

REFERENCE: CERD/EWUAP/114session/2024/CS/BJ/ks

13 December 2024

Excellency,

I write to you in relation to the Committee's [letter](#) of 8 December 2023 regarding the information received under its early warning and urgent action procedure in relation to the allegations on the impacts of Line 5 crude oil pipeline on the rights of Indigenous peoples in Canada and in the United States of America.

The Committee thanks the State party for its response to the letter and for the information provided. The Committee notes the information that Line 5 falls under the provisions of the 1977 Canada-U.S. Transit Pipelines Treaty (hereinafter the 1977 Treaty). It notes the information that the State party invoked the dispute settlement mechanism of the 1977 Treaty twice, first on October 4, 2021, concerning the segment in the Straits of Mackinac (the State of Michigan), and again on August 29, 2022, concerning the segment that crosses the Bad River Band of the Lake Superior Chippewa Tribe's Reservation (in Wisconsin), and that diplomatic negotiation are still ongoing with the aim of reaching a mutually acceptable solution whereby the concerns of Indigenous peoples in Wisconsin and Michigan are addressed, while also respecting Canada's rights under the 1977 Treaty.

The Committee also notes the information provided on the State party's support to the proposals by Enbridge, the transnational corporation registered in Canada operating Line 5, to build a replacement segment of Line 5 outside and around the Bad River Band's Reservation in Wisconsin and to place the Line 5 segment currently resting on the lakebed Straits of Mackinac within a tunnel bored underneath the Straits. The Committee further notes the information that the proposed projects fall under the jurisdiction of the United States of America and thus its regulatory framework applies concerning the permission and environmental impact assessment processes, as well as, concerning the respect of the rights of Indigenous peoples, particularly in relation to obtaining their free, prior, and informed consent. It notes the information provided that the permitting and environmental impact assessment processes are ongoing in the United States of America, including by the Pipelines and Hazardous Materials Safety Administration (PHMSA) and the review by the United States Army Corps of Engineers. Lastly, it notes the information that permitting and environmental impact assessment processes allow for participation in the consultation process to all interested parties.

H.E. Mr. Peter Macdougall  
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The Committee also notes the information that the State party is not a party in the two cases against Enbridge in the United States of America concerning Line 5, notwithstanding the submission of *amicus curiae* in these cases. It also takes note of the information that the State party takes no position on United States domestic law as it relates to any of these proceedings pertaining to Line 5.

The Committee also notes the information that the State party takes no position regarding measures taken by Enbridge to engage with Indigenous peoples in Michigan and Wisconsin regarding the two proposed projects and that the domestic regulatory and environmental assessment processes provide opportunities for the engagement by relevant stakeholders.

Regarding the 12 kilometres segment of Line in the territories of the State party, the Committee notes the information on the legislative framework on safety and environmental standards, as well as the oversight and investigation mandate of the Canada Energy Regulator (CER) to ensure the protection of the environment in accordance with its commitments to achieving reconciliation with Indigenous peoples and implementing the UN Declaration on the Rights of Indigenous Peoples.

The Committee further notes the information on the Great Lakes Water Quality Agreement of 1972 and its Protocol between Canada and the United States of America that aim at ensuring binational consultation and cooperation to restore, protect and enhance the water quality and ecological health of the Great Lakes, while including Tribal, First Nations, and Métis governments to achieve the objectives of the Agreement.

Notwithstanding the information provided, the Committee regrets the lack of information on some of the allegations and concerns set out in the Committee's letter of 8 December 2023, particularly: (a) that continued operations of Line 5 and the risk of an oil spill could cause a disproportionate harm to the Anishinaabe Indigenous Peoples, to their way of life and to the right to their lands, resources, culture, health, and could also cause their forced displacement; (b) that, by supporting Enbridge's continued operation of Line 5, the State party enables discriminatory practices and poses foreseeable risks to the Anishinaabe people's rights; (c) the reported lack of consultations with affected Indigenous communities and lack of respect of the principle of free, prior and informed consent of these communities with regard to Line 5 pipeline; and (d) measures to decommission Line 5 in accordance with the recommendations of the UN Permanent Forum on Indigenous and the UN Special Rapporteur on the rights of Indigenous Peoples.<sup>1</sup>

In this regard and in accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee kindly requests that the State party provide updated and detailed information on the impacts of Line 5 crude oil pipeline on the

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<sup>1</sup> See report on the 23<sup>rd</sup> session of the UN Permanent Forum on Indigenous Issues (15-26 April 2024), [E/2024/43](#), para. 35 and report of the Special Rapporteur on the rights of Indigenous Peoples on his visit to Canada, 24 July 2023, [A/HRC/54/31/Add.2](#), paras. 71 and 96 (i).

rights of Indigenous peoples as part of its combined twenty-fourth and twenty-fifth periodic reports, overdue since November 2021.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Canada, with a view to ensuring the effective implementation of the Convention.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,



Michal Balcerzak  
Chair

Committee on the Elimination of Racial Discrimination