



**Joint Parallel Report to the Human Rights Committee  
on the Occasion of the Committee's Periodic Review of Canada  
during the Committee's 145th Session  
2 - 9 March 2026**

Submitted February 2026

**Submitted by:**

Bay Mills Indian Community or Gnoozhekaaning, "Place of the Pike"

**Together with:**

Center for International Environmental Law  
EarthRights International

## **I. Introduction**

The Bay Mills Indian Community (Bay Mills), together with the Center for International Environmental Law (CIEL) and EarthRights International,<sup>i</sup> submit this report to the Human Rights Committee ahead of its consideration of Canada’s seventh periodic report in March 2026. The report aims to provide the Committee with a more complete picture of Canada’s implementation of the International Covenant on Civil and Political Rights (ICCPR), a treaty which Canada ratified in 1976. It highlights areas in which the Canadian government has failed to uphold its human rights commitments under the ICCPR, specifically in relation to conduct in support of the continued operation of Line 5, a 645-mile oil and gas pipeline operated by Canadian multinational corporation Enbridge Inc.

Bay Mills is a federally-recognized Tribal Nation in Northern Michigan, and is a signatory to the March 28, 1836 Treaty of Washington. The treaty expressly reserved for all time Bay Mills’ “usual privileges of occupancy,” which has been interpreted to be 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. Line 5 runs through our territory and waters. Its existence and potential expansion 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.

Not only has Canada failed to ensure that Enbridge’s operations respect the environment and Indigenous Peoples’ rights, it is actively advocating for the continued operation of Line 5 despite the opposition of affected Indigenous communities and the current and foreseeable threats it poses to human rights. Canada has supported Line 5 on numerous fronts, including by invoking a bilateral treaty with the U.S. to seek to prevent a shut down of Line 5 and to engage in closed-door negotiations excluding affected Indigenous communities, as well as through submissions to U.S. courts advocating for the pipeline’s continued operation. Canada’s efforts to prevent the decommissioning of Line 5 and its failure to properly regulate Enbridge violate its obligations under the ICCPR to respect and protect Indigenous Peoples’ rights to life; privacy, family, and the home; culture; and free, prior and informed consent.

We respectfully ask that the Committee call attention to these important issues during Canada’s review by asking Canada the below suggested questions, and urging the Canadian government to take the recommended steps outlined herein.

## **Suggested Questions**

1. Please provide specific information on steps Canada has taken, and is taking, to implement the recommendations of the UNPFII and the U.N. Special Rapporteurs, with respect to Line 5?

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<sup>i</sup> The Center for International Environmental Law and EarthRights International are non-governmental, non-profit organizations dedicated to promoting human rights and environmental protection, including through the power of law.

2. How is Canada's support of the continued operation of Line 5 compatible with its obligations under the ICCPR? More specifically, please explain how Canada is ensuring that its actions regarding the Line 5 pipeline fulfill its obligation under the ICCPR to respect and protect Indigenous Peoples rights, including the right to life; family, privacy, and the home; culture; participation; and free, prior, and informed consent?
3. How will Canada ensure that, moving forward, its currently closed-door negotiations with the United States government over Line 5's future are inclusive and respect the right of Indigenous Peoples affected by the pipeline's operation to participate effectively in decisions that affect them?
4. How is Canada's support of the continued operation of Line 5, an oil and gas pipeline with a substantial climate footprint, compatible with its obligations to prevent and mitigate the effects of climate change and environmental degradation?

### **Suggested Recommendations**

1. The Committee calls on Canada to implement the recommendations by the UNPFII and U.N. Special Rapporteurs regarding Line 5.
2. The Committee calls on Canada to reexamine its support for the Line 5 Pipeline, which jeopardizes the Great Lakes and poses a real and credible threat to the human rights of Indigenous Peoples in Canada and the United States. The Committee recommends that Canada cease interfering with, and support, efforts to decommission Line 5.
3. The Committee calls on Canada to withdraw its invocation of the Pipeline Treaty. The Committee calls on Canada to ensure that affected Indigenous Nations, who are sovereigns and human rights holders, are invited to participate in discussions regarding Line 5's future, including any negotiations under the Pipeline Treaty so long as they continue, and to interpret all international treaties, including the Pipeline Treaty, consistently with Canada's human rights obligations.
4. The Committee calls on Canada to ensure its actions in relation to Line 5 respect and protect Indigenous Peoples' rights, including by ensuring that corporations under Canadian jurisdiction do not cause or contribute to foreseeable threats to human rights.

### **II. Factual Background**

Line 5 is a 645-mile pipeline owned and operated by Canadian company Enbridge.<sup>ii1</sup> As part of a larger Enbridge pipeline system, Line 5—which begins in Wisconsin, passes through

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<sup>ii</sup> Enbridge refers to the group of companies operating under that name, including Enbridge Energy, Limited Partnership; Enbridge Energy Company, Inc.; Enbridge Energy Partners, L.P.

Michigan, and ends in Sarnia, Ontario—transports up to approximately 23 million gallons of crude oil and natural gas liquids daily from western to eastern Canada.<sup>2</sup> Line 5 crosses hundreds of interconnected waters and traverses traditional territories of numerous Indigenous Peoples.<sup>3</sup> A 4.5-mile segment of Line 5 diverges into two parallel pipelines as it travels under the Straits of Mackinac (the Straits) between the Great Lakes Huron and Michigan, near Bay Mills' territories.<sup>4</sup>

#### **A. Risk of a catastrophic oil spill posed by Line 5's continued operation**

According to an analysis of government records Line 5 has spilled over 1 million gallons of oil in over 30 documented incidents.<sup>5</sup> The pipeline poses real risks of additional spills.<sup>6</sup> When the pipeline was installed in 1953—over 70 years ago—an engineer who worked on the installation stated it would “last 50 years.”<sup>7</sup> Operating an aging pipeline risks infrastructure failure because pipelines degrade over time,<sup>8</sup> compounding “inherent threats to pipeline integrity due to incorrect operations and procedural errors.”<sup>9</sup> Moreover, government agencies and other groups have documented environmental and safety protocol deficiencies and violations associated with Enbridge operations.<sup>10</sup>

Events and research show that Line 5 is particularly vulnerable under the Straits, where it lies exposed below busy shipping lanes. Indeed, vessels with anchors or external objects struck the Straits pipeline in 2018 and, likely, 2019.<sup>11</sup> In 2020, after damage to the pipeline was discovered, a U.S. court ordered a temporary shut down,<sup>12</sup> recognizing the “substantial and irreparable,” risk of harm that “endangers so many communities and livelihoods and the natural resources of Michigan,” if the pipeline could not operate safely.<sup>13</sup> In November 2020, the State of Michigan gave notice of a revocation and termination of the easement that allowed Enbridge to operate in the Straits based on threats to the environment and Indigenous Peoples from the continued operations of the pipeline.<sup>14</sup> The State recognized the “substantial, inherent and unacceptable risk of a catastrophic oil spill with grave ecological and economic consequences.”<sup>15</sup> The risk of a disaster in the Straits remains even with Enbridge’s proposed tunnel project (discussed below).<sup>16</sup>

#### **B. Risk of environmental destruction and irreparable harm to affected Indigenous Peoples from Line 5's continued operations**

A major Line 5 spill would pose grave threats to Great Lakes communities and ecosystems. The Great Lakes provides drinking water to over 40 million people.<sup>17</sup> A major oil spill from Line 5 places at risk more than 375,000 acres of land and wetlands, 450 lakes, and thousands of kilometers of shorelines and rivers,<sup>18</sup> and thereby the many people who depend on these resources. A spill within the Straits would be particularly ecologically devastating. A University of Michigan study concluded that the Straits are the “worst possible place” for an oil spill in the Great Lakes because their strong, shifting currents would quickly contaminate waters and shorelines in both Lakes Michigan and Huron,<sup>19</sup> which contain over 20 percent of the world’s fresh surface water.<sup>20</sup> One analysis cited by the International Joint Commission, the binational commission 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 a previous

