup> United Nations, *Secretary-General Calls on States to Tackle Climate Change 'Time Bomb' through New Solidarity Pact, Acceleration Agenda, at Launch of Intergovernmental Panel Report*, U.N. Doc. SG/SM/21730 (Mar. 20, 2023), <https://press.un.org/en/2023/sgsm21730.doc.htm>; United Nations, *Secretary-General's video message to the Sixth Austrian World Summit* (June 14, 2022), <https://www.un.org/sg/en/content/sg/statement/2022-06-14/secretary-generals-video-message-the-sixth-austrian-world-summit>; United Nations, *Secretary-General's video message to the Press Conference Launch of IPCC Report* (Feb. 28, 2022), <https://www.un.org/sg/en/content/sg/statement/2022-02-28/secretary-generals-video-message-the-press-conference-launch-of-ipcc-report-scroll-down-for-languages>.

<sup>199</sup> Joint Statement on Human Rights and Climate Change, para. 12; CEDAW, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, U.N. Doc. CEDAW/C/GC/37, paras. 14, 43, 46 (2018); CESCR, *Climate Change and the ICESCR*, para. 9.

<sup>200</sup> Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, U.N. Doc. A/74/161, paras. 73, 76, 77(a) (2019); Special Rapporteur on Extreme Poverty, *Report on Climate Change and Poverty*, paras. 40, 43, 59; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *the human rights to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals*, U.N. Doc. A/77/284, para. 80(e) (2022); Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Promotion and protection of human rights in the context of climate change*, U.N. Doc. A/77/226, para. 90 (2022).

<sup>201</sup> *See* IPCC, WGI 1.5, SPM, pages 14-15 (fig. SPM.3b, para. C.2); IPCC, WGIII AR6, pages 68 (fig. TS.3), 85, 89, 355 (sec. 3.5.2.2), 1742 (sec. 17.3.2.2); IPCC, *Synthesis Report AR6*, SPM, pages 22-23 (fig. SPM.5).

<sup>202</sup> IPCC, WGIII AR6, Technical Summary, page 90 (Box TS.8); *see also* IPCC, *Synthesis Report AR6*, SPM, page 20 (para. B.5); Stockholm Env't Institute, *et. al, The Production Gap Report: 2020 Special Report*, pages 3-4 (2020), [https://productiongap.org/wp-content/uploads/2020/12/PGR2020\\_FullRprt\\_web.pdf](https://productiongap.org/wp-content/uploads/2020/12/PGR2020_FullRprt_web.pdf); Stockholm



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Environment Institute, *et. al*, *The Production Gap: Governments' Planned Fossil Fuel Production Remains Dangerously Out of Sync with Paris Agreement limits*, pages 3-4 (2021), [https://productiongap.org/wp-content/uploads/2021/11/PGR2021\\_web\\_rev.pdf](https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf).

<sup>203</sup> CERD, *Concluding observations on the combined twenty-second and twenty-third reports of Cameroon*, U.N. Doc. CERD/C/CMR/CO/22-23, para. 27(e) (May 26, 2022).

<sup>204</sup> CERD, 2022 COB France, para. 16(e).

<sup>205</sup> Climate Action Tracker, *Canada: Country Summary*, <https://climateactiontracker.org/countries/canada/>.

<sup>206</sup> Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Canada*, U.N. Doc. CRC/C/CAN/CO/5-6, para. 37 (2022) [hereinafter, "CRC, 2022 Canada COB"].

<sup>207</sup> Above Ground, *Crown Corporation EDC is Undermining Canada's Climate commitments. Will Ottawa step in and take action?* (Jan. 13, 2021), <https://aboveground.ngo/edc-fossil-finance-will-ottawa-step-in/>; Letter from Above Ground *et al.*, to Honourable Mary Ng, MP, Minister of Small Business, Export Promotion and International Trade *et al.*, (Dec. 21, 2020), <https://aboveground.ngo/wp-content/uploads/2021/01/Stop-EDC-fossil-finance-letter-to-Minister-Ng-Dec2020-1.pdf>; Oil Change International and Friends of the Earth United States, *At a Crossroads: Assessing G20 and MDB International Energy Finance Ahead of Stop Funding Fossils Pledge Deadline* (Nov. 2022), <https://priceofoil.org/content/uploads/2022/11/G20-At-A-Crossroads.pdf>.

<sup>208</sup> Environmental Defence Canada, *Budget 2023: Will this be the budget to eliminate fossil fuel subsidies?*, page 2 (Mar. 2023), <https://environmentaldefence.ca/wp-content/uploads/2023/03/Backgrounder-Fossil-Fuel-Subsidies-Budget-2023-Environmental-Defence-Final.pdf>; Environmental Defence, *The Running List of Federal Fossil Fuel Subsidies in Canada in 2022* (2022), <https://environmentaldefence.ca/federal-fossil-fuel-subsidies-tracking/>; Above Ground, *Canada Must Stop Bankrolling and Exporting Climate Destruction*, <https://aboveground.ngo/about-us-2/our-focus/end-canadas-fossil-fuel-finance-2/>; Environmental Defence Canada, *Paying Polluters: Federal Financial Support to Oil and Gas in 2020*, page 3 (Apr. 2021), <https://environmentaldefence.ca/wp-content/uploads/2021/04/Federal-FossilFuelSubsidies-April-2021.pdf>.

