

Request for Precautionary Measures on behalf of Bay Mills Indian Community, Little Traverse Bay Band, Sault Ste. Marie Tribe of Chippewa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, and Little River Band of Ottawa and Chippewa Indians

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I. OVERVIEW OF THE REQUEST

1. In accordance with Article 25(1) of the Commission's Rules of Procedure, the International Human Rights Program (the "IHRP") at the University of Toronto Henry N.R. Jackman Faculty of Law respectfully requests that the Inter-American Commission on Human Rights (the "Commission") urgently grant precautionary measures to protect Indigenous communities native to the Great Lakes who are facing a serious and urgent risk of irreparable harm due to the imminent risk of the Line 5 Pipeline ("Line 5") spilling significant quantities of crude oil into the Straits of Mackinac and Lake Huron (the "Request").
2. Line 5 is a 645-mile-long oil pipeline that originates in Canada and runs through Michigan and Wisconsin to Sarnia, Ontario.¹ It is owned by the Canadian multinational pipeline and energy corporation, Enbridge Inc. ("Enbridge").² Line 5 was constructed in 1953, carrying 23 million gallons of crude oil and natural gas from Wisconsin to Ontario daily.³ It passes through the Great Lakes and the Straits of Mackinac that connect Lake Huron and Lake Michigan.⁴ As discussed in this Request, Line 5's aged infrastructure and Enbridge's history of safety violations and spills present an imminent risk of a catastrophic spill from Line 5, which will irreparably harm the Indigenous Beneficiaries to this Request.
3. The Great Lakes and the Straits of Mackinac are home to several Indigenous communities who rely on the lakes for their livelihood and for spiritual and cultural purposes. These communities have resided on the shores of the Great Lakes for generations, with cultural sites dating back to 3000 BC.⁵
4. This Request comes at the heel of mounting statements by international experts expressing grave concerns about Line 5. This includes multiple recommendations from the UN Permanent Forum on Indigenous Issues ("UNPFII") calling on Canada and the United States ("US") to decommission the pipeline, noting that Line 5's continued operation jeopardizes treaty-protected rights, Indigenous cultures, and internationally recognized human rights obligations.⁶ Both the UN Special Rapporteur

¹ "What is Line 5", *Enbridge*: online <enbridge.com/projects-and-infrastructure/public-awareness/line-5-answering-your-questions/what-is-line-5>.

² *Ibid.*

³ *Ibid.*

⁴ "About Line 5", *Enbridge*: online <enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/about-line-5>.

⁵ Affidavit, Austin Lowes at para 7.

⁶ See: EarthRights International, "UN Permanent Forum on Indigenous Issues Again Calls for Canada and the US to Decommission Enbridge's Line 5 Pipeline" (21 May 2025), online: <https://earthrights.org/media_release/un-permanent-forum-on-indigenous-issues-again-calls-for-canada-and-the-us-to-decommission-enbridges-line-5-pipeline/> .

on the human rights to safe drinking water and sanitation⁷ and the UN Special Rapporteur on the rights of Indigenous Peoples⁸ have highlighted the documented risks of catastrophic oil spills from Line 5's aging infrastructure and have called on Canada to suspend Line 5 until the free, prior, and informed consent of the Indigenous peoples affected is secured. These expert assessments reflect a growing global consensus that Line 5 presents unacceptable environmental and human rights risks. Line 5 was originally designed to last 50 years. It has now been operating for almost 70. Each passing minute that Line 5 remains operational extends the likelihood of catastrophic oil spills that would devastate Indigenous lands. This is tempting fate and placing Indigenous communities at an unacceptably high risk.

5. This Request is also consistent with evolving international legal standards on States' obligations to address the climate crisis, including recent landmark advisory opinions by the International Court of Justice ("ICJ") and the Inter-American Court of Human Rights ("Inter-American Court").⁹ These advisory opinions affirm the obligations of States to take preventative and precautionary measures to avoid significant harm to the environment, including measures with respect to fossil fuel production, consumption, licensing and subsidization. The continued operation of Line 5, which locks in long-term emissions and exposes ecosystems to catastrophic climate and environmental risks, is therefore inconsistent with Canada's human rights and environmental obligations under international law.

II. BENEFICIARIES

6. This Request is being filed concerning Canada, which is responsible for addressing the serious, urgent situation that presents a risk of irreparable harm at issue in this Request. Canada is a Member State of the Organization of American States ("OAS"). As it has not ratified the American Convention on Human Rights, this Request refers to the rights under the American Declaration of the Rights and Duties of Man ("ADRM") that are at risk of being gravely impacted and require immediate protection.
7. The IHRP is filing this Request on behalf of five US Tribal Nations: Bay Mills Indian Community, Little Traverse Bay Band, Sault Ste. Marie Tribe of Chippewa Indians, Grand Traverse Band of Ottawa

⁷ U.N., Visit to Canada: Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Pedro Arrojo Agudo, A/HRC/57/48/Add.1 (11 September 2024).

⁸ U.N., Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31/Add.2 (24 July 2023).

⁹ International Court of Justice, *Obligations of States in Respect of Climate Change* at para 393, online (PDF): <[icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf](https://www.icj.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf)>; Inter-American Court of Human Rights, *Advisory Opinion AO-32/25 of May 29, 2025* at para 295, online (PDF): <corteidh.or.cr/docs/4pinions/seriea_32_en.pdf>

and Chippewa Indians, and Little River Band of Ottawa and Chippewa Indians (together, the “Beneficiaries”).

