

# Canada's Support for the Line 5 Crude Oil Pipeline

Submission to the United Nations Human Rights Council in relation to the Fourth Universal Periodic Review of Canada  
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Submitted by:

Anishinabek Nation, Bad River Band of the Lake Superior Tribe of Chippewa Indians, Bay Mills Indian Community, Grand Traverse Band of Ottawa & Chippewa Indians, Hannahville Indian Community, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, Nottawaseppi Huron Band of Potawatomi, Red Cliff Band of Lake Superior Chippewa, Saginaw Chippewa Indian Tribe, Sault Ste. Marie Tribe of Chippewa Indians\*

Together with:

The Georgetown University Law Center Environmental Law and Justice Clinic, 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.

## **I. Introduction**

1. 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, we have a solemn responsibility to preserve our homeland, environment, culture, treaty-protected resources, and distinct lifeways for future generations.
2. As part of this responsibility, the undersigned present this submission to examine the Government of Canada's compliance with its international obligations to respect and protect Indigenous Peoples' rights and the environment. We assert violations arising from Canada's support for the petroleum industry, particularly the aging Line 5 pipeline, which is owned and operated by Enbridge, a Canadian corporation.<sup>1</sup>
3. During its last UPR, Canada accepted and noted recommendations to: (1) respect and protect Indigenous Peoples' rights, including the right to free, prior, and informed consent (FPIC); (2) regulate Canadian businesses to prevent the human rights impacts of their operations; and (3) promote and protect human rights in the context of climate change.<sup>2</sup> Canada's support for Line 5 demonstrates its failure to implement these recommendations.
4. Line 5 poses a current and foreseeable threat to a broad range of human rights. 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, endangering the way of life of dozens of Indigenous communities in Canada and the U.S. Enbridge is operating Line 5 without valid easements, and has also been found to be trespassing on Indigenous Peoples' land. Indigenous Peoples on both sides of the border and the U.S. State of Michigan have publicly expressed opposition to the pipeline and called for its decommissioning.
5. Not only has Canada failed to ensure that Enbridge's operations respect the environment and Indigenous rights, it is actively advocating for the continued operations 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.
6. Canada's efforts to prevent the decommissioning of Line 5 and failure to properly regulate Enbridge violate its obligations to respect and protect Indigenous Peoples' rights to FPIC, a healthy environment, life, and culture, and to interpret its international agreements consistently with its human rights obligations. 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. Canada must "withdraw support" for Line 5, a "project[] threatening the traditional lifestyle of [I]ndigenous [P]eoples."<sup>3</sup>
7. Accordingly, the undersigned recommend that Canada:
  - a. Withdraw its invocation of the Pipeline Treaty and its positions in U.S. litigation opposing decommissioning Line 5.

- b. 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;
- c. Interpret all international treaties, including the Pipeline Treaty, consistently with Canada's human rights obligations;
- d. Ensure affected Indigenous Peoples' FPIC before providing support for extractive sector projects and withdraw support from projects that do not have affected Indigenous Peoples' FPIC;
- e. Ensure corporations under Canadian jurisdiction do not cause or contribute to foreseeable threats to human rights.

## **II. Factual Background**

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

- 8. Line 5 transports up to 23 million gallons of crude oil and natural gas liquids daily from Enbridge lines principally originating in Canada, through Wisconsin and Michigan, to Ontario.<sup>4</sup> It crosses the Straits of Mackinac (the Straits) between Lakes Huron and Michigan, and runs over and alongside rivers, streams, and wetlands.<sup>5</sup>
- 9. The 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>6</sup>
- 10. 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>7</sup> It would irreversibly devastate the environment, impacting Indigenous communities' livelihood, ability to practice their culture, and way of life.
- 11. Line 5 poses real risks of catastrophic oil spills at multiple points due to its documented failures, aged infrastructure, and the surrounding environment. 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>8</sup> Indeed, Enbridge vessels struck *their own* pipeline with anchors or cables at least three times in 2018 and 2019.<sup>9</sup> In 2020, the pipeline was damaged so severely that a court ordered Enbridge to temporarily shut it down.<sup>10</sup> The Straits are the "worst possible place" for an oil spill in the Great Lakes because of their strong, shifting currents,<sup>11</sup> and their location between two of the Great Lakes, which contain 20 percent of the world's fresh surface water.<sup>12</sup>
- 12. Moreover, 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>13</sup> Operating an aging pipeline risks infrastructure failure, because pipelines degrade over time due to corrosion, pressure, and use.<sup>14</sup>
- 13. Natural changes in the surrounding landscape exacerbate these issues. For example, a U.S. 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," and that "the negative impact ... on the Bad River watershed and even Lake Superior itself could be catastrophic."<sup>15</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>16</sup>