Enbridge spill in the region<sup>21</sup>—could affect approximately 15 percent of Lake Michigan’s open waters and 60 percent of Lake Huron’s surface.<sup>22</sup>

Environmental devastation from a Line 5 spill would cause irreparable harm to Indigenous Peoples in the region, disrupting our livelihoods, ability to practice culture, and way of life.<sup>23</sup> The Great Lakes contain many sacred sites and important cultural and historic resources.<sup>24</sup> According to Bay Mills’ origin story, the Straits are the center of creation of Turtle Island and hold an ongoing spiritual significance.<sup>25</sup> Water, plants, and animals are necessary for our cultural ceremonies and traditions.<sup>26</sup> A spill in the Straits would threaten these cultural resources and could wipe out fisheries that have provided a food source and lain at the heart of Indigenous way of life for millennia, and that still form the core of treaty-protected fisheries.<sup>27</sup>

The ongoing operation of Line 5 also exacerbates the climate crisis at a time when countries must transition away from fossil fuels.<sup>28</sup> Indigenous Peoples’ are “disproportionately vulnerable to climate change.”<sup>29</sup> Line 5’s upstream and downstream greenhouse gas emissions amount to approximately 87 million metric tons of carbon dioxide equivalent annually (when operating at full capacity)<sup>30</sup>—as much as over 20 million gasoline-powered passenger vehicles.<sup>31</sup> Given the threat that Line 5 presents, as discussed below, Indigenous Peoples have called for the pipeline to be decommissioned.

Instead of decommissioning Line 5, Enbridge is moving forward with new projects to keep the pipeline operating: a new pipeline and tunnel beneath the Straits and a new pipeline along the borders of the Bad River Band of the Lake Superior Tribe of Chippewa Indians (Bad River Band) Reservation in Wisconsin.<sup>32</sup> Affected Tribes including Bay Mills have not provided free, prior, and informed consent for the proposals.<sup>33</sup> Both projects pose serious environmental and human rights concerns, which Tribal Nations<sup>34</sup> and the U.S. EPA<sup>35</sup> have raised. Despite opposition from tribes and others, the projects appear to be advancing through federal and state permitting processes (though, as mentioned below, there are associated legal challenges).<sup>36</sup> Rather than move forward with the “costly and ill-advised” tunnel project, and expensive reroute, the Institute for Energy Economics and Financial Analysis recently recommended that Enbridge consider closing Line 5.<sup>37</sup>

### **C. Opposition to Line 5 from affected Indigenous Peoples**

Tribes in the U.S. and Canada, including Bay Mills, have worked for years to decommission Line 5 given the risk a catastrophic oil spill poses to our health, culture, and environment.<sup>38</sup> In 2015 and 2016, federally-recognized Tribes in Michigan passed resolutions calling to decommission Line 5.<sup>39</sup> In 2017, the Bad River Band ordered Enbridge to remove all infrastructure from the Bad River watershed.<sup>40</sup> In 2021, Bay Mills formally banished Line 5 from our territory, including the Straits.<sup>41</sup> The Midwest Alliance of Sovereign Tribes<sup>42</sup> and the Anishinabek Nation in Canada (representing 39 Anishinabek First Nations in Canada)<sup>43</sup> have issued similar statements.

Tribes in the United States are also pursuing legal action to protect their rights. The Bad River Band, for example, sued Enbridge in U.S. federal court in Wisconsin for trespassing on Tribal lands when the company continued operating on its land despite the Band’s decision to not renew the expired easements.<sup>44</sup> The court held that Enbridge is “a conscious or willful

trespasser” on the Band’s property and, in June 2023, ordered Enbridge to decommission the stretch of the pipeline on the Band’s property within three years.<sup>45</sup> Both parties appealed and the case is pending.<sup>46</sup> Bay Mills and 31 other Tribal Nations and organizations filed an *amicus* brief in October 2023 supporting the Bad River Band.<sup>47</sup> Tribes are also taking legal action to challenge permit approvals for Enbridge’s proposals to construct an oil pipeline tunnel under the Straits and to reroute a section of pipeline around the Bad River Band’s Reservation.<sup>48</sup>

There is also litigation over the easement for Line 5 in the Straits of Mackinac in Michigan which remains pending.<sup>49</sup> Affected Tribes including Bay Mills have filed *amicus* briefs in support of Michigan, including a brief from 63 Tribal Nations in federal court in September 2023.<sup>50</sup>

#### **D. Canada’s actions in support of Line 5’s continued operation**

Canada is advocating for Line 5’s continued operation on a variety of fronts. 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>51</sup> While 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>52</sup> Ultimately, the Committee’s report, which was issued in April 2021, recommended that Canada act to ensure the pipeline “operate[s] without interruption.”<sup>53</sup> It failed to mention the risk of oil spills or Canada’s human rights obligations.<sup>54</sup> Instead, it focused on energy security, without mention of studies showing alternatives to Line 5<sup>55</sup> or the need to reduce reliance on fossil fuels and transition to renewable energy.<sup>56</sup> While the report recommended that the government “gather input” from Indigenous Peoples,<sup>57</sup> Canada has yet to consult us.

Canada has also invoked the 1977 Agreement between the Government of Canada and the Government of the United States of America Concerning Transit Pipelines (the Pipeline Treaty) to initiate closed-door negotiations over Line 5’s fate. The Pipeline Treaty is a bilateral treaty focused on pipelines that start in one country, traverse the other country, and reenter the original country.<sup>58</sup> While the Pipeline Treaty limits public authorities from instituting measures that interfere with transit pipelines,<sup>59</sup> it specifically provides that transit pipelines are “subject to regulations . . . in the same manner as for any other pipelines,” including regulations for pipeline safety and environmental protection.<sup>60</sup> The Pipeline Treaty provides a process for resolving disputes between the United States and Canada, but does not address how to resolve concerns from other parties.<sup>61</sup> It does not provide explicit procedures for or restrictions on decommissioning pipelines.<sup>62</sup>

In October 2021 and August 2022, Canada formally invoked the dispute resolution provision of the Pipeline Treaty in response to “efforts” by the governor of Michigan and the Bad River Band “to shut down Line 5.”<sup>63</sup> As of April 2023, Canada and the United States had engaged in at least three rounds of bilateral negotiations under the Treaty.<sup>64</sup> In December 2024, Canada stated that the “dispute resolution process is ongoing, Canada is pursuing it diligently.”<sup>65</sup> According to a recent U.S. federal court opinion, both countries have indicated that they continue to engage in negotiations through the treaty process.<sup>66</sup> Canada has excluded Bay Mills and other affected Indigenous Peoples from these negotiations, despite our requests to participate.<sup>67</sup>

Canada has also relied on the Pipeline Treaty in litigation in U.S. courts to seek to prevent a court-ordered shut down of Line 5. Canada submitted multiple amicus briefs arguing that the court should not order—and should prevent—a compelled shut down while the treaty process is ongoing.<sup>68</sup> Canada similarly argued in the Bad River Band’s case that a federal court order to shut down the section of Line 5 trespassing on the Bad River Reservation violates Canada’s rights under the Pipeline Treaty, and that the Court should defer to the Pipeline Treaty dispute resolution process.<sup>69</sup> In backing the continued operations of the pipeline, Canada has indicated that it “supports the proposed Great Lakes Tunnel Project.”<sup>70</sup>

Canada has publicly stated that it remains committed to its international human rights obligations, including respecting the rights of Indigenous Peoples, with regards to Line 5.<sup>71</sup> Yet, Canada’s various efforts to ensure Line 5 remains in operation affects a variety of human rights that Canada has committed to uphold including rights enshrined in the ICCPR. In its reliance on the Pipeline Treaty, Canada has “stressed the importance of fully respecting and implementing international agreements.”<sup>71</sup> Canada must interpret its bilateral agreements, including the Pipeline Treaty, consistently with its human rights obligations under the ICCPR and other international treaties to which it is a party, as well as customary international law.<sup>72</sup> Its use of the Pipeline Treaty to prolong Line 5’s operations, despite its threats to rights, violates this obligation.