8. The Beneficiaries are the groups most severely affected by Line 5, which transports 23 million gallons of crude oil and natural gas through or close to the Beneficiaries’ traditional territories daily.¹⁰ They face a serious and urgent situation that poses a risk of irreparable harm to their rights under the ADRM due to Line 5, which is at imminent risk of spilling significant quantities of crude oil into the Straits of Mackinac and Lake Huron. This Request for a broad class of beneficiaries is shaped by the nature of the risk at hand. Map 1¹¹ and Map 2¹², which have been included as relevant documents to this Request, depict the location of the Beneficiaries as well as their proximity to a potential spill from Line 5.
9. Line 5 is owned and operated by Enbridge, a Canadian multinational pipeline and energy company headquartered in Calgary, Alberta. The Canadian government’s lack of regulation over Enbridge combined with the Canadian government’s explicit support for Enbridge’s continued operation of Line 5 is a violation of the Beneficiaries’ rights under the ADRM.

III. A CATASTROPHIC SPILL FROM LINE 5 POSES AN URGENT SITUATION

a. History of anchor strikes and Enbridge’s failure to maintain the aging pipeline

10. Line 5 is at imminent risk of a catastrophic spill into the Straits of Mackinac and Lake Huron. As outlined below, there is a history of anchor strikes to the stretch of the pipeline that lies under the Straits of Mackinac, many of which were near-misses for a catastrophic spill. Combined with aged infrastructure and Enbridge’s history of safety violations and spills, this risks an imminent catastrophic spill.
11. The stretch of Line 5 that “lie[s] exposed in the Straits” below busy shipping lanes has been struck by Enbridge vessels with anchors or cables at least three times between 2018 and 2020, two of which decision-makers labeled as near misses for a catastrophic rupture.¹³ In 2020, Line 5 was damaged so

¹⁰ Enbridge, “About Line 5”, online: <enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/about-line-5>.

¹¹ See Appendix A.

¹² See Appendix B.

¹³ National Wildlife Federation, *The Edge of Disaster for the Great Lakes: Near Misses from Enbridge’s Aging and Degraded Line 5* at 3, online (PDF): <nwf.org/-/media/Documents/PDFs/Press-Releases/2020/11-20-20-Line-5-Report>; State of Michigan, “Notice of Revocation and Termination of Easement” (13 November 2020) at 5-9, online (PDF): <content.govdelivery.com/attachments/MIEOG/2020/11/13/file_attachments/1600920/Notice%20of%20Revocation%20and%20Termination%20of%20Easement%202811.13.20%29.pdf>; National Wildlife Federation, *Enbridge Over Troubled Water* at 14-15, online (PDF): <nwf.org/-/media/PDFs/Global-Warming/Tar-Sands/Enbridge-Over-Troubled-Water-Report-Final.pdf>; Great Lakes Science Advisory Board, *Potential Ecological Impacts of Crude Oil Transport in the Great Lakes Basin*

severely that a court ordered Enbridge to temporarily shut it down.¹⁴ It is thus likely that another anchor strike to the pipeline is imminent.

12. The risk from an anchor strike is compounded by Line 5's aged infrastructure. The pipeline is 70 years old. According to an engineer who worked on the pipeline installation, during construction, Enbridge's predecessor stated that Line 5 would "last 50 years."¹⁵ Operating an aging pipeline risks infrastructure failure because pipelines degrade over time due to corrosion, pressure, and use.¹⁶
13. Furthermore, Enbridge has ignored requirements to physically support Line 5, and has instead left it free-floating in certain sections of the Straits of Mackinac.¹⁷ According to the National Wildlife Federation, "sections of Line 5 crossing the Straits have [also] been dented and bent, parts of the twin pipelines have a loss of wall thickness, a majority of both lines are covered in quagga mussels and the required protective coating continues to fail at alarming rates and from unknown causes."¹⁸ Moreover, Michigan's Department of Natural Resources found that "threats to pipeline integrity from incorrect operations and procedural errors ... present[] a substantial, inherent and unacceptable risk of a catastrophic oil spill".¹⁹ Michigan's Governor Gretchen Whitmer, whose office revoked the easement allowing Line 5 to operate under the Straits of Mackinac, stated that: "The Line 5 pipeline is a ticking

(2018) at 6, 37, online (PDF): <[ijc.org/sites/default/files/2019-01/Potential%20Ecological%20Impacts%20of%20Crude%20Oil%20Transport%20in%20the%20Great%20Lakes%20Basin%20-%20Oct%202018.pdf](https://www.ijc.org/sites/default/files/2019-01/Potential%20Ecological%20Impacts%20of%20Crude%20Oil%20Transport%20in%20the%20Great%20Lakes%20Basin%20-%20Oct%202018.pdf)>; Environmental Defence Canada, "Enbridge's Line 5: Media Backgrounder", online (PDF): <environmentaldefence.ca/wp-content/uploads/2021/08/Environmental-Defence-Line-5-backgrounder.pdf>.

