

REFERENCE: CERD/EWUAP/111th Session/2023/MJ/CS/ks

8 December 2023

Excellency,

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the impact of Line 5 crude oil pipeline, on the rights of Indigenous Peoples in Canada and in the United States of America.

According to the information received:

- The continued operation of the 70 years old Line 5 pipeline, owned and operated by Enbridge, a Canadian corporation, poses a foreseeable risk of a catastrophic oil spill and threatens vital natural and cultural resources, thus disproportionately and discriminatorily endangering the culture, health, and lands of dozens of Indigenous communities in Canada and the U.S.;
- There are several documented failures and previous spill history of Line 5, which reportedly has spilled over 1 million gallons of oil over 33 incidents since 1953;
- In 2020, the pipeline was damaged so severely that a court in Michigan ordered Enbridge to temporarily shut it down;
- Natural changes in the surrounding landscape exacerbates the fragility of the pipeline such as the rapid and significant erosion of the Bad River and its migration towards the pipeline, which a Wisconsin court considered “an actual risk of significant rupture” in November 2022 and in June 2023, ordered Enbridge to establish a more stringent shutdown and purge protocol to address the risk from the ongoing erosion;
- The ongoing operation of Line 5 contributes to significant climate-induced harm to the Great Lakes and the natural resources vital to Indigenous Peoples, such as the Anishinaabe communities surrounding these lakes in Canada and the U.S.;
- In some areas, Enbridge is operating the pipeline without legal permission to cross tribal and state lands, and in June 2023 a Wisconsin court ordered Enbridge to decommission the stretch of the pipeline on the Bad Rive Band’s property, but gave Enbridge up to three years to reroute the pipeline primarily due to Canada’s assertion that such a measure would cause economic harm;
- In November 2020, the State of Michigan terminated the easement that allowed Enbridge to operate in the Straits of Mackinac based on threats to the environment and to Indigenous Peoples, but litigation over the matter is pending before courts;

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- Despite the opposition of Indigenous communities to the continued operation of Line 5, orders by courts calling for Enbridge to decommission the pipeline on the Bad River Band Reservation, and the state of Michigan terminating the easement to operate in the Straits, Enbridge has continued its operations in total disregard of the right to free, prior, and informed consent of affected Indigenous Peoples;
- Affected Indigenous communities have not provided their free, prior, and informed consent for a project proposed by Enbridge to build a tunnel beneath the Straits to house a replacement pipeline, instead of decommissioning Line 5;
- The U.S. Environmental Protection Agency (EPA), environmental organizations, and tribal groups have raised substantial concerns regarding the environmental impact of the proposed replacement pipeline;
- Affected Indigenous Peoples from both sides of the border have been excluded from the ongoing negotiations between Canada and the U.S. regarding Line 5, despite their requests to participate.

The information received also alleges that the State party has failed to properly regulate Enbridge to ensure that its Line 5 operations respect Indigenous Peoples rights. It is further alleged that the State party continues to actively advocate for the operation of Line 5 despite the opposition of affected Indigenous communities and the recommendations made by the UN Permanent Forum on Indigenous Peoples and the Special Rapporteur on Indigenous Peoples to decommission Line 5. Reportedly, the State party has expressed support to the continued operation of Line 5, including by invoking its 1977 Transit Pipeline Treaty with the United States for diplomatic negotiations as well as before U.S. courts, arguing that the court must delay ordering decommissioning and defer to the negotiations under the Treaty. Moreover, according to the allegations received, the State party has acted against the opposition of Indigenous groups and excluded Indigenous communities from the design of its policy in relation to Line 5 and from participation in the transnational negotiations over the fate of the pipeline.

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.

The Committee notes that, in April 2023, the UN Permanent Forum on Indigenous called upon "Canada to re-examine its support for the Enbridge Line 5 oil pipeline, which jeopardizes the Great Lakes in the United States" as it "presents a real and credible threat to the treaty-protected fishing rights of Indigenous Peoples in the United States and Canada" and recommended "that Canada and the United States decommission Line 5".¹

Similarly, in its visit report of July 2023, the UN Special Rapporteur on the rights of Indigenous Peoples considered that 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

¹ UN 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,



lands and waters of Indigenous Peoples on both sides of the border” and recommended that Canada cease the operation of Line 5 pipeline, until the free, prior and informed consent of the Indigenous Peoples affected is secured.²

Furthermore, the Committee recalls its previous concluding observations in which it recommended the State party “to take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable” and “to ensure access to justice through judicial and non-judicial remedies for violations of rights of persons by transnational corporations registered in Canada, operating abroad” (CERD/C/CAN/CO/19-20, para. 14; CERD/C/CAN/CO/21-23, para. 22). The Committee also recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to the rights and interests of Indigenous Peoples are taken without their informed consent.

In light of the above, and in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee requests the State party to provide information on the abovementioned allegations and to submit its response by 15 March 2024.

The Committee would like once more to request the State party to submit its overdue combined twenty-fourth and twenty-fifth periodic reports.

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.

Yours sincerely,

Verene Shepherd
Chair

Committee on the Elimination of Racial Discrimination

² Visit to Canada, Report of the Special Rapporteur on the rights of Indigenous Peoples, 24 July 2023, [A/HRC/54/31/Add.2](#), para. 71 and 96(i).