Additionally, Canada has failed to implement recommendations from multiple U.N. human rights experts regarding Line 5. In the past few years, the U.N. Permanent Forum on Indigenous Issues (UNPFII),<sup>73</sup> the U.N. Special Rapporteur on the Rights of Indigenous Peoples,<sup>74</sup> and the U.N. Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation<sup>75</sup> have all recognized the grave risks associated with Line 5’s continued operation and called on Canada to protect Indigenous Peoples’ rights (see Appendix A, Excerpts of Statements, *infra* p.12). For the past three years, the UNPFII has called on Canada to decommission the Line 5 pipeline. The U.N. Special Rapporteurs have called on Canada to suspend the pipeline until the free, prior, and informed consent of Indigenous Peoples affected is secured,<sup>76</sup> and until the “necessary processes of assessing the impact of long-term risks to human rights and to the environment and biodiversity have been completed.”<sup>77</sup> The Committee on the Elimination of Racial Discrimination has also sent Canada two letters under its Early Warning Urgent Action Procedure concerning Canada’s support for Line 5.<sup>78</sup> Canada has paid no heed, and its conduct in

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<sup>71</sup> When invoking the Pipeline Treaty, Canada’s Minister of Foreign Affairs stated that Canada is “firmly committed to taking important steps to fight climate change and protect the environment for future generations” and that “Canada respects the rights and interests of Indigenous peoples, such as the Bad River Band’s governance of their territory as a U.S. Tribe.” The Minister further stated that “[i]n the forthcoming negotiations with the United States under the treaty, Canada is committed to working constructively to find a solution that responds to the interests of communities, respects Canada’s rights under the treaty and ensures the continued and safe supply of energy to central Canada.” [Canada, Treaty Statement 2022](#). Canada took a similar position in its response to a letter from the Committee on the Elimination of Racial Discrimination. A letter from the Committee notes the information from the State 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.” [Letter from Michal Balcerzak](#), Chair, Comm. on the Elimination of Racial Discrimination to H.E. Mr. Peter Macdougall, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWUAP/114session/2024/CS/BJ/k (Dec. 13, 2024) [hereinafter “CERD, EWUA Letter to Canada Dec. 2024”].

support of the pipeline contradicts its own representations regarding its compliance with Committee recommendations, as discussed below.

### **III. Canada's Violations of the ICCPR**

#### **A. Rights to life and to privacy, family, and the home (arts. 6, 17)**

Enbridge's operation of Line 5 and proposed construction of new stretches of pipeline pose foreseeable risks of severe oil spills, which would cause harm to water quality and sensitive ecosystems, threatening affected Indigenous communities—including Bay Mills’—rights to life and to privacy, family, and the home. Additionally, the pipeline's continued transmission of fossil fuels has the foreseeable effect of increasing greenhouse gas (GHG) emissions and worsening the impacts of climate change, further jeopardizing the right to life. Thus, by actively promoting Line 5's operation and failing to properly regulate Enbridge, Canada is contributing to a foreseeable risk to, and failing to respect and protect, ICCPR-enshrined rights.

Under the ICCPR, Canada has an obligation to refrain from causing or contributing to (interfering with), and to protect against foreseeable threats to human rights,<sup>79</sup> including those posed by environmentally-destructive conduct. Canada's duties include regulating the conduct of corporations subject to its jurisdiction, including extraterritorial activities, and this Committee has called on Canada “to ensure that all Canadian corporations under its jurisdiction … respect human rights standards when operating abroad.”<sup>80</sup> As the Committee has recognized, “environmental degradation, climate change, and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>81</sup> Accordingly, “[i]mplementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.”<sup>82</sup>

Likewise, “when environmental damage threatens disruption to privacy, family, and the home,” States parties must prevent “serious and foreseeable” interference with individuals’ exercise of the right, even if such interference “arises from conduct not attributable to the State.”<sup>83</sup> According to the Committee, climate harm constitutes environmental harm that can acutely disrupt privacy, family and the home, and States must therefore take measures to prevent its severe interference with the exercise of the right.<sup>84</sup> Recognizing that Indigenous Peoples enjoy a special relationship with their territory, the Committee has found that protecting Indigenous communities’ right to privacy, family, and the home in the face of harm means protecting the natural resources, animals, land, crops, and ecosystems connected to their way of life, subsistence, livelihood, and wellbeing.<sup>85</sup>

By promoting Line 5's continued operation and advocating against attempts to shut down the pipeline, Canada is not just failing to prevent, but *enabling*, foreseeable environmental risks that will be disproportionately felt by Indigenous Peoples in the Great Lakes. As detailed above, a major Line 5 oil spill would pose grave threats to the Great Lakes ecosystems, thereby harming local Indigenous communities’ way of life, safety, ability to subsist, and wellbeing. Nonetheless, Canada continues to support the pipeline's continued operations, including by seeking to prevent

Michigan’s attempt to revoke Enbridge’s permission to operate the pipeline in the Straits due to the threats the pipeline’s continued operation pose to the environment and Indigenous Peoples. In interfering with Michigan’s efforts to avoid devastating environmental harm, Canada is not only in violation of its own obligations to prevent foreseeable risk to the rights to life and to privacy, family, and the home, but is actively preventing another State from complying with *its* obligations, in violation of the ICCPR.<sup>86</sup>

Additionally, the ongoing operation of Line 5 exacerbates climate change, which the Committee has recognized disproportionately affects Indigenous Peoples.<sup>87</sup> Rather than “safeguarding the rights of those who are at particular risk of climate harm . . . including . . . indigenous peoples,” as it is legally bound to do,<sup>88</sup> Canada is further exposing these groups to harm through its support of the GHG-intensive project. Notably, in its List of Issues prior to submission of the (current) seventh periodic report, the Committee asked Canada to “provide information about efforts to prevent and mitigate the effects of climate change and environmental degradation, including on the right to life,” and to share details of targeted measures to address the impact of climate change on Indigenous peoples.<sup>89</sup> While Canada claims it has implemented “many initiatives to prevent and mitigate the effects of climate change and environmental degradation, including on food security for Indigenous communities,”<sup>90</sup> its conduct surrounding Line 5 undermines these objectives and the ICCPR-protected rights to life and to privacy, family, and the home. Furthermore, as stated by the U.N. Special Rapporteur on the Rights of Indigenous Peoples, the government’s invocation of the “1977 transit pipeline treaty . . . to prolong Line 5 operations, . . . is inconsistent with its international commitment to prevent and mitigate the effects of climate change by phasing out fossil fuels.”<sup>91</sup>

## **B. Rights to culture, participation, and free, prior, and informed consent (art. 27)**

Canada’s actions to ensure Line 5’s continued operation despite vocal opposition by affected Indigenous groups in Canada and the U.S. disregards, and actively interferes with their ability to practice their culture and their rights to free, prior, and informed consent (FPIC) and participation in decision-making processes affecting them. Canada should not have formed a policy position and intervened diplomatically to ensure Line 5’s continued operation without the effective participation of affected Indigenous communities. Canada must also ensure that corporations within its jurisdiction—like Enbridge—obtain FPIC from Indigenous Peoples whose lands and rights are affected by their projects.