¹⁴ *Nessel v Enbridge Energy Limited Partnership et al*, (Cir Ct Mich 2020) (Temporary Restraining Order), online (PDF): <michigan.gov/documents/ag/Order_Granteeing_Motion_for_TRO_in_Nessel_v_Enbridge_Energy_et_al_19-474-CE_695012_7.pdf>.

¹⁵ Environmental Defence Canada, "Enbridge's Line 5: Media Backgrounder", online (PDF): <environmentaldefence.ca/wp-content/uploads/2021/08/Environmental-Defence-Line-5-backgrounder.pdf>; Spencer Chumbley, "The Dirty Secret at the Bottom of the Great Lakes: Oil & Water" (1 September 2015) at min 9:11, online: <spencerchumbley.tv/blog/2015/9/1/b3gw84mo9k1q09r47kdal7amtxc30g>; Midwest Environmental Advocates et al, "Comments on Draft EIS for Enbridge Line 5 in Northern Wisconsin" (15 April 2022) at 1, online (PDF): <midwestadvocates.org/assets/resources/MEA-L5-DEIS-Comments.pdf>.

¹⁶ Pipeline & Hazardous Materials Safety Administration, "Fact Sheet: Pipe Defects and Anomalies", online: <primis.phmsa.dot.gov/comm/FactSheets/FSPipeDefects.htm?nocache=7250>; United States Environmental 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" (21 March 2022) at 6, online: <widnr.widen.net/s/wpx8fhcpk7/el5_deis-comments_federal_usepa>; National Wildlife Federation, *Enbridge Over Troubled Water* at 14-15, online (PDF): <nwf.org/-/media/PDFs/Global-Warming/Tar-Sands/Enbridge-Over-Troubled-Water-Report-Final.ashx>; Jeff Alexander & Beth Wallace, *Sunken Hazard: Aging Oil Pipelines Beneath the Straits of Mackinac an Ever-Present Threat to the Great Lakes* (National Wildlife Federation, 2012), online (PDF): <documentcloud.org/documents/472338-nwfsunkenhazardline5.html>.

¹⁷ National Wildlife Federation, *The Edge of Disaster for the Great Lakes: Near Misses from Enbridge's Aging and Degraded Line 5* at 5, online (PDF): <nwf.org/-/media/Documents/PDFs/Press-Releases/2020/11-20-20-Line-5-Report#:~:text=The%20Enbridge%20funded%20study%20by,misses%20from%20a%20catastrophic%20rupture.>.

¹⁸ *Ibid* at 4.

¹⁹ State of Michigan, "Notice of Revocation and Termination of Easement" (13 November 2020) at 13-17, online (PDF): <content.govdelivery.com/attachments/MIEOG/2020/11/13/file_attachments/1600920/Notice%20of%20Revocation%20and%20Termination%20of%20Easement%202811.13.20%29.pdf>.

time bomb”, and that “so long as oil is flowing through the pipelines, there is a very real threat of a catastrophic oil spill in the Great Lakes.”²⁰

14. Between the aging infrastructure and current failures to maintain and correctly operate Line 5, the pipeline will likely not have the structural integrity to prevent a catastrophic spill when another anchor strike does occur.

b. Enbridge’s history of oil spills and safety violations

15. Enbridge’s long history of oil spills and safety violations further points to the imminence of a catastrophic oil spill. One study found that since 1953, Line 5 has spilled 1.1 million gallons of oil over 33 incidents in and around the Great Lakes.²¹ These previous spills of increasing devastation have resulted in multiple fires and injuries, as well as mass evacuations.²² Given its history, Line 5 has been described as a “disaster waiting to happen”²³ – a disaster that may be similar to, if not worse than, other Enbridge oil spills that resulted in irreparable environmental damage. Notably, Greenpeace has calculated that across the US, Enbridge’s pipelines have spilled 2.8 million gallons of oil.²⁴ This includes the largest US inland oil spill during that period: the Line 6B pipeline, which released nearly a million gallons of heavy crude oil into Michigan’s Kalamazoo River in 2010 after it took 17 hours for Enbridge to realize there was a leak and shut down the pipeline. Federal investigators called the Line 6B spill a “...complete breakdown of safety at Enbridge”.²⁵
16. These examples are just the documented spills. Advocates question whether other spills have gone unreported, or if Enbridge has underreported the quantity of oil spilled. For instance, around 1980, Enbridge leaked five barrels of oil into the Hiawatha National Forest in the Upper Peninsula of

²⁰ Governor Gretchen Whitmer, “Gov. Whitmer on Efforts to Protect the Great Lakes from Line 5 Oil Spill After Canada Invokes Treaty with United States”, online: <michigan.gov/whitmer/news/press-releases/2021/10/04/gov--whitmer-on-efforts-to-protect-the-great-lakes-from-line-5-oil-spill-after-canada-invokes-treat>.

²¹ National Wildlife Federation, “Line 5”, online: <nwf.org/Line5>.

²² Clean Water Action, “Line 5: A Timeline of a Ticking Time Bomb,” online: <<https://cleanwater.org/line-5-timeline-ticking-bomb>>.

²³ *Ibid.*

²⁴ Greenpeace, *Dangerous Pipelines: Enbridge’s History of Spills Threatens Minnesota Waters*, (2018) at 11, online (PDF): <greenpeace.org/usa/wp-content/uploads/2018/11/Greenpeace-Report-Dangerous-Pipelines.pdf>.