14. Enbridge has proposed building a new pipeline and tunnel beneath the Straits and a new pipeline in Wisconsin along the borders of the Bad River Reservation and across rivers, streams, wetlands, and drinking water aquifers.<sup>17</sup> The U.S. Environmental Protection Agency 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>18</sup> It raised virtually identical issues regarding the proposed Wisconsin pipeline.<sup>19</sup> Environmental organizations and tribal groups have also expressed serious concerns about the construction’s environmental impacts.<sup>20</sup> Yet Enbridge intends to continue operating its aging pipeline during the many years of (uncertain) permitting and construction.<sup>21</sup> Ultimately, an oil spill could occur anywhere along the pipeline; new segments will not eliminate the risk.<sup>22</sup>
15. 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,<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>
16. Enbridge’s pipelines have experienced multiple oil spills. One study found that since 1953, Line 5 has spilled 1.1 million gallons of oil over 33 incidents.<sup>27</sup> Greenpeace calculated that Enbridge spilled 2.8 million gallons of oil across the U.S. between 2002 and 2018.<sup>28</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>29</sup> In 1991, Enbridge’s Line 3 spilled 1.7 million gallons of crude oil into Minnesota’s Prairie River.<sup>30</sup> These spills caused irreversible damage to the environment and trauma to the Indigenous Peoples, including the undersigned.<sup>31</sup>
17. The ongoing operation of Line 5 also exacerbates the climate crisis at a time when countries must transition away from fossil fuels.<sup>32</sup> Line 5’s upstream and downstream greenhouse gas (GHG) emissions amount to approximately 87 million metric tons of carbon dioxide equivalent annually.<sup>33</sup> That equals the annual GHG emissions of nearly 19 million gasoline-powered passenger vehicles.<sup>34</sup>

## **B. Impacted Indigenous groups and the State of Michigan oppose Line 5.**

18. 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>35</sup> In 2015 and 2016, Michigan’s twelve federally recognized Tribes passed resolutions calling to decommission Line 5.<sup>36</sup> In 2017, the Bad River Band ordered Enbridge to remove all infrastructure from the Bad River watershed.<sup>37</sup> In 2021, the Bay Mills Indian Community formally banished Line 5 from its territory, including the Straits.<sup>38</sup> The Midwest Alliance of Sovereign Tribes<sup>39</sup> and the Anishinabek Nation in Canada<sup>40</sup> have issued similar orders. Yet Enbridge has continued operating the pipeline.

19. Enbridge is currently operating Line 5 without required easements across 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>41</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>42</sup> In 2019, after years of negotiations, Bad River Band sued Enbridge for trespass and nuisance.<sup>43</sup> A U.S. court held that Enbridge is “a conscious or willful trespasser” on the Band’s property.<sup>44</sup> The court stated that it was inclined to allow Enbridge to continue operating the pipeline during years of rerouting due to Canada’s economic concerns arising from decommissioning,<sup>45</sup> despite its 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>46</sup> The court is still determining the appropriate remedy.
20. 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>47</sup> Enbridge, however, continued its operations.<sup>48</sup> Litigation over the matter remains pending.<sup>i</sup>

### **C. The Canadian Government has supported Line 5.**

21. Canada is advocating for Line 5 on a variety of fronts, despite Indigenous opposition and environmental and human rights concerns.
22. Canada has supported the pipeline through diplomatic negotiations with “high-level U.S. decisionmakers, including the U.S. President.”<sup>49</sup>
23. 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>50</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>51</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>52</sup> The Committee’s April 2021 report recommended that the government “gather input” from Indigenous communities;<sup>53</sup> Canada has not consulted us.
24. The report recommended that Canada act to ensure the pipeline “operate without interruption.”<sup>54</sup> It failed<sup>ii</sup> to mention the risk of oil spills or Canada’s human rights obligations. It instead focused on energy security,<sup>55</sup> ignoring studies showing alternatives

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

<sup>ii</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).

to Line 5<sup>56</sup> and the need to reduce reliance on fossil fuels<sup>57</sup> and transition to renewable energy.<sup>58</sup>

25. 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,<sup>59</sup> and issued statements supporting Line 5.<sup>60</sup> The treaty prohibits regulations discriminating against transnational pipelines, but permits environmental protection.<sup>61</sup> Sovereign Indigenous Nations have been excluded from the ongoing negotiations, despite their requests to participate because negotiations directly affect their rights.<sup>62</sup>
26. Canada filed a letter and three briefs in the Michigan lawsuits, asking the court to allow Enbridge to continue pipeline operations and defer to the negotiations.<sup>63</sup> Canada's submissions disregard Indigenous rights, and its position has affected the willingness of at least one court to honor our rights.<sup>64</sup>
27. Canada's use of diplomatic and legal tools to ensure that Enbridge continues operating Line 5 contravenes its human rights obligations to respect and protect Indigenous Peoples' rights and the environment.