Canada is duty-bound to protect the right of Indigenous Peoples to enjoy and develop their culture, which may require it to adopt positive measures of protection when this right is threatened.<sup>92</sup> “The protection of [Article 27] rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.”<sup>93</sup> According to the Committee, “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>94</sup> Article 27 thus enshrines “the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity,”<sup>95</sup> and imposes on State Parties specific obligations of protection.

To guarantee Indigenous Peoples' exercise of their rights, in accordance with Article 27, Canada must ensure their "effective participation" in decisions which affect them.<sup>96</sup> This entails "not mere consultation but the free, prior and informed *consent* of the members of the community."<sup>97</sup> The Committee has elaborated that State conduct, even if pursued on behalf of "economic development" interests, "may not undermine the rights protected by article 27,"<sup>98</sup> such as by "substantially compromis[ing] or interfer[ing] with the culturally significant economic activities."<sup>99</sup> The permissibility of any interference or restriction "depends on whether the members of the community in question have had the opportunity to participate in the decision-making process in relation to these measures."<sup>100</sup> The Committee has relied on its interpretation of Article 27 to call on State Parties to respect their duty to consult with Indigenous Peoples prior to approving any activity that infringes on their enjoyment of traditional lands, territories, or resources.<sup>101</sup>

With respect to Canada specifically, the Committee expressed concerns in its sixth periodic report "about information that indigenous peoples are not always consulted, to ensure that they may exercise their right to free, prior and informed consent to projects and initiatives concerning them."<sup>102</sup> In its List of Issues prior to submission of the seventh periodic report, the Committee asked Canada to report on "measures taken to ensure the promotion and protection of the rights of indigenous peoples and their meaningful participation in decisions that affect them, particularly in relation to land, water, and other natural resources."<sup>103</sup> Furthermore, it requested that Canada provide "specific information on steps taken to obtain the free, prior and informed consent of indigenous peoples . . . whose lands and territories are affected by any legislation or projects."<sup>104</sup>

Canada's support for Line 5, despite its potentially devastating environmental impacts on lands and waters of critical cultural significance to Indigenous Peoples in the Great Lakes, runs counter to its obligations under Article 27. Line 5 poses a foreseeable risk of environmental harm that infringes on the right of Bay Mills and other Indigenous communities in the Great Lakes to exercise our culture, which is rooted in the very ecosystems and natural resources that the pipeline threatens. As described above, the pipeline poses the risk of oil spills and other environmental hazards that would jeopardize the Great Lakes waters, animals, plants, and air at the center of Anishinaabe culture and cosmology, as well as archaeological sites.<sup>105</sup> Such environmental harm would also affect our ability to hunt, gather, and fish in our traditional territories on both sides of the border<sup>106</sup>—culturally-important subsistence activities protected not only by Article 27 but longstanding domestic treaties between our peoples and the U.S.<sup>107</sup>

Canada's apparent disregard for Indigenous communities' opposition to Line 5 further violates its obligations under the ICCPR as it violates their rights to FPIC and participation. Bay Mills and other Indigenous communities in Canada and the U.S. directly affected by Line 5 have a right to give or withhold their FPIC in any decisions concerning the pipeline as it directly traverses our land.<sup>108</sup> Canada has failed in its duty to protect our rights by advocating for Enbridge to continue operating Line 5 in the absence of the FPIC of affected Indigenous communities, and, in fact, in spite of our clear opposition to the pipeline and repeated calls for its decommissioning. Canada's advocacy for the continued operations of the pipeline includes support for the tunnel project in the Straits—a position it has taken since it invoked the treaty in October 2021 following "Michigan's efforts to shut down Line 5."<sup>109</sup> Canada's support for the

tunnel project does not appear to account for the vocal opposition of Indigenous communities, including Bay Mills, the lack of their FPIC, and the environmental concerns they have raised.

Canada's exclusion of affected Indigenous communities from decision making processes concerning Line 5 is also at odds with the Canadian government's own representations in its seventh periodic report. Canada claims that it is "committed to ensuring Indigenous rights and interests are fully considered in decision-making,"<sup>110</sup> including by taking steps to guarantee Indigenous groups "have a seat at the table where decisions and policies are being made."<sup>111</sup> The exact opposite has been the case with Line 5. Foremost, as described above, the Canadian parliamentary Committee conducted Line 5 hearings without the participation of Indigenous Peoples, and its report does not consider Indigenous communities' well-documented opposition to the pipeline. Moreover, in invoking the Pipeline Treaty's dispute resolution provision, Canada initiated a closed-door process that excludes sovereign Indigenous nations who have expressly requested to participate in negotiations whose outcome will directly impact their rights, including their ability to practice their culture.<sup>112</sup> In relation to Line 5, Canada has thus persistently failed to respect and protect the participation and FPIC rights of affected Indigenous Peoples in Canada and the U.S., in contravention of the ICCPR and this Committee's express recommendations.

#### **IV. Suggested Questions and Recommendations**

The Line 5 pipeline presents a serious current and foreseeable risk to human rights. By advocating for the continued operations of the pipeline despite the foreseeable threat it poses to human rights and the opposition of Indigenous Peoples, Canada's actions are incompatible with its duty to respect and protect human rights under the ICCPR. U.N. experts have expressed concern over Canada's support for Line 5 and called on Canada to take corrective action, yet, Canada has failed to do so. To uphold its obligations, we ask the Committee to call on Canada to cease its interference with efforts to decommission the pipeline and ensure its actions respect and protect the rights of Indigenous Peoples including their right to free, prior, and informed consent.

We respectfully request that the Committee call attention to Canada's actions and obligations regarding Line 5 during Canada's review by asking the below suggested questions, and urging the Canadian government to take the actions recommended below.

#### **Suggested Questions**

1. Please provide specific information on steps Canada has taken, and is taking, to implement the recommendations of the UNPFII and the U.N. Special Rapporteurs, with respect to Line 5?
2. How is Canada's support of the continued operation of Line 5 compatible with its Convention obligations? More specifically, please explain how Canada is ensuring that its actions regarding the Line 5 pipeline fulfill its Convention obligation to respect and protect Indigenous Peoples rights, including the right to life; family, privacy, and the home; culture; participation; and free, prior, and informed consent?

3. How will Canada ensure that, moving forward, its currently closed-door negotiations with the United States government over Line 5's future are inclusive and respect the right of Indigenous Peoples affected by the pipeline's operation to participate effectively in decisions that affect them?
4. How is Canada's support of the continued operation of Line 5, an oil and gas pipeline with a substantial climate footprint, compatible with its obligations to prevent and mitigate the effects of climate change and environmental degradation?

### **Suggested Recommendations**

1. The Committee calls on Canada to implement the recommendations by the UNPFII and U.N. Special Rapporteurs regarding Line 5.
2. The Committee calls on Canada to reexamine its support for the Line 5 Pipeline, which jeopardizes the Great Lakes and poses a real and credible threat to the human rights of Indigenous Peoples in Canada and the United States. The Committee recommends that Canada cease interfering with, and support, efforts to decommission Line 5.
3. The Committee calls on Canada to withdraw its invocation of the Pipeline Treaty. The Committee calls on Canada to ensure that affected Indigenous Nations, who are sovereigns and human rights holders, are invited to participate in discussions regarding Line 5's future, including any negotiations under the Pipeline Treaty so long as they continue, and to interpret all international treaties, including the Pipeline Treaty, consistently with Canada's human rights obligations.
4. The Committee calls on Canada to ensure its actions in relation to Line 5 respect and protect Indigenous Peoples' rights, including by ensuring that corporations under Canadian jurisdiction do not cause or contribute to foreseeable threats to human rights.