²⁵ United States Environmental Protection Agency, “Enbridge Clean Water Act Settlement” (20 July 2016), online: <epa.gov/enforcement/enbridge-clean-water-act-settlement>; Lisa Song & Elizabeth McGowan, “Federal Agency Blames ‘Complete Breakdown of Safety at Enbridge’ for 2010 Oil Spill”, *InsideClimate News* (10 July 2012), online: <insideclimatenews.org/news/10072012/national-transportation-safety-board-ntsb-kalamazoo-enbridge-6b-pipeline-marshall-michigan>.

Michigan.²⁶ Enbridge reported that it cleaned up the spill, but in 2011, it was discovered that high levels of contamination remained.²⁷ According to one researcher, “[e]ither Enbridge knew about the extent of the contamination in the national forest for more than 30 years and didn’t clean it up; or it didn’t know about the spill’s effects for more than three decades.”²⁸

17. US government agencies have also documented Enbridge’s persistent violations of safety protocols.²⁹ One database contains thirty-two US federal enforcement actions for Enbridge’s violations of environmental regulations,³⁰ including failing to inspect its pipelines for vulnerabilities.³¹

c. Conditions in the Great Lakes would disperse oil quickly and complicate a spill response

18. The currents and flow patterns in the Straits of Mackinac add to the urgency of the situation. Extensive spill modeling research has been conducted on the Straits of Mackinac, showing how the current speeds would disperse the oil more quickly, causing increased catastrophic harm in a shorter time period.³²
19. Current speeds are highest during the winter season, which, combined with potential ice coverage, would complicate any spill response and result in further damage.³³ In 2017, the US Coast Guard’s Research and Development Center released the *Federal On-scene Coordinator (FOSC) Guide for Oil on Ice*, which found that the equipment used for oil extraction from water in the Great Lakes is not

²⁶ Keith Matheny, “30 years later, contamination remained at site of pipeline spill” (10 May 2016), *Detroit Free Press*, online: <freep.com/story/news/local/michigan/2016/05/07/enbridge-line5-oil-spill-hiawatha-national-forest/83507228/>.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ See e.g. National Transportation Safety Board, *Pipeline Accident Report: Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release Marshall, Michigan July 25, 2010* (Washington, DC: 2012) at xii, online (PDF): <ntsb.gov/investigations/AccidentReports/Reports/PAR1201.pdf>; Michigan Petroleum Pipeline Task Force, *Michigan Petroleum Pipeline Task Force Report* (2015), online (PDF): <michigan.gov/psab/-/media/Project/Websites/psab/archive/media/Michigan-Petroleum-Pipeline-Task-Force-Report.pdf>; *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation v Enbridge Energy Company, Inc et al*, 626 F Supp 3d 1030 (WD Wis 2022) (Amicus Brief, Great Lakes Business Network) at 11-14, online (PDF): <turtletalk.files.wordpress.com/2022/09/295-great-lakes-business-network-amicus-brief.pdf>.

³⁰ Greenpeace, *Dangerous Pipelines: Enbridge’s History of Spills Threatens Minnesota Waters*, (2018) at 11, online (PDF): <greenpeace.org/usa/wp-content/uploads/2018/11/Greenpeace-Report-Dangerous-Pipelines.pdf>; Violation Tracker, “Current Parent Company Summary”, online: <violationtracker.goodjobsfirst.org/?parent=enbridge&order=primary_offense&sort=>>.

³¹ *United States of America v Enbridge Energy Limited Partnership et al*, (WD Mich 2018) (Stipulation and Agreement Regarding Assessment and Payment of Stipulated Penalties Relating to Timeliness of Certain in-Line Inspections), online: <documentcloud.org/documents/4451281-Enbridge-May-2018.html>; David Hasemyer, “Enbridge Fined for Failing to Fully Inspect Pipeline After Kalamazoo Oil Spill”, *InsideClimate News* (3 May 2018), online: <insideclimatenews.org/news/03052018/enbridge-fined-tar-sands-oil-pipeline-inspections-kalamazoo-michigan-dilbit-spill/>.

³² Affidavit, Eric Anderson at 2.

³³ *Ibid* at 3.

suitable for extraction of oil from under ice.³⁴ Demonstrations also showed that most vessels would have difficulty handling crew decontamination during a spill.³⁵

20. If an oil spill from Line 5 happens during winter, when the Great Lakes are frozen over, the US Coast Guard will not be able to respond in a timely manner to prevent or minimize the damage caused by the spill.³⁶ Combined with Enbridge's history of delayed leak detection and pipeline shutdown with Line 6B, the risk of widespread, irreversible harm from a Line 5 oil spill would be substantially heightened.

d. Enbridge's proposed Great Lakes Tunnel further risks a devastating oil spill

21. While continuing to operate Line 5, Enbridge plans to construct a Great Lakes Tunnel—a massive project that would be built deep under the Straits of Mackinac to house Line 5 dual oil pipelines.³⁷ Enbridge's proposal itself reflects an acknowledgment that the existing configuration of Line 5 poses unacceptable risks to the Great Lakes and cannot safely continue as currently operated. The Great Lakes Tunnel would re-reroute the existing pipeline in Wisconsin and be bored through rock, as much as 100 feet below the lakebed.³⁸ Enbridge claims that this tunnel would make Line 5 safer, since any future oil leaks would be contained within the tunnel and not released into the Great Lakes.³⁹ However, rather than eliminating risk, the tunnel merely substitutes one set of serious dangers for another. The tunnel project is based on an untested design, which experts warn can lead to a total collapse of the tunnel⁴⁰ and presents risks of a catastrophic explosion that would release oil and devastate the freshwater, wildlife, and shorelines of the Great Lakes.⁴¹