### **III. Canada's human rights obligations and violations**

28. Canada's ongoing support for Line 5 over the objection of impacted Indigenous groups violates their rights to FPIC, and jeopardizes their rights to a healthy environment, life, culture, and private family and home life. Canada's actions violate its international human rights obligations and are part of Canada's pattern of failing to regulate Canadian businesses at the expense of Indigenous Peoples' rights.<sup>65</sup>
29. Canada has ratified seven major international human rights treaties<sup>66</sup> and passed legislation giving the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) "application in Canadian law."<sup>67</sup>
30. Canada must respect human rights by refraining from conduct that causes or contributes to reasonably foreseeable harms to human rights.<sup>68</sup> States violate this obligation when they "prioritize the interests of businesses over [human] rights without adequate justification or when they pursue policies that negatively affect such rights."<sup>69</sup> The duty to respect 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."<sup>70</sup> By acting to ensure Line 5's continued operations, despite its foreseeable risks and opposition of affected Indigenous communities, Canada has violated this obligation.
31. Canada must protect human rights by "tak[ing] all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing" to reasonably foreseeable threats to human rights.<sup>71</sup> States must address, alleviate, and mitigate foreseeable threats to human rights,<sup>72</sup> regulate the activities of businesses to ensure "effective protection" against rights violations, and hold corporations accountable for violations.<sup>73</sup> This duty applies extraterritorially; States must regulate businesses within their jurisdiction to prevent them from violating rights when operating abroad.<sup>74</sup> States violate this duty "by failing to prevent or to counter conduct by businesses that leads to such rights being abused, or that has the foreseeable effects of leadings to such rights being abused,"<sup>75</sup> "or otherwise collaborat[ing] with or tolerat[ing] the infringements."<sup>76</sup>

Canada has violated this obligation by supporting Enbridge and failing to properly regulate Enbridge to ensure its operations do not violate human rights.

32. Canada must also interpret its bilateral agreements, including the Pipeline Treaty, consistently with its human rights obligations.<sup>77</sup> Its use of the treaty to prolong Line 5's operations despite its threats to rights violates this obligation.

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

33. Canada's actions to ensure Line 5's continued operations despite vocal opposition by affected Indigenous groups in Canada and the U.S. disregards, and actively interferes with, their rights to FPIC and participation. Moreover, Canada should not have formed a policy position and intervened to support Line 5 without the effective participation of affected communities. 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. Indigenous Peoples have a right to participate in decisions that affect them and withhold consent for any project which affects their territories or rights.

34. Indigenous Peoples have a right to participate in government decisions that "may affect them" or "their rights,"<sup>78</sup> such as "development projects being carried out on or near their lands or territories."<sup>79</sup>
35. Indigenous Peoples also have a related but distinct right requiring States to consult and cooperate in order to obtain their FPIC "prior to the approval of any project affecting their lands or territories and other resources."<sup>80</sup> Specifically, FPIC is required for extractive industry projects within the territories of Indigenous Peoples and/or projects with a significant, direct impact on Indigenous Peoples,<sup>81</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>82</sup> Canada has endorsed or ratified human rights instruments that affirm and protect FPIC and the underlying and related rights to self-determination, equality, culture, and property.<sup>83</sup>
36. The Human Rights Committee (HRC) has explained that "participation in the decision-making process must be effective, which requires not mere consultation but the [FPIC] of the members of the community."<sup>84</sup> FPIC processes must allow Indigenous Peoples to "influence the outcome of decision-making," suggest alternatives, and withhold consent.<sup>85</sup> FPIC must be continuous; "consent must be ongoing with express opportunities for review and renewal," and can be revoked.<sup>86</sup>

ii. Canada's closed-door decision-making and disregard for Indigenous communities' opposition to Line 5 violates its human rights obligations.

37. Canada supported recommendations to respect and protect FPIC and Indigenous rights in its previous UPR.<sup>87</sup> In the context of Line 5, Canada has failed to respect and protect the participation and FPIC rights of affected Indigenous Peoples in Canada and the U.S.
38. The Indigenous communities in Canada and the U.S. directly affected by Line 5 have a right to FPIC. The pipeline traverses Indigenous land.<sup>88</sup> Additionally, treaties between the U.S., Canada, and Indigenous Peoples enshrine our rights to hunt and fish in our

traditional territories on both sides of the border.<sup>89</sup> An oil spill could destroy these lands and waters.<sup>90</sup> Accordingly, Line 5 has a direct, significant impact on our rights.

39. Canada has failed in its duty to protect these rights; Canada should have taken steps to prevent Enbridge from operating without FPIC of directly affected Indigenous communities in Canada and the U.S.<sup>iii</sup> Enbridge has continued operations despite affected Indigenous communities' clear opposition and calls for decommissioning.<sup>91</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>92</sup>
40. Canada has also failed in its duty to respect these rights by disregarding and interfering with directly affected Indigenous Peoples' FPIC rights,<sup>iv</sup> through its diplomatic intervention and participation in U.S. legal proceedings to keep Line 5 operating, despite opposition from directly affected Indigenous communities.<sup>93</sup>
41. In forming its position on Line 5 without the participation of Indigenous Peoples, Canada violated affected Indigenous communities' right to participate in decisions affecting their rights.<sup>94</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>95</sup> In invoking the Pipeline Treaty's dispute resolution provision, Canada initiated a closed-door process that excludes Indigenous communities who have a right to participate.<sup>96</sup>
42. 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. 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>97</sup> 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>98</sup> Line 5 is another example of Canada's failure to respect and protect Indigenous Peoples' right to FPIC.