<sup>209</sup> Global Affairs Canada, *Statement by Minister Garneau on Line 5 Transit Pipeline*, Oct. 4, 2021, <https://www.canada.ca/en/global-affairs/news/2021/10/statement-by-minister-garneau-on-line-5-transit-pipeline.html>.

<sup>210</sup> *E.g.* Robinson-Superior Treaty, 1850, Treaty No. 60 and Robinson-Huron, 1850, Treaty No. 61; *Treaty with the Chippewa*, WL 4123(Trty.) 7 Stat., 536 (Jul. 29, 1837); *Treaty with the Ottawa*, WL 4198(Trty.), 7 Stat. 491 (Mar. 28, 1836). *See also*, *U.S. v State of Michigan* (N.D. Mich.) 417 F. Supp 192, 213 ("When the Indians granted to the United States their ownership in the land and waters of the Great Lakes described in Article First of the 1836 Treaty, they retained all those rights not specifically conveyed. Among the retained rights was their aboriginal right to continue to fish in the ceded waters of the Great Lakes").

<sup>211</sup> *See* Vienna Convention on the Law of Treaties, arts. 31, 32, *signed* May 23, 1969, *entered into force* Jan. 27, 1980, 1155 U.N.T.S. 331, art. 31(3)(c).

<sup>212</sup> CESCR, GC No. 24, para. 13.

<sup>213</sup> CESCR, 2016 Canada COB, para. 16.

<sup>214</sup> *See* Amnesty International, *Canada: UN Special Rapporteur's visit must shift 'glacial progress' on Indigenous rights* (March 1, 2023), <https://www.amnesty.org/en/latest/news/2023/03/canada-un-special-rapporteurs-visit-indigenous-rights/>; John Paul Tasker, *Trudeau cabinet approves Trans Mountain, Line 3 pipelines, rejects Northern Gateway*, CBC (Nov. 29, 2016), <https://www.cbc.ca/news/politics/federal-cabinet-trudeau-pipeline-decisions-1.3872828>; *The Indigenous-led fight to stop the Line 3 oil pipeline expansion in Minnesota, explained*, VOX (Mar. 5, 2021), <https://www.vox.com/22333724/oil-pipeline-expansion-protest-minnesota-biden-climate-change>; Apr. 2022 CERD Letter, Canada.

<sup>215</sup> *See* CERD 2007 Canada COB, para. 17; CERD, 2012 Canada COB, para. 14; CRC, 2012 Canada COB, paras. 28-29; HRC, 2015 Canada COB, para. 6; CESCR, 2016 Canada COB, paras. 15-16; CERD, 2017 Canada COB, paras. 21-22; CRC 2022 Canada COB, para. 16.

<sup>216</sup> CERD, 2007 COB Canada, para. 17; CERD, 2012 Canada COB, para. 14; CERD, 2017 Canada COB, paras. 19-20.

<sup>217</sup> SR on the Rights of Indigenous Peoples, Visit to Canada, page 10.

<sup>218</sup> CERD, 2017 Canada COB, para. 20(e).

<sup>219</sup> CERD, Decision 1 (100).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*; *see also* Letter from Nouredine Amir, Chair, Comm. Elimination of Racial Discrimination to Chief Ms. Tamara Mawhinney, Deputy Permanent Representative of Canada to the United Nations Office, Reference

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CERD/EWUAP/99THSESSION/Canada/JP/ks (Aug. 29, 2019) (asking for "additional information regarding the steps taken to suspend the Site C dam until free, prior and informed consent is obtained...").

<sup>223</sup> *Id.*

<sup>224</sup> CERD, 2007 COB Canada, para. 22; CERD, 2012 COB Canada, para. 12; CERD, 2017 COB Canada, paras. 19, 21.

<sup>225</sup> *See e.g.* Communities United by Water, Indigenous Leaders, Environmental Groups, and Concerned Citizens Call on Canada to Shut Down Enbridge's Line 5 Pipeline (May 17), <https://communitiesunitedbywater.org/blog/indigenous-leaders-environmental-groups-and-concerned-citizens-call-on-canada-to-shut-down-enbridges-line-5-pipeline>; Letter from civil society organizations and individuals, to Prime Minister Justin Trudeau *et al.* Subject: Withdraw your invocation of the 1977 pipeline treaty; shut down Enbridge's Line 5 (May 15, 2023), [https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e\\_50ddc5456b464fd5a56efcc9662ccf96.pdf](https://d99d2e8d-06c9-433b-915d-f6e381b1acd4.usrfiles.com/ugd/d99d2e_50ddc5456b464fd5a56efcc9662ccf96.pdf).