³⁴ United States Coast Guard Research and Development Center, *Federal On-scene Coordinator (FOSC) Guide for Oil in Ice* (Washington, DC: 2017), online (PDF): <homeport.uscg.mil/Lists/Content/Attachments/43701/USCG%20FOSC%20Guide%20-%20Oil%20in%20Ice.pdf>

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Enbridge, *The Great Lakes Tunnel Project*, online: <enbridge.com/projects-and-infrastructure/public-awareness/line-5-michigan/great-lakes-tunnel-project>.

³⁸ *Ibid.*

³⁹ Enbridge, *Line 5 and the Great Lakes Tunnel: Fact vs. Fiction*, online: <enbridge.com/projects-and-infrastructure/public-awareness/line-5-fact-vs-fiction>.

⁴⁰ Julian Cooper, "Experts say more geological testing must be completed before Line 5 tunnel project receives permits," *Michigan Advance* (21 August 2025), online <<https://michiganadvance.com/2025/08/21/expert-says-more-geological-testing-must-be-completed-before-line-5-tunnel-should-receive-permits/>>.

⁴¹ Native American Rights Fund, *Enbridge's Line 5 Pipeline (Bay Mills Indian Community)*, online: <narf.org/cases/enbridges-line-5-pipeline/>. See also U.N., Visit to Canada: Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Pedro Arrojo Agudo, A/HRC/57/48/Add.1 (11 September 2024) at para 83.

22. Despite strong opposition from civil society, academia, businesses, local government and Indigenous Peoples, as well as the Governor of Michigan’s 2020 decision to revoke Line 5’s easement through the Straits of Mackinac, the Michigan Public Service Commission approved a permit for the Great Lakes Tunnel in 2023.⁴² In April 2025, four Tribal Nations and environmental advocates requested the Michigan Supreme Court to overturn the permit.⁴³

IV. A CATASTROPHIC SPILL FROM LINE 5 IS A SERIOUS SITUATION PRESENTING A RISK OF IRREPARABLE HARM

23. Precautionary measures are required to protect the Beneficiaries, all of whom are Indigenous communities residing on or having access to the shores of Lake Huron and the Straits of Mackinac—from imminent harm emanating from Line 5, including the proposed Great Lakes Tunnel. The Beneficiaries are confronting a serious and urgent situation presenting a risk of irreparable harm to their rights to health, life, personal security, and culture because of the Canadian government’s past and ongoing violations of their ADRM obligations, including the failure to effectively regulate Enbridge.
24. As stated in the United Nations Guiding Principles on Business and Human Rights, all States have a duty to ultimately protect human rights from abuse from third parties, including business enterprises, by way of policies, regulations, legislation, and adjudications. While they may not be directly responsible for abuse conducted by entities, States may breach their human rights obligations by not taking appropriate steps to protect these rights.⁴⁴ This duty is particularly relevant in high-risk situations, as the Inter-American Court has confirmed that States have “a duty to regulate, supervise, and monitor the implementation of dangerous activities that entail significant risks for the life and integrity of the persons subject to their jurisdiction, as a measure to protect and preserve their rights.”⁴⁵
25. This duty to regulate applies both within a State’s own territory and extraterritorially, as acknowledged by UN Human Rights Committee: “while the human rights obligations of a State on its own territory cannot be equated in all respects with its obligations outside its territory, the Committee considers that

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, UNHR, 2011, UN Doc A/HRC/17/31.

⁴⁵ *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*. Preliminary objections, merits, reparations and costs. Judgment of July 15, 2020. Series C No. 407, para. 118.

there are situations where a State party has an obligation to ensure that rights under the Covenant are not impaired by extraterritorial activities conducted by enterprises under its jurisdiction.”⁴⁶

26. The extraterritorial application of the ADRM was considered by the Commission in *Coard et al. v United States*, wherein the Commission acknowledged that “under some circumstances, the exercise of jurisdiction over acts with an extra-territorial locus will not only be consistent with, but required by, the norms which pertain. [...] In principle, the inquiry turns not on the presumed victim’s nationality or presence within a particular geographic area, but on whether, under the circumstances, the State observed the rights of a person subject to its authority and control.”⁴⁷
27. In the present case, Canada has a duty to respect and responsibility to protect the rights under the ADRM, which not only includes the actions implemented and acted upon by the State officers, but those of third parties that are registered and regulated by the laws within Canada.⁴⁸ As Enbridge is a corporation registered and domiciled in Canada, Canada has the jurisdiction to prevent or regulate Enbridge from disrespecting or harming the rights that are set within the ADRM and other ratified international law instruments.
28. As stated within this Request, the extraterritorial conduct of Enbridge creates an urgent situation presenting a risk of irreparable harm to the human rights of the Beneficiaries. Enbridge has not considered the risks that Line 5 poses and has continuously ignored warnings and pleas from experts and victims to shut the pipeline down. It is incumbent upon Canada to regulate Enbridge, including the decommissioning of Line 5, to prevent irreparable harm.
29. While the following section is structured to demonstrate the violations to specific rights under the ADRM, the Beneficiaries to this Request do not view these rights as distinct but rather deeply intertwined.