**B. Canada's support for Line 5 violates its duty to respect and protect Indigenous Communities' rights to a healthy environment, life, culture, and private home and family life.**

43. 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, life, culture, and private home and family life. By failing to properly regulate Enbridge and actively promoting Line 5's operation, Canada is enabling a foreseeable risk to, and failing to protect, these human rights.

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<sup>iii</sup> See *supra* para. 31 (duty to protect applies extraterritorially).

<sup>iv</sup> See *supra* para. 30 (duty to respect applies extraterritorially and is violated by "interfering directly or indirectly with the enjoyment of the [] rights by persons outside their territories.").



i. Line 5 poses a foreseeable threat to several human rights.

*1. Right to clean, healthy, and sustainable environment (life, water, health, adequate standard of living)*

44. The U.N. General Assembly (UNGA) and Human Rights Council recognize “the right to a clean, healthy, and sustainable environment.”<sup>99</sup> Canada was among the 161 States that voted in favor of the UNGA Resolution.<sup>100</sup> The UNGA and U.N. Human Rights Treaty Bodies have recognized that the right to a healthy environment intersects with, and is encompassed within, various rights including the rights to life, health, water, and adequate standard of living, found in numerous declarations and treaties to which Canada is a party.<sup>101</sup> For instance, the right to life includes the right to enjoy a life with dignity, which is predicated on a clean, healthy, and safe environment, and access to food and water.<sup>102</sup> As the HRC 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>103</sup> Collectively, these rights guarantee “clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environment to live, work, study and play, and healthy biodiversity and ecosystems.”<sup>104</sup>
45. An oil spill would cause substantial harm to the ecosystem that sustains our way of life. It would impact animal and plant species on which many of us rely for subsistence by polluting the water and shorelines of the Great Lakes and surrounding wetlands and rivers,<sup>105</sup> including Ramsar Sites like the Kakagon and Bad River Sloughs.<sup>106</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>107</sup> Oil pollution in the Great Lakes would jeopardize access to drinking water for more than 48 million people.<sup>108</sup>
46. Enbridge’s proposed tunnel under the Straits and new pipeline in Wisconsin threaten additional harms to water, biodiversity, and geography.<sup>109</sup>
47. The continued operation of Line 5 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, adequate standard of living, and life.

*2. Right to culture, privacy, family, and home life*

48. Numerous treaties protect the right to culture, including Indigenous culture. Indigenous Peoples have a right “to enjoy their own culture,”<sup>110</sup> “to take part in cultural life,”<sup>111</sup> and to “freely ... participate in the cultural life of the community.”<sup>112</sup> The right to culture is woven throughout UNDRIP, which recognizes the rights to “practise,” “revitalize,”<sup>113</sup> “maintain, control, protect,”<sup>114</sup> “develop and teach”<sup>115</sup> cultural customs and ceremonies, “cultural heritage, traditional knowledge and traditional cultural expressions.”<sup>116</sup>
49. The HRC has recognized that, “in the case of [I]ndigenous [P]eoples, 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.... Article 27 ... enshrines the inalienable right of [I]ndigenous [P]eoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.”<sup>117</sup>

50. The right to privacy, family, and home<sup>118</sup> also protects the natural resources, animals, land, crops, and ecosystems connected to Indigenous Peoples' way of life, subsistence, livelihood, and wellbeing, because Indigenous Peoples enjoy a special relationship with their territory.<sup>119</sup>
51. Treaties between the U.S., Canada, and Indigenous Peoples similarly protect our rights to the territory and natural resources needed to practice our culture and maintain our livelihoods, including rights to fishing, hunting, gathering, and other customary practices.<sup>120</sup>
52. Line 5 threatens the rights to culture, livelihood, and way of life of Indigenous Anishinaabe communities surrounding the Great Lakes. The Anishinaabe People's relationship with the environment, including the waters, animals, plants, and air, is at the center of Anishinaabe culture and life.<sup>121</sup>
53. The Great Lakes contain many sacred sites for Anishinaabe People and are traditional cultural property.<sup>122</sup> According to the Anishinaabe origin story, the Straits are the center of creation of Turtle Island and hold an ongoing spiritual significance.<sup>123</sup>
54. Water, plants, and animals are necessary for Anishinaabe cultural ceremonies and traditions.<sup>124</sup> Many Anishinaabe women are water keepers and pray and care for water during ceremonies.<sup>125</sup>
55. 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>126</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>127</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>128</sup> This right is so important that it was enshrined in treaties with the U.S.<sup>129</sup>
56. 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>130</sup>
57. Line 5 poses foreseeable harms to the land, water, flora, and fauna central to these cultural practices.<sup>131</sup> Oil spills could completely "destroy a sacred cultural landscape central to Anishinaabe life,"<sup>132</sup> posing an irreversible threat to our ability to practice, teach, and protect our culture and way of life.

ii. Canada has violated its obligation to respect and protect human rights by failing to prevent, and indeed enabling, foreseeable threats to human rights.