## **Appendix A: Excerpts of Statements of U.N. International Human Rights Bodies and Experts on Line 5**

### **U.N. Permanent Forum on Indigenous Issues**

UN 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:

- 65. The Permanent Forum calls upon Canada to re-examine its support for the Enbridge Line 5 oil pipeline, which jeopardizes the Great Lakes in the United States. The pipeline presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada. The Permanent Forum recommends that Canada and the United States decommission Line 5.

UN Permanent Forum on Indigenous Issues, [\*Report on the Twenty-Third Session\*](#) (15–26 April 2024), U.N. Doc. E/2024/43-E/C.19/2024/8:

- 35. The Permanent Forum reiterates that the Enbridge Line 5 oil pipeline jeopardizes the Great Lakes and poses a real and credible threat to the human rights of Indigenous Peoples in Canada and the United States. The Forum reiterates its call for Canada and the United States to decommission Line 5.

UN Permanent Forum on Indigenous Issues, [\*Report on the Twenty-Fourth Session\*](#) (21 April–2 May 2025), U.N. Doc. E/2025/43-E/C.19/2025/8

- 12. The Permanent Forum reiterates its call for Canada and the United States to decommission the Enbridge Line 5 oil pipeline, which poses a real and credible threat to the Great Lakes and Indigenous Peoples. Both States must implement the Declaration in connection with Line 5 by respecting the free, prior and informed consent of the affected Indigenous Peoples.

### **U.N. Special Rapporteur on the Rights of Indigenous Peoples**

[\*Visit to Canada, Report of the Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay\*](#), U.N. Doc. A/HRC/54/31/Add.2 (July 24, 2023):

- 71. [] Canada continues to support the operation of the Line 5 pipeline, despite the opposition of directly affected Indigenous Peoples in Canada and the United States of America. The transportation of crude oil and liquid natural gas by Canadian-owned Enbridge is creating the risk of a catastrophic oil spill that could contaminate the lands and waters of Indigenous Peoples on both sides of the border. Canada is advocating for the pipeline to continue operations, following the decision of a Parliamentary Committee that did not hear testimony from the affected Indigenous Peoples. The Government invoked the 1977 transit pipeline treaty with the United States to prolong Line 5 operations, which is inconsistent with its international commitment to prevent and mitigate the effects of climate change by phasing out fossil fuels.
- 96(i). Canada should . . . [s]uspend . . . [the] Line 5 pipeline[], until the free, prior and informed consent of the Indigenous Peoples affected is secured.

## **U.N. Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation**

*Visit to Canada, Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Pedro Arrojo Agudo*, U.N. Doc. A/HRC/57/48/Add.1 (Sept. 11, 2024) (citations omitted):

- 82: The Special Rapporteur received concerning information about the risks posed by the Line 5 pipeline to the Great Lakes, which are home to 20 percent of the world's surface fresh water and provide drinking water to more than 40 million people. The Line 5 pipeline transports up to 22.7 million gallons of crude oil and natural gas liquids daily from Canada, through the United States of America, to Ontario, crossing straits and traversing Indigenous territories. Risks of catastrophic oil spills due to the aged infrastructure and the strong currents in the straits are well documented.
- 83. However, the company plans to re-route the existing pipeline in Wisconsin and build a tunnel under the Straits of Mackinac in Michigan, which has raised opposition from civil society, academia, businesses, local government and Indigenous Peoples, among others.
- 84. The Special Rapporteur reiterates the recommendation made by the Special Rapporteur on the rights of Indigenous Peoples that Canada cease construction or operation of pipelines until the free, prior and informed consent of the Indigenous Peoples affected was secured.
- 138(q): The Special Rapporteur recommends that Canada . . . [s]uspend large-scale mining and oil and gas pipeline projects, such as . . . [the] Line 5 pipelines, until the necessary processes of assessing the impact of long-term risks to human rights, the environment and biodiversity, and guaranteeing the right of the Indigenous Peoples concerned to respect for the principle of free, prior and informed consent, have been completed.

## **U.N. Committee on the Elimination of Racial Discrimination**

*Letter from Verene Shepherd*, Chair, CERD to H.E. Ms. Leslie E. Norton, Permanent Representative of Canada to the United Nations Office Geneva, 8 December 2023, Reference: CERD/EWUAP/111th Session/2023/MJ/CS/ks (Dec. 8, 2023):

- The allegations received by the Committee may amount to a breach of the State party's obligations to respect and protect Indigenous Peoples' rights enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In particular, the Committee is concerned 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. It is also concerned 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. It is further concerned at 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.

[Letter from Michal Balcerzak](#), Chair, Comm. on the Elimination of Racial Discrimination to H.E. Mr. Peter Macdougall, Permanent Representative of Canada to the United Nations Office, Reference CERD/EWUAP/114session/2024/CS/BJ/k (Dec. 13, 2024):

- [T]he 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> Michigan Dept. of Env’t, Great Lakes, and Energy, [Line 5 in Michigan, Overview](#) (last visited Feb. 1, 2026); Enbridge, [About Line 5](#) (last visited Feb. 1, 2026). Enbridge refers to the group of companies operating under that name, including Enbridge Energy, Limited Partnership; Enbridge Energy Company, Inc.; Enbridge Energy Partners, L.P.

<sup>2</sup> Michigan Dept. of Env’t, Great Lakes, and Energy, [Line 5 in Michigan, Overview](#); Enbridge, [About Line 5](#); Enbridge, [The Mainline Pipeline System](#) (last visited Feb. 1, 2026).

<sup>3</sup> For a map of Anishinaabe territory in the United States, see U.S. Env’t Prot. Agency, [Indian Lands in US EPA Region 5](#) (last visited Feb. 1, 2026). For a map of Anishinaabe territory in Canada, see [Anishinabek Nation](#) (last visited Feb. 1, 2026).

<sup>4</sup> Enbridge, [About Line 5](#).

<sup>5</sup> National Wildlife Federation, [Line 5](#) (map relies on data from U.S. government sources); see also ArcGIS interactive map, [Line 5 pipeline system, owned by Enbridge Energy](#) (map is linked in Earthjustice, [Line 5: Media Backgrounder](#)) (last visited Feb. 5, 2026).

<sup>6</sup> See State of Michigan, Office of the Governor, Dept. of Natural Resources, [Notice of Revocation and Termination of Easement](#), pp. 5-9, 16-17 (Nov. 13, 2020) [hereinafter “Michigan Easement Revocation”] (“... transporting millions of gallons of petroleum products each day through two 67-year old pipelines that lie exposed in the Straits below uniquely vulnerable and busy shipping lanes presents an extraordinary, unreasonable threat to public rights because of the very real risk of further anchor strikes and other external impacts to the Pipelines, the inherent risks of pipeline operations, and the foreseeable, catastrophic effects if an oil spill occurs at the Straits.”).

<sup>7</sup> 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”).

<sup>8</sup> See Pipeline and Hazardous Materials Safety Administration (PHMSA), [Fact Sheet: Pipe Defects and Anomalies](#) (Dec. 1, 2011).

<sup>9</sup> [Michigan Easement Revocation](#), p. 17.

<sup>10</sup> See, e.g., National Transportation Safety Board, [Pipeline Accident Report: Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan July 25, 2010](#), p. xii -xiv (July 10, 2012); Michigan Dept. of Attorney General & Dept. of Environmental Quality, [Michigan Petroleum Pipeline Task Force Report](#), p.12 (July 2015); U.S. Env’t Prot. Agency, [Enbridge Clean Water Act Settlement](#) (Aug. 19. 2025); [Michigan Easement Revocation](#), pp. 12-17; U.S. Dept. of Transportation, PHMSA, [Special Permit Analysis and Findings](#), Docket No. PHMSA-2002-0167, (Mar. 31, 2023), pp. 6-7; Violation Tracker, [Parent Company Summary: Enbridge](#) (last visited Feb. 1, 2026); David Hasemyer, [Enbridge Fined for Failing to Fully Inspect Pipeline After Kalamazoo Oil Spill](#), Inside Climate News (May 3, 2018).