a. Canada’s ineffective regulation of Enbridge constitutes a grave risk to the right to health of the Beneficiaries

30. The Canadian government’s ineffective regulation of and support for Enbridge constitute a grave violation of its international obligation to respect the Beneficiaries’ right to health. Article 11 of the

⁴⁶ OHCHR, Human Rights Committee, *Basem Ahmed Issa Yassin et al v Canada*, CCPR/C/120/D/2285/2013, 26 July 2017, online: <juris.ohchr.org/casedetails/2316/en-US>.

⁴⁷ *Coard et al. v. United States*, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/Ser.L/V/II.106 doc. 6 rev. (1999).

⁴⁸ See e.g. OAS, Inter-American Commission on Human Rights, Resolution 90/2020, online (PDF): <oas.org/en/iachr/decisions/pdf/2020/90-20MC935-20-CU.pdf>.

ADRM provides that “every person has the right to the preservation of his health through sanitary and social measures relating to food...[and] housing...”.⁴⁹ As a State Party, Canada has a responsibility to respect this right.

31. Credible evidence suggests that Line 5 is a serious risk to the health of the communities that live on the shores of Lake Huron and Straits of Mackinac because an oil spill from Line 5 would pollute drinking water and harm animal and plant species—which Beneficiaries rely on for subsistence—and disrupt Beneficiaries’ homesites.⁵⁰
32. In particular, an oil spill into Lake Huron or the Straits would pollute the Great Lakes, which hold twenty percent of the world’s fresh water, and jeopardize access to drinking water for more than 48 million people, including Bay Mills Indian Community, Little River Band of Ottawa and Chippewa Indians, and Sault Ste. Marie Tribe of Chippewa Indians.⁵¹
33. A spill in Lake Huron or the Straits would also wipe out fisheries that have provided a food source to the Beneficiaries and remained at the heart of tribal way of life for millennia.⁵² This would significantly threaten the Beneficiaries’ food security. For example:
 - a. At least 150 families in the Little River community rely on fishing for subsistence.⁵³
 - b. Each year, Grand Traverse Band of Ottawa and Chippewa Indians issues approximately 45 subsistence fishing permits for the waters of the Great Lakes and tribe members depend on native fish, such as whitefish, for subsistence.⁵⁴

⁴⁹ Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948) at art 11.

⁵⁰ Affidavit, Jessica Lynn Steinberg at paras 18, 24, 28, 39, 46, 52; Affidavit, David M Arroyo at paras 6, 9, 21; Affidavit, Whitney Gravelle at paras 13, 16, 18.

⁵¹ Michigan Departments of Environment, Great Lakes, and Energy, *Michigan: State of the Great Lakes: 2022 Report*, (2020) at 3, online (PDF): <michigan.gov/egle/-/media/Project/Websites/egle/Documents/Reports/OGL/State-of-the-Great-Lakes/Report-2022-Standard.pdf>; Affidavit, Jessica Lynn Steinberg at paras 52-53; Affidavit, Austin Lowes at para 8.

⁵² 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” (14 October 2022) at 30-31, online (PDF): <earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf>; Charles E Cleland, *The Place of the Pike (Gnoozhekaaning): A History of the Bay Mills Indian Community* (University of Michigan Press, 2004) at 83; 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” (10 May 2021), online (PDF): <narf.org/nill/documents/20210510BayMills_banish_Enbridge.pdf>; Affidavit, Jessica Lynn Steinberg at paras 11, 27, 36, 54; Affidavit, Austin Lowes at paras 7, 12; Affidavit, Eric Paul Hemenway at para 16; Affidavit, Whitney Gravelle at paras 5, 13-14.

⁵³ Affidavit, Jessica Lynn Steinberg at para 24.

⁵⁴ Affidavit, David M Arroyo at paras 8, 21.

- c. Sault Ste. Marie Tribe of Chippewa Indians issues over 300 hundred subsistence fishing licenses annually.⁵⁵
34. As the Straits and Lake Huron are the Beneficiaries' treaty fishing territory—meaning the territory in which they have the right to fish based on treaty agreements with the government—they would not be able to switch to fishing in another area in the aftermath of a spill.⁵⁶ Therefore, if a spill were to occur, witness statements indicate that the Beneficiaries' community members would be forced to consume polluted dying fish, which would significantly harm their health. Notably, the fish consumed by the Beneficiaries' community members is already hazardous to their health, as they contain high levels of mercury and Per- and polyfluoroalkyl substances (PFAS).⁵⁷ Thus, a spill from Line 5 could make the situation more dire.⁵⁸
35. Community members from Little River and Sault Ste. Marie Tribe of Chippewa Indians also rely on food sources such as waterfowl and other wild animals that live on or drink from the Straits and Lake Huron, which would also be severely impacted by an oil spill.⁵⁹ In the event of a spill, these animals would become polluted by the oil. Even if it did not immediately kill the animal, the pollution would accumulate in their fatty tissue, causing a risk to the health of Beneficiaries who consume these animals over time.⁶⁰ The Beneficiaries would not be able to alter their hunting areas to regions with unpolluted game because they only have hunting rights within their traditional territories around the Straits and Lake Huron.⁶¹ Witness statements indicate that losing access to game due to oil pollution would impact the Beneficiaries' ability to feed themselves, thereby endangering their health.⁶²
36. A spill in Lake Huron or the Straits would also seriously threaten the beneficiaries' access to plants that grow along the shores of Lake Huron, as well as along rivers and the river flat connected to the Lake Huron watershed, because the plants would be impacted by impurities in the water.⁶³ The

⁵⁵ Affidavit, Austin Lowes at para 16.