58. During its last UPR, Canada accepted and noted numerous recommendations to protect the right to a healthy environment and other economic, social, and cultural rights of Indigenous Peoples, including by regulating corporations' transnational activities.<sup>133</sup> Canada's obligations to respect the above-outlined rights include protecting the environment from harm and pollution caused by private actors,<sup>134</sup> applying the precautionary principle,<sup>135</sup> protecting "natural water resources" "from contamination by harmful substances,"<sup>136</sup> assessing its policies' "environmental impact,"<sup>137</sup> and ensuring that "economic development [does] not undermine" protected rights.<sup>138</sup>
59. By seeking to ensure the pipeline's continued operation – without apparently considering the foreseeable threat to our communities – Canada is prioritizing business interests over human rights. Canada is thus violating its obligation to respect the above-outlined human

rights by interfering with the enjoyment of rights by impacted Indigenous communities in Canada and the U.S.<sup>139</sup>

60. 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. Treaty bodies have repeatedly expressed concern over reported human rights violations associated with Canadian corporations and called on Canada to properly regulate its companies.<sup>140</sup> Canada's support for Line 5, despite its foreseeable disastrous impact on human rights, disregards these obligations.

**C. Canada's support for Line 5 violates its duty to respect and protect the many rights affected by climate change.**

61. Canada's support for Line 5 contradicts its obligations to mitigate climate change and protect against its adverse human rights impacts. To comply with its human rights obligations, Canada must phase out fossil fuels, not advocate to extend the operation of an aging pipeline through new construction that will lock in fossil fuel production and consumption for another century.<sup>141</sup>

i. Line 5 contributes to climate change, which poses a foreseeable threat to a broad range of human rights.

62. The world is experiencing an accelerating climate emergency. Line 5's continued operation has the foreseeable effect of increasing GHG emissions and worsening the impacts of climate change.<sup>142</sup> 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>143</sup>

63. 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>144</sup> As five U.N. Treaty Bodies expressed in a joint statement, 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>145</sup>

64. Countries must take "special measures" to protect the rights of persons in vulnerable situations, including Indigenous Peoples.<sup>146</sup> Indigenous Peoples' rights to life, food, health, and water are "disproportionately vulnerable to climate change,"<sup>147</sup> because they "often live in marginal lands and fragile ecosystems which are particularly sensitive to alterations in the physical environment."<sup>148</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 ways of life, threatening their rights to self-determination and cultural identity.<sup>149</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>150</sup>

65. Line 5 contributes to significant climate-induced harm to the Great Lakes and the treaty-protected natural resources vital to the undersigned Indigenous communities.<sup>151</sup> Experts expect climate change to cause increased precipitation and flooding around the Great Lakes.<sup>152</sup> Flooding causes soil runoff and erosion, which contributes to the excess nutrient pollution responsible for toxic algal blooms and "dead zones."<sup>153</sup> Lake Erie has already experienced multiple algal blooms which cause drinking water emergencies.<sup>154</sup>

The warming of the Great Lakes also threatens Anishinaabe communities' culturally vital natural resources, including miin (blueberry), ziinzibaakwadwaatig (sugar maple), adikamegwag (whitefish), and manoomin (wild rice).<sup>155</sup>

- ii. Canada's support for fossil fuel projects like Line 5 represents an active dereliction of its duty to mitigate climate change.

66. In its last UPR, Canada accepted the recommendation that it “[e]ngage actively with the international community in efforts to promote and protect human rights in the context of climate change.”<sup>156</sup>
67. Canada's human rights obligations require it to refrain from conduct that causes or contributes to climate change, “take measures to prevent foreseeable human rights harm caused by climate change, [and] regulate activities contributing to such harm,” such as actions by “private actors,” including corporations.<sup>157</sup> To meet its obligations, Canada must phase out fossil fuels. Canada accepts that fossil fuels are the main driver of anthropogenic climate change.<sup>158</sup> The U.N. Secretary General,<sup>159</sup> Human Rights Treaty Bodies,<sup>160</sup> Independent Experts,<sup>161</sup> and the Intergovernmental Panel on Climate Change all affirm that an urgent and rapid shift away from fossil fuels is required.<sup>162</sup> “[W]ithout 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>163</sup>
68. 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. 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.
69. In failing to consult with Indigenous Peoples prior to determining its position on Line 5, Canada is violating these communities' right to participate in decision-making processes that affect them, including decisions involving climate change and its impacts.<sup>164</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>165</sup>
70. 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>166</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>167</sup> Among G20 countries, Canada provides one of the highest amounts of public financing for fossil fuels on a per-capita basis,<sup>168</sup> and in 2022 provided billions of dollars in subsidies and public financing for the oil and gas sector.<sup>169</sup>

#### **IV. Conclusion**

71. Line 5 represents an ongoing and serious threat to the cultural and environmental resources of the Great Lakes and, by extension, to Indigenous communities' fundamental rights. Furthermore, the project poses an unacceptable risk to the international effort to mitigate climate change's adverse human rights impacts.