<sup>11</sup> See [Michigan Easement Revocation](#), pp. 6-7.

<sup>12</sup> See [Temporary Restraining Order, Nessel v. Enbridge Energy](#), No. 19-474 (Ingham Cnty. Cir. Ct. Mich. June 25, 2020); Michigan Dept. of Attorney General, [Nessel Files Motions After Enbridge Discloses Damage to Line 5 Pipeline](#) (June 22, 2020); Michigan Dept. of Attorney General, [Judge Orders Line 5 to Cease Operations](#) (June 25, 2020).

<sup>13</sup> [Temporary Restraining Order, Nessel v. Enbridge Energy](#), No. 19-474, paras. 6-7.

<sup>14</sup> See generally [Michigan Easement Revocation](#).

<sup>15</sup> [Michigan Easement Revocation](#), p. 17.

<sup>16</sup> See 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.](#)

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[Army Corps of Engineers](#) (Oct. 14, 2022), pp. 43-50 [hereinafter “Bay Mills Tunnel Comments”].

<sup>17</sup> Great Lakes Commission, [About the Lakes](#) (last visited Feb. 1, 2026).

<sup>18</sup> [Bay Mills Tunnel Comments](#), p. 34; *see also* David Schwab, [Statistical Analysis of Straits of Mackinac Line 5: Worst Case Spill Scenarios](#), University of Michigan Water Center p. 10 (Mar. 2016) (concluding more than 1,000 km of shoreline could be impacted); [Michigan Easement Revocation](#), p. 8.

<sup>19</sup> *See* University of Michigan, [Straits of Mackinac ‘worst possible place’ for a Great Lakes oil spill, U-M researcher concludes](#) (July 10, 2014).

<sup>20</sup> *See* U.S. Env’t Protection Agency, [Facts and Figures About the Great Lakes](#) (last visited Feb. 1, 2026).

<sup>21</sup> National Transportation Safety Board, [Pipeline Accident Report](#), p. xii (July 25, 2010) (Line 6B spill released an estimated 843,444 gallons of crude oil).

<sup>22</sup> Great Lakes Science Advisory Board, [Potential Ecological Impacts of Crude Oil Transport in the Great Lakes Basin](#), p. 43 (Oct. 2018) (citing Schwab 2016).

<sup>23</sup> *See* Oliver Milman, [‘We Can’t Drink Oil’: How a 70-Year-old Pipeline Imperils the Great Lakes](#), The Guardian (Sept. 26, 2023); [Bay Mills Tunnel Comments](#), pp. 2-7; [Letter to President Biden, Re: Administration Support for Michigan Tribal Nations and Governor Whitmer to Decommission the Enbridge Line 5 Pipeline](#) (Nov. 4, 2021) [hereinafter “2021 Letter to President Biden”]; [Michigan Easement Revocation](#), p. 9; 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](#), p.26 (Oct. 7, 2022) [hereinafter “EPA Tunnel Comments 2022”].

<sup>24</sup> [Bay Mills Tunnel Comments](#), pp. 7-8; *see also* 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, pp. 1, 18, 45-48 (March 22, 2022) [hereinafter “Bad River Band Rerouting Comments”].

<sup>25</sup> [Bay Mills Tunnel Comments](#), pp. 2-3; Amicus Brief of Bay Mills Indian Community et. al., p. 4, *Enbridge v. Whitmer*, Docket No. 11:120-cv-01141 (W.D. Mich. Apr. 6, 2022) (Dkt. 75).

<sup>26</sup> [Bay Mills Tunnel Comments](#), pp. 3, 38-39.

<sup>27</sup> [Bay Mills Tunnel Comments](#), pp. 30-31; Charles E. Cleland, *The Place of the Pike (Gnoozhekaaning): A History of the Bay Mills Indian Community*, p. 83 (U. Mich. Press, 2004); 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).

<sup>28</sup> International Energy Agency (IEA), [Net Zero Roadmap: A Global Pathway to Keep the 1.5C Goal in Reach, 2023 Update](#), pp. 13, 16, 75-76 (2023); IEA, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#) (Oct. 2021), pp. 18-21, 100-05; Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation, and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the IPCC* (H.-O. Pörtner, et. al eds., Cambridge University Press, 2022), [Summary for Policymakers](#), at B.6, Fig. SPM.5; 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 \(SPM\)](#), p. 14 (fig. SPM.3b, para. C.2) (2018). *See also* *Obligations of States in Respect of Climate Change*,

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Advisory Opinion, I.C.J. Reports 2025 (I), p. 122, para. 427 (finding that failure of a State to protect the climate system from GHG emissions due to fossil fuel production, consumption, licensing, and subsidies “may constitute an internationally wrongful act which is attributable to that state”, triggering legal consequences).

<sup>29</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); [Bay Mills Tunnel Comments](#), pp. 38-41.

<sup>30</sup> [Bay Mills Tunnel Comments](#), pp. 37-38.

<sup>31</sup> Calculation from U.S. Env’t Prot. Agency, [Greenhouse Gas Equivalencies Calculator](#) (last visited Feb. 3, 2026).

<sup>32</sup> See Enbridge, [The Great Lakes Tunnel Project](#), (last visited Feb. 8, 2026); Enbridge, [Line 5 through the Bad River Reservation](#) (last visited Feb. 8, 2026).

<sup>33</sup> See *infra* Sec. II(B); President Whitney Gravelle, Bay Mills Indian Community et al., Letter to Lt. Col. Wallace W. Bandeff, Commander, U.S. Army Corps of Engineers, Detroit District, [Re: Notice of Intent to Withdraw as Cooperating Agencies](#) (Mar. 21, 2025) (letter sent from six Michigan Tribes).

<sup>34</sup> See [Bay Mills Tunnel Comments](#); [Response Brief on Remand on Behalf of the Bay Mills Indian Community](#), *In the matter of the Application for the Authority to Replace and Relocate the Segment of Line 5 Crossing the Straits of Mackinac into a Tunnel Beneath the Straits of Mackinac*, U-20763 (May 19, 2023); Earthjustice, [Statement: Four Michigan Tribes Appeal Line 5 Tunnel Permit](#) (Dec. 22, 2023); [Testimony and Exhibits](#), MPSC Case No. U-20763 (Feb. 3, 2023); Bay Mills Indian Community, [Bay Mills Indian Community’s Comments on the Draft Environmental Impact Statement for the Line 5 Tunnel Project](#) (June 30, 2025); [Bad River Band Rerouting Comments](#); [Letter from Aurora Conley et al., to U.S. Army Corps of Engineers](#) (Apr. 27, 2022).

<sup>35</sup> [EPA Tunnel Comments 2022](#); 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](#) (Mar. 21, 2022).

<sup>36</sup> See Paul W. Parfomak, [Line 5 Pipeline: Relocation and Permitting](#), Congressional Research Service (Jan. 23, 2026).

<sup>37</sup> Suzanne Mattei, Tom Sanzillo, & David Schlissel, [Enbridge Should Consider Closing Its Old, Troubled Line 5 Pipeline](#), Institute for Energy Economics and Financial Analysis, p. 5 (Jan. 2025).

<sup>38</sup> See, e.g., Oil and Water Don’t Mix, [Federally-Recognized Indian Tribes are Speaking Out to Protect this Vital and Sacred Water](#) (last visited Feb. 1, 2026).