⁵⁶ Treaty of Washington (28 March 1836), 7 Stat 491; Affidavit, Whitney Gravelle at paras 7-9; Affidavit, David M Arroyo at para 4.

⁵⁷ Nadia Barbo et al, "Locally caught freshwater fish across the United States are likely a significant source of exposure to PFOS and other perfluorinated compounds." (2023) 220 Environ Res, online: <pubmed.ncbi.nlm.nih.gov/36584847/>.

⁵⁸ See generally Affidavit, Mikaela Gabriel at paras 19, 28.

⁵⁹ Affidavit, Jessica Lynn Steinberg at para 28; Affidavit, Austin Lowes at para 16.

⁶⁰ Michigan Technological University, *Independent Risk Analysis for the Straits Pipelines*, (2018) at 200, 210, online (PDF): <hazmaton.org/wp-content/uploads/2022/01/Straits_Independent_Risk_Analysis_Final-1-1.pdf>.

⁶¹ Treaty of Washington (28 March 1836), 7 Stat 491.

⁶² *Ibid* at 139-40; Affidavit, Jessica Lynn Steinberg at para 28.

⁶³ Affidavit, Jessica Lynn Steinberg at paras 12,14; Affidavit, Austin Lowes at para 8.

Beneficiaries use these plants to enhance community members' health and provide sustenance.⁶⁴ As the Beneficiaries have harvested plants from these areas for centuries, switching to harvesting in another area in the aftermath of an oil spill would impair the Beneficiaries' ability to harvest because they would not be able to rely on intergenerational knowledge about the best places to harvest.⁶⁵

37. Grand Traverse Band of Ottawa and Chippewa Indians anticipate expanding the use of Mahnomin (wild rice) as a source of traditional food for its tribal members.⁶⁶ Mahnomin is a particularly sensitive plant that would be eradicated if an oil spill were to occur, seriously impacting the Beneficiaries' future food security.⁶⁷
38. The interconnections between food, water, and other human rights have been recognized by both Inter-American and United Nations (UN) bodies. The Inter-American Court has “referred in its jurisprudence to the obligation to guarantee access to and quality of water and food, indicating that these conditions have an acute impact on the right to a dignified existence and the basic conditions for the exercise of other human rights.”⁶⁸ The International Court of Justice and the UN Committee on Economic, Social and Cultural Rights have likewise recognized the right to water and food, as part of the right to an adequate standard of living.⁶⁹
39. The right to health under the ADRM also incorporates social measures related to housing.⁷⁰ A spill from Line 5 would disrupt, if not destroy, the ability of Grand Traverse Band of Ottawa and Chippewa Indians and Sault Ste. Marie Tribe of Chippewa Indians tribe members to maintain homesites on the shore of Lake Michigan and the Straits of Mackinac.⁷¹ Grand Traverse Band of Ottawa and Chippewa

⁶⁴ Affidavit, Jessica Lynn Steinberg at para 16; Affidavit, Whitney Gravelle at paras 16, 18.

⁶⁵ Affidavit, Whitney Gravelle at paras 13, 16-18.

⁶⁶ Affidavit, David M Arroyo at paras 12-13.

⁶⁷ *Ibid*; Affidavit, Whitney Gravelle at paras 16-17; 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” (14 October 2022) at 39-40, online (PDF): <earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf>; Bad River Tribe, “Kakagon and Bad River Sloughs Recognized as a Wetland of International Importance” (5 April 2012), online: <badriver-nsn.gov/kakagon-and-bad-river-sloughs-recognized-as-a-wetland-of-international-importance/>.

⁶⁸ OAS, Inter-American Commission on Human Rights, *Annual Report 2017* at 95, online (PDF): <oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf>.

⁶⁹ *International Court of Justice, Obligations of States in Respect of Climate Change* at para 393, online (PDF): <icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>; Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts 11 and 12 of the Covenant)*, E/C.12/2002/11 (20 January 2003), online: <[https://www.refworld.org/legal/general/cescr/2003/en/39347](http://www.refworld.org/legal/general/cescr/2003/en/39347)>.

⁷⁰ Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948) at art 11.

⁷¹ Affidavit, David M Arroyo at para 6; Affidavit, Austin Lowes at para 10.