72. In failing to properly regulate Enbridge's Line 5 operations, Canada violates its obligation to protect human rights. 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, promote and enable threats to human rights. This violates its duty to respect human rights. Canada cannot rely on the Pipeline Treaty to flout these human rights obligations.
73. Canada's support for Line 5 is part of its pattern of favoring the fossil fuel industry over Indigenous rights. We call on the Canadian Government to abandon its current posture in the Line 5 litigation in U.S. courts, respect and protect the rights of Indigenous Peoples, and prioritize the pursuit of a sustainable future.

## **Annex: Submitting Organizations**

*Note: The Tribal signatories do not include their date of establishment, as the U.N. 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

**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

**Red Cliff Band of Lake Superior Chippewa**, the "People of the Big Water" or 'gi-chi-b-waa-tig' are a federally recognized Native American tribe situated along the shores of the legendary waters of Lake Superior. The Red Cliff Reservation is located at the extreme northern-most point of Wisconsin, on what's now known as the Bayfield Peninsula and the Apostle Islands National Lakeshore. These lands and waters are renowned for their pristine environment, rugged waters, wilderness areas, and unique scenic beauty and are the hub or center of an historical, spiritual and cultural crossroads highly significant for the past 1,500 years but which extends back more than 4,000 years.

Contact Person: Tribal Chairman Christopher Boyd  
Address: 88455 Pike Rd Bayfield, WI, U.S. 54814

**The Georgetown University Law Center Environmental Law & Justice Clinic** conducts public interest legal work on behalf of underserved clients in the areas of environmental justice, pollution control, natural resources, and climate change. The Clinic is an immersive and multi-modal experience, exposing students to the broad range of work in which environmental



attorneys engage. We teach students key lawyering and advocacy skills through work on live cases that are excellent learning vehicles. The Clinic can trace its roots to Georgetown's Institute for Public Representation, which was founded in 1971.

Contact Person: Lindsay Bailey  
600 New Jersey Ave., NW, Washington, D.C., U.S. 20001

**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: Tamara Morgenthau  
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, Limited Partnership; Enbridge Energy Company, Inc.; Enbridge Energy Partners, L.P.

<sup>2</sup> See U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Canada*, U.N. Doc. A/HRC/39/11, paras. 142.87, 142.89-142.94, 142.152, 142.233-142.234, 142.237-142.238, 142.251, 142.254-142.255, 142.257 (July 11, 2018) (hereinafter *Canada 2018 UPR*); see also U.N. Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Canada - Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, U.N.

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Doc. A/HRC/39/11/Add.1, paras. 9-11, 32-33 (Sept. 18, 2018) (accepting and noting recommendations) (hereinafter Canada 2018 UPR – State Views).

<sup>3</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), <http://www.ohchr.org/Documents/Issues/Environment/Mappingreport/3.CERD-25-Feb.docx> (hereinafter, OHCHR, Mapping Human Rights Obligations for a Health Environment: Report on ICERD).

<sup>4</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 April 3, 2023).

<sup>5</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>6</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>7</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. Army Corps of Engineers*, page 34 (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”) (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>8</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%20Revocation%20and%20Termination%20of%20Easement%20%2811.13.20%29.pdf](https://content.govdelivery.com/attachments/MIEOG/2020/11/13/file_attachments/1600920/Notice%20of%20Revocation%20and%20Termination%20of%20Easement%20%2811.13.20%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), [17](https://ijc.org/sites/default/files/2018-</a></p></div><div data-bbox=)

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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>9</sup> Michigan Easement Revocation, pages 6-7.

<sup>10</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>11</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>12</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>13</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”).

<sup>14</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/wpx8fhcpk7/el5\\_deis-comments\\_federal\\_usepa](https://widnr.widen.net/s/wpx8fhcpk7/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>15</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 \*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

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(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>16</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>17</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>18</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>19</sup> See EPA Rerouting Comments, page 2.

<sup>20</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>21</sup> See *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, \*16-17 (W.D. Wis. Nov. 28, 2022); 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>22</sup> Bay Mills Tunnel Comments, pages 28-35, 42-60.

<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, pages 11-14 (W.D. Wis. June 16, 2022).

<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>).

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- <sup>27</sup> National Wildlife Federation, *Line 5*, <https://www.nwf.org/Line5>.
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<sup>42</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, \*15 (W.D. Wis. Sep. 7, 2022).

<sup>43</sup> *Id.* at pages \*14-15.

<sup>44</sup> *Id.* at page \*45.

<sup>45</sup> *Id.* at pages \*58-61.