<sup>39</sup> See *id.*; Bay Mills Indian Community, [Line 5 Information Portal](#) (last visited Feb. 1, 2026) (providing links to resolutions).

<sup>40</sup> 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).

<sup>41</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).

<sup>42</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); see Midwest Alliance of Sovereign Tribes, [Who We Are](#) (last visited Feb. 6, 2026).

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<sup>43</sup> Anishinabek Nation, [\*Anishinabek Nation leadership supports shut down of Line 5 pipeline\*](#) (May 6, 2021).

<sup>44</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, \*14-15 (W.D. Wis. Sept. 7, 2022).

<sup>45</sup> *Id.* at \*49; *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, 2023 U.S. Dist. LEXIS 105397, \*63-66 (W.D. Wis. June 16, 2023).

<sup>46</sup> See Kyle Davidson, [\*U.S. Government Weighs in on Line 5 Appeal Noting Treaty Concerns and Issues with Damages\*](#), Michigan Advance (Apr. 10, 2024).

<sup>47</sup> [Brief of 32 Tribal Nations and Organizations as Amicus Curiae in Support of Appellee/Cross-Appellant](#), *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v. Enbridge Energy*, L.P., Nos. 23-2309, 23-2467 (7th Cir. Oct. 23, 2023).

<sup>48</sup> See [\*Tribes, Greens Take Line 5 Tunnel to Michigan’s Supreme Court\*](#), Earthjustice (Apr. 3, 2025); [\*Michigan Supreme Court Takes Up Challenge to Line 5 Oil Tunnel\*](#), Earthjustice (Sept. 19, 2025); Henry Redman, [\*Bad River Band sues Army Corps of Engineers over Enbridge Pipeline Permit Approval\*](#), Wisconsin Examiner (Dec. 16, 2025); Earthjustice, [\*Line 5: Media Backgrounder\*](#).

<sup>49</sup> There are different legal actions pending. See [\*Enbridge Energy, LP v. Nessel\*](#), Oyez, (last visited Feb. 6, 2026); Kyle Davidson, [\*Whitmer asks U.S. Supreme Court to weigh state immunity in Line 5 case\*](#), Michigan Advance (Nov. 20, 2025); Parfomak, [\*Line 5 Pipeline\*](#).

<sup>50</sup> [Brief of Tribal Nations as Amici Curiae in Support of Plaintiff-Appellant](#), *Nessel v. Enbridge Energy*, L.P., No. 23-1671 (6th Cir. Sept. 25, 2023); see also [Brief of Bad River Band of the Lake Superior Tribe of Chippewa Indians et al. as Amicus Curiae, Nessel v. Enbridge Energy, L.P.](#), No. 19-474-CE (Ingham Cnty. Cir. Ct. Mich. Dec. 2, 2024); [Brief of Tribal Nations as Amici Curiae in Support of Respondent](#), *Enbridge Energy, LP v. Nessel*, No. 24-783 (2025).

<sup>51</sup> Raj Saini, Special Committee on the Economic Relationship between Canada and the United States, [\*Enbridge’s Line 5: An Interim Report\*](#), p. 3 (Apr. 2021) [hereinafter “Canada Line 5 Report”].

<sup>52</sup> *Id.* at pp. 3-4.

<sup>53</sup> *Id.* at pp. 9-11.

<sup>54</sup> Cf *id.* at Supplementary Opinion of the New Democratic Party of Canada, pp. 27-29 (discussing the “climate crisis,” and the needed transition; this is not part of the Committee’s report or analysis).

<sup>55</sup> See, e.g., Environmental Defence Canada, [\*Enbridge’s Line 5: Media Backgrounder\*](#), pp. 5-9 (June 2021) (citing London Economics International LLC, [\*Michigan Refining Sector: Alternatives to Enbridge Line 5 for Transportation\*](#) (Sept. 12, 2018); [\*Bay Mills Tunnel Comments\*](#), pp. 18-20 (see sources cited therein)).

<sup>56</sup> Canada Line 5 Report, pp. 3-11; see also *supra* n. 31 (referencing studies).

<sup>57</sup> Canada Line 5 Report, p. 12.

<sup>58</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.

<sup>59</sup> *Id.*, art. II.

<sup>60</sup> *Id.*, art. IV(1).

<sup>61</sup> *Id.*, art. IX.

<sup>62</sup> *Id.*

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<sup>63</sup> Global Affairs Canada, [Statement by Minister Garneau on Line 5 Transit Pipeline](#) (Oct. 4, 2021) [hereinafter “Canada, Treaty Statement 2021”]; Global Affairs Canada, [Statement by Minister Joly on Line 5 Transit Pipeline](#) (Aug. 29, 2022) [hereinafter “Canada, Treaty Statement 2022”].

<sup>64</sup> Beth LeBlanc, [U.S., Canadian delegates continue Line 5 treaty negotiations in D.C.](#), The Detroit News (Apr. 19, 2023).

<sup>65</sup> Brief of the Government of Canada as Amicus Curiae, *Nessel v. Enbridge Energy, LP*, No. 19-474-CE, at 5 (Ingham Cnty. Cir. Ct. Mich. Dec. 2, 2024).

<sup>66</sup> *Enbridge Energy, LP v. Whitmer*, 2025 U.S. Dist. LEXIS 265981, \*14 (W.D. Mich. Dec. 17, 2025).

<sup>67</sup> See, e.g., Anishinabek Nation et al., [Submission to the United Nations Human Rights Council in relation to the Fourth Universal Periodic Review of Canada](#) (Apr. 4, 2023) (calling on Canada to “[e]nsure that affected Indigenous Nations, who are sovereigns and human rights holders, are invited to participate in discussions regarding Line 5’s future, including any negotiations under the Pipeline Treaty, so long as they continue.”); [2021 Letter to President Biden](#).

<sup>68</sup> See, e.g., Brief of the Government of Canada as Amicus Curiae in Support of Defendants, *Michigan v. Enbridge Energy, LP*, No. 1:20-cv-01142 (W.D. Mich. June 1, 2021); Supp. Brief of the Government of Canada as Amicus Curiae in Support of Defendants, *Michigan v. Enbridge Energy, LP*, No. 1:20-cv-01142 (W.D. Mich. Nov. 16, 2021); Brief of the Government of Canada as Amicus Curiae in Partial Support of Plaintiffs, *Enbridge v. Whitmer*, No. 20-cv-01141 (W.D. Mich. Apr. 5, 2022); Brief of the Government of Canada as Amicus Curiae in Partial Support of Plaintiffs, *Enbridge Energy Co. v. Whitmer*, No. 20-cv-1141, (W.D. Mich. Aug. 14, 2025) [hereinafter “Canada Amicus Brief, *Enbridge v Whitmer*, Aug. 2025”].

<sup>69</sup> See Brief of the Government of Canada as Amicus Curiae in Partial Support of Enbridge, *Enbridge Energy Co. v. Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation*, Nos. 23-2309, 23-2467 (7th Cir. Sept. 18, 2023).

<sup>70</sup> Canada Amicus Brief, *Enbridge v Whitmer*, Aug. 2025, p. 3; see also [Canada, Treaty Statement 2021](#).

<sup>71</sup> [Canada, Treaty Statement 2021](#).

<sup>72</sup> See U.N. Comm. on Economic, Social and Cultural Rights (CESCR), *General Comment No. 24 (2017) on State Obligations in the Context of Business Activities*, U.N. Doc. E/C.12/GC/24, para. 13 (2017) [hereinafter “CESCR, General Comment 24”]; CESCR, *Concluding Observations On The 6th Periodic Report Of Canada*, U.N. Doc. E/C.12/CAN/CO/6, para. 16 (Mar. 23, 2016); Vienna Convention on the Law of Treaties, Arts. 26, 33(c) May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969); see also U.N. Special Rapporteur on the Rights of Indigenous Peoples, [Visit to Canada, Report of the Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay](#), U.N. Doc. A/HRC/54/31/Add.2, para. 71 (July 24, 2023) [hereinafter “Special Rapporteur on the Rights of Indigenous Peoples, 2023 Visit to Canada”].