Indians and Sault Ste. Marie Tribe of Chippewa Indians tribe members have generally lived in this region since the 1600s and have maintained homes along the shore since time immemorial.⁷²

40. An imminent oil spill from Line 5 into the Straits or Lake Huron also poses a serious threat to the Beneficiaries' mental health.⁷³ According to witness statements, many community members fear that they will no longer be able to live in their communities, feed their families, or continue their cultural practices in the event of an oil spill. Living with this fear has negatively affected their mental health.⁷⁴ Experts believe that this mental health crisis will only worsen in the aftermath of an oil spill. Negative mental health impacts would be caused by several factors, including the inability to connect to land and culture; dislocation; and health and economic worries.⁷⁵ In cases of previous environmental damage and harm, including oil spills, Indigenous community members were more likely to show clinical signs of depression as well as acute physical, emotional, spiritual, and mental health traumas due to the immediate ongoing harms of a spill, as well as conflict arising from the financial and logistical troubles that follow a spill.⁷⁶
41. This reinforces that the connection the Beneficiaries have with nature, water, and land is instrumental to their physical and mental health, which is reflected in traditional teachings that emphasize holistic beliefs and interdependency of the communities with nature.⁷⁷ The health impacts resulting from the urgent situation of Line 5 will continue until Canada properly regulates Enbridge and ensures that its operations do not continue to violate human rights.

b. Canada's ineffective regulation of Enbridge constitutes a grave risk to the right to life and personal security of the Beneficiaries

42. The Canadian government's obligations to respect ADRM rights includes an obligation to respect the right to life,⁷⁸ which is implicated where Line 5 impacts the rights to health and work.
43. In the case of environmental pollution, the Commission has held that the right to life is implicated when environmental pollution causes "serious physical illness, impairment and suffering on the part

⁷² Affidavit, David M Arroyo at para 6; Affidavit, Austin Lowes at paras 5, 10.

⁷³ Affidavit, Whitney Gravelle at para 21.

⁷⁴ *Ibid*; Affidavit, David M Arroyo at para 21.

⁷⁵ Affidavit, Mikaela Gabriel at para 23.

⁷⁶ *Ibid* at paras 14, 21, 23.

⁷⁷ *Ibid* at paras 7-8.

⁷⁸ Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948) at art 1.

of the local populace”.⁷⁹ Thus, failure to adequately uphold the right to health, leading to serious physical illness, violates Article 1 of the ADRM.

44. As set out above, credible evidence suggests that an oil spill from Line 5 would force the Beneficiaries’ community members to eat polluted and dying fish, fowl, and game.⁸⁰ This would result in the consumption of PAH compounds released by the oil spill and accumulated in the fatty tissue of animals and fish.⁸¹ These compounds pose a serious risk of physical illness to humans resulting in a violation of their right to life.⁸²
45. Additionally, the right to life can be regarded as intimately tied to the right to work, as earning a livelihood is gravely important for life itself.⁸³ Each year, Grand Traverse Band of Ottawa and Chippewa Indians issues approximately 15 commercial fishing permits for the waters of the Great Lakes.⁸⁴ Sault Ste. Marie Tribe of Chippewa Indians issues 67 commercial fishing licenses per year.⁸⁵ Over half of the households in the Bay Mills Indian Community rely on fishing for some or all of their income.⁸⁶ A spill from Line 5 would pollute or kill native fish that are a major source for commercial fishing activities. As stated above, the Straits and Lake Huron are designated as the Beneficiaries’ fishing territory by treaty, and as such they would not be able to switch to fishing in another area in the aftermath of a spill.⁸⁷ Therefore, the ability of tribal fishers to earn a living would be irreparably damaged.⁸⁸
46. Line 5 also poses a risk to the Beneficiaries’ right to security of the person under Article 1 of the ADRM. Line 5 has divided Indigenous communities, and those who resist the continued operation of the pipeline have been subjected to intimidation and threats. For example, one witness recounts being

⁷⁹ Earth Justice, “Global Warming & Human Rights Gets Hearing on the World Stage” (1 March 2007), online: <earthjustice.org/press/2007/global-warming-human-rights-gets-hearing-on-the-world-stage>.

⁸⁰ Affidavit, Jessica Lynn Steinberg at paras 46-47.

⁸¹ Michigan Technological University, *Independent Risk Analysis for the Straits Pipelines* (2018) at 139, online (PDF): <michigan.gov/psab/-/media/Project/Websites/psab/archive/media/Straits_Independent_Risk_Analysis_Final.pdf?rev=7ec49ca4abd847b4a2542fcd083674fe&hash=37C49779A2B68A3EB79B85CA42AC7B93>.

⁸² *Ibid* at 139-140.

⁸³ Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948) at art 14.

⁸⁴ Affidavit, David M Arroyo at para 8.

⁸⁵ Affidavit, Austin Lowes at para 16.

⁸⁶ Affidavit, Whitney Gravelle at paras 9, 14.

⁸⁷ Treaty of Washington (28 March 1836), 7 Stat 491; Affidavit, David M Arroyo at para 4; Affidavit, Whitney Gravelle at paras 7-9.

⁸⁸ Affidavit, David M Arroyo at para 21; Affidavit, Austin Lowes at para 16.

approached by Indigenous individuals associated with Enbridge who stated, “we don’t want this to be another Dakota Access Pipeline (DAPL), where our people are shot by rubber bullets, hosed with freezing water and tear gassed.”⁸⁹ This witness believes that this statement – drawing a parallel between Line 5 resistance efforts and protests against the DAPL, which resulted in hundreds of arrests and injuries of Indigenous protesters⁹