<sup>46</sup> *Id.* at pages \*56-57.

<sup>47</sup> Michigan Easement Revocation.

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<sup>57</sup> See *infra* notes 159-162.

<sup>58</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*, para. 44, U.N. Doc. A/HRC/41/39 (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>.

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<sup>64</sup> *See supra* para. 19.

<sup>65</sup> *See, e.g.*, Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations: Canada*, U.N. Doc. CERD/C/CAN/CO/18, para. 17 (2007) (hereinafter “CERD, 2007 Canada COB”); CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, U.N. Doc. CERD/C/CAN/CO/19-20, para. 14 (2012) (hereinafter “CERD, 2012 Canada COB”); CERD, *Concluding Observations: Canada*, U.N. Doc. CERD/C/CAN/CO/21-23, paras. 19-20 (2017) (hereinafter “CERD, 2017 Canada COB”); 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).

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<sup>72</sup> CEDAW, Gen. Rec. No. 34, para. 12; HRC GC No. 36, paras. 18, 26; CRC, *Draft general comment No. 26 on children's rights and the environment with a special focus on climate change*, paras. 75-76 (2021) (hereinafter CRC, Draft GC No. 26); CESCR, GC No. 24, para. 16.

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<sup>75</sup> CESCR, GC No. 24, para. 18.

<sup>76</sup> CRC, GC No. 16, para. 28.

<sup>77</sup> CESCR, GC No. 24, para. 13; CESCR, *Concluding Observations On The 6th Periodic Report Of Canada*, U.N. Doc. E/C.12/CAN/CO/6, para. 16 (Mar. 23, 2016).

<sup>78</sup> UNDRIP, arts. 18, 19; *accord* Int'l Covenant on Civil and Political Rights arts. 25, 27, Dec. 16, 1966, 999 U.N.T.S. 171 (hereinafter ICCPR); International Covenant on Economic, Social and Cultural Rights arts. 3, 15(1)(a), Dec. 16, 1966, 993 U.N.T.S. 3 (hereinafter ICESCR); 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, *General comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights* (art. 3 of the ICESCR), E/C.12/2005/4, para. 37 (2005) (hereinafter CESCR, GC No. 16); 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

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<sup>80</sup> UNDRIP, art. 32(2).

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<sup>82</sup> CESCR, GC No. 21, para. 55(e).

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<sup>85</sup> EMRIP, FPIC: a Human Rights-Based Approach, paras. 14-20, 24-30.

<sup>86</sup> *Id.* 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>87</sup> Canada 2018 UPR – State Views, paras. 9-11.

<sup>88</sup> *See supra* paras. 9, 18-19.

<sup>89</sup> *See infra* para. 51.

<sup>90</sup> *See infra* paras. 45-47, 52-57.

<sup>91</sup> *See supra* para. 32.

<sup>92</sup> *See supra* paras. 18-19.

<sup>93</sup> *See supra* para. 26.

<sup>94</sup> *See supra* paras. 34-36; *see also* 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); 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).

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<sup>96</sup> *See supra* para. 25.

<sup>97</sup> United Nations Special Rapporteur on the Rights of Indigenous Peoples, *Visit to Canada 1-10 March 2023, End of Mission Statement*, page 10,

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<sup>100</sup> United Nations Digital Library, *The human right to a clean, healthy and sustainable environment: resolution / adopted by the General Assembly* (Jul. 28, 2022), <https://digitallibrary.un.org/record/3982659?ln=en>.

<sup>101</sup> See HRC, GC No. 36, paras. 26, 62 (applying ICCPR art. 6); OHCHR, *Mapping Human Rights Obligations for a Health Environment: Report on ICERD*, paras. 17-18 (applying ICERD, art. 5(e)(iv)); CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the ICESCR)*, E/C.12/2000/4, paras. 4, 11, 15, 27, 34 (2000) (applying ICESCR art. 12); UNDRIP art. 29(1).

<sup>102</sup> HRC, GC No. 36, paras. 3, 26, 62.

<sup>103</sup> HRC, GC No. 36, para. 62.

<sup>104</sup> Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, *Right to a Healthy Environment: Good Practices*, U.N. Doc. A/HRC/43/53, para. 2 (2019); see also *id.* paras. 38-118 (expanding on each of these rights); OHCHR, UNEP, UNDP, *What is the Right to a Healthy Environment: Information Note*, page 9 (Jan. 5, 2023), <http://www.undp.org/publications/what-right-healthy-environment>.

<sup>105</sup> Bad River Band Rerouting Comments, pages 3-5

<sup>106</sup> Ramsar Sites Information Service, *Kakagon and Bad River Sloughs* (Feb. 2, 2012), <https://rsis.ramsar.org/ris/2001>.

<sup>107</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>108</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>109</sup> See *supra* para. 14.