<sup>73</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); United Nations Permanent Forum on Indigenous Issues, [Report on the Twenty-Third Session](#) (15-26 April 2024), U.N. Doc. E/2024/43-E/C.19/2024/8, para. 35 (2024); United Nations Permanent Forum on Indigenous Issues, [Report on the Twenty-Fourth Session](#) (21 April-2 May 2025), U.N. Doc. E/2025/43-E/C.19/2025/8, para. 12 (2025).

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<sup>74</sup> Special Rapporteur on the Rights of Indigenous Peoples, [2023 Visit to Canada](#), paras. 71, 96(i).

<sup>75</sup> U.N. Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, [Visit to Canada, Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Pedro Arrojo Agudo](#), U.N. Doc. A/HRC/57/48/Add.1, paras. 82-84, 138(q) (Sept. 11 2024) [hereinafter “Special Rapporteur on Water, 2024 Visit to Canada”].

<sup>76</sup> *Id.* at paras. 84, 138(q); Special Rapporteur on the Rights of Indigenous Peoples, [2023 Visit to Canada](#), para. 96(i).

<sup>77</sup> Special Rapporteur on Water, [2024 Visit to Canada](#), para. 138(q).

<sup>78</sup> [Letter from Verene Shepherd](#), Chair, CERD to H.E. Ms. Leslie E. Norton, Permanent Representative of Canada to the United Nations Office Geneva, 8 December 2023, Reference: CERD/EWUAP/111th Session/2023/MJ/CS/ks (Dec. 8, 2023); CERD, [EWUA Letter to Canada Dec. 2024](#).

<sup>79</sup> UN General Assembly, 85th Plenary Meeting, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Doc. No. A/RES/53/144, 9 December 1998, art. 2; Human Rights Committee (HRC), *General Comment No. 31 - The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc.

CCPR/C/21/Rev.1/Add.13, paras. 2, 7 (March 29, 2014); HRC, *General Comment No. 36: Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/36, paras. 7, 18, 21–22, 63 (Sept. 3, 2019) [hereinafter “HRC, General Comment No. 36”]; HRC, *Daniel Billy v. Australia (Torres Strait Islanders Petition)*, CCPR/C/135/D/3624/2019 (July 21, 2022), para. 8.3; Office of the High Commissioner of Human Rights, [International Human Rights Law](#) (last visited Feb. 8, 2026).

<sup>80</sup> HRC, General Comment No. 36, paras. 22, 63; HRC, Concluding Observations on the Sixth Periodic Report of Canada, U.N. Doc. CCPR/C/CAN/CO/6, para. 6 (Aug. 13, 2015) [hereinafter “HRC, 2015 Concluding Observations Canada”].

<sup>81</sup> HRC, General Comment No. 36, para. 62.

<sup>82</sup> *Id.* at para. 62; *see also* U.N. 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. 28, 62, (July 15, 2019).

<sup>83</sup> *Daniel Billy and others v. Australia* para. 8.9.

<sup>84</sup> *Id.* at para. 3.6.

<sup>85</sup> *See id.* at para. 8.10; HRC, *General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, para. 5 (April 8, 1988); HRC, *Benito Oliveira Pereira et al v. Paraguay*, U.N. Doc. CCPR/C/132/D/2552/2015, para. 8.3 (Sept. 21, 2022).

<sup>86</sup> HRC, General Comment No. 36, paras. 22, 63. *Accord* CESCR, General Comment 24, para. 29.

<sup>87</sup> Joint Statement by the Comm. on the Elimination of Discrimination Against Women, CESCR, Comm. on the Protection of the Rights of All Migrant Workers and Members of their Families, Comm. on the Rights of the Child, Comm. on the Rights of Persons with Disabilities, Statement on Human Rights and Climate Change, U.N. Doc. HRI/2019/1, para. 3 (May 14, 2020).

<sup>88</sup> *Id.* at para. 17.

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<sup>89</sup> HRC, *List of Issues Prior to Submission of the Seventh Periodic Report of Canada*, U.N. Doc. CCPR/C/CAN/QPR/7, para. 13 (Aug. 24, 2021) [hereinafter “HRC, 2021 List of Issues Canada”].

<sup>90</sup> HRC, *Seventh Periodic Report Submitted by Canada under Article 40 of the Covenant*, due in 2022, U.N. Doc. CCPR/C/CAN/7, para. 82 (published Apr. 30, 2025; received Mar. 7, 2025) [hereinafter “HRC, Canada Seventh Periodic Report”].

<sup>91</sup> U.N. S.R. on the Rights of Indigenous Peoples, [2023 Visit to Canada](#), para. 71.

<sup>92</sup> HRC, General Comment No. 23: Article 27 (Rights of Minorities), U.N. Doc. CCPR/C/21/Rev.1/Add.5, paras. 6.1-6.2, 7 (Apr. 8, 1994) [hereinafter “HRC, General Comment No. 23”].

<sup>93</sup> *Id.* at para. 9.

<sup>94</sup> *Daniel Billy et al. v. Australia*, para. 8.13; *Benito Oliveira et al. v. Paraguay*, para. 8.6; *see also* HRC, General Comment No. 23, para. 7.

<sup>95</sup> *Daniel Billy et al. v. Australia*, para. 8.13; *accord* CESCR, *General Comment No. 21: Right of Everyone to Take Part in Cultural Life*, U.N. Doc. E/C.12/GC/21, paras. 36-37 (Dec. 21, 2009).

<sup>96</sup> ICCPR, arts. 25, 27, Dec. 16, 1966, 999 U.N.T.S. 171; HRC, General Comment No. 23, para.

<sup>7</sup>; HRC, *Poma Poma v. Peru*, U.N. Doc. CCPR/C/95/D/1457/2006, para. 7.2 (March 27, 2009).

<sup>97</sup> *Poma Poma*, para. 7.6 (emphasis added).

<sup>98</sup> *Id.* at para. 7.4.

<sup>99</sup> *Id.* at para. 7.6.

<sup>100</sup> *Id.*

<sup>101</sup> *See, e.g.*, HRC, *Concluding Observations on the Second Periodic Report of Ethiopia*, U.N. Doc. CCPR/C/ETH/CO/2, paras. 47-48 (Dec. 7, 2022); HRC, *Concluding Observations on the Eighth Periodic Report of the Russian Federation*, U.N. Doc. CCPR/C/RUS/CO/8, paras. 40-41 (Dec. 1, 2022); HRC, *Concluding Observations on the Third Periodic Report of Cambodia*, U.N. Doc. CCPR/C/KHM/CO/3, paras. 42-43 (May 18, 2022).

<sup>102</sup> HRC, 2015 Concluding Observations Canada, para. 16.

<sup>103</sup> HRC, 2021 List of Issues Canada, para. 24.

<sup>104</sup> *Id.*

<sup>105</sup> Bay Mills Tunnel Comments, p. 8.

<sup>106</sup> *See supra* sec. II(B).

<sup>107</sup> *See, e.g.*, Treaty of Washington of March 28, 1836, 7 Stat. 491; *see also* 2021 Letter to President to Biden.

<sup>108</sup> *See supra* sec. II(C).

<sup>109</sup> [Canada, Treaty Statement 2021](#).

<sup>110</sup> HRC, Canada Seventh Periodic Report, para. 162.

<sup>111</sup> *Id.* at para. 163.

<sup>112</sup> *See supra* sec. II(D)