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- <sup>110</sup> ICCPR, art. 27; *see also* HRC, *Daniel Billy et al. v. Australia*, U.N. Doc. CCPR/C/135/D/3624/2019, para. 8.13 (Sept. 22, 2022); HRC, *Chief Bernard Ominayak and Lubicon Lake Band v. Canada*, CCPR/C/38/D/167/1984, para. 32.2 (1990).
- <sup>111</sup> ICESCR, art. 15(1).
- <sup>112</sup> UDHR, art. 27.
- <sup>113</sup> UNDRIP, art. 11.
- <sup>114</sup> UNDRIP, art. 31.
- <sup>115</sup> UNDRIP, art. 12.
- <sup>116</sup> UNDRIP, art. 31.
- <sup>117</sup> *Daniel Billy et al. v. Australia*, para. 8.13; *accord* CESCR, GC No. 21, paras. 36-37.
- <sup>118</sup> ICCPR, art. 17.
- <sup>119</sup> *See Daniel Billy et al. v. Australia*, para. 8.10; HRC, *CCPR, General Comment 16 on the right to property*, para. 5 (1988); HRC, *Benito Oliveira Pereira et al v. Paraguay*, CCPR/C/132/D/2552/2015, para. 8.3 (Sept. 21, 2022). *See also* UNDRIP, art. 25.
- <sup>120</sup> *See* 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); *see, e.g.*, Treaty of Sault Ste. Marie of June 16, 1820; Treaty of Washington of March 28, 1836, 7 Stat. 491; Treaty of Detroit of July 30, 1855; Treaty of Detroit of August 2, 1855; Treaty with the Chippewa, 7 Stat. 536 (1837); Treaty with the Chippewa, 7 Stat. 591 (1842); *see also United States v. Bouchard*, 464 F. Supp. 1316, 1358 (W.D. Wis. 1978), *aff'd in relevant part and rev'd on other grounds sub nom. Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341 (7th Cir. 1983).
- <sup>121</sup> Bad River Band Rerouting Comments, page 1.
- <sup>122</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>123</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>124</sup> Bay Mills Tunnel Comments, pages 3, 38-39.
- <sup>125</sup> Bay Mills Tunnel Comments, page 3.
- <sup>126</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>127</sup> Bay Mills Tunnel Comments, page at 3.
- <sup>128</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>129</sup> *See supra* note 120.

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<sup>130</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>131</sup> *See supra* paras. 45-47.

<sup>132</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>133</sup> *See* Canada 2018 UPR – State Views, para. 9; Canada 2018 UPR, paras. 142.233 (Moldova); 142.234 (Gabon); 142.236 (China); 142.235 (Bolivia); 142.230 (Cuba); 142.231 (Georgia); 142.237 (Sudan); 142.238 (Brazil); 142.232 (Namibia); 142.246 (Kazakhstan); 142.247 (Mali); 142.239 (France); 142.141 (Italy); 142.252 (Russia).

<sup>134</sup> HRC, GC No. 36, para. 62.

<sup>135</sup> *Id.*

<sup>136</sup> CESCR, *General comment No. 15, The right to water (arts. 11 and 12 of the ICESCR) E/C.12/2002/11*, U.N. Doc. E/C.12/2002/11, para. 8 (Jan. 20, 2003).

<sup>137</sup> CRC, Draft GC No. 26, para. 76.

<sup>138</sup> HRC, *Poma Poma v. Peru*, para. 7.4.

<sup>139</sup> *See supra* para. 30.

<sup>140</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, *Concluding observations on the combined fifth and sixth periodic reports of Canada*, U.N. Doc. CRC/C/CAN/CO/5-6, para. 16 (2022) (hereinafter “CRC 2022 *Canada COB*”).

<sup>141</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>142</sup> *See supra* para. 16.

<sup>143</sup> *See* IPCC, WGI 1.5, SPM, 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>144</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*

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<sup>145</sup> Joint Statement on Human Rights and Climate Change, para. 3.

<sup>146</sup> HRC, GC No. 36, para. 23.

<sup>147</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>148</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 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>149</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>150</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).

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<sup>151</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>152</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>153</sup> *Id.*

<sup>154</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>155</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>156</sup> See Canada 2018 UPR, para. 142.87; see also Canada 2018 UPR – State Views, para. 34 (accepting and noting recommendations).

<sup>157</sup> Joint Statement on Human Rights and Climate Change, paras. 10-12; HRC, GC No. 36, paras. 7, 18, 21-22, 26, 62-63; CRC, GC No. 16, paras. 26-28; CESCR, *Climate Change and the International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. E/C.12/2018/1, para. 6 (2018) (hereinafter, CESCR, Climate Change and the ICESCR); CEDAW, Gen. Rec. No. 39, para. 57(d).

<sup>158</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>159</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>160</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; CRC, Draft GC No. 26, para. 73(d).

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<sup>161</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>162</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>163</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 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>164</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>165</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>.

<sup>166</sup> Climate Action Tracker, *Canada: Country Summary*, <https://climateactiontracker.org/countries/canada/>.

<sup>167</sup> CRC, 2022 Canada COB, para. 37.

<sup>168</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>169</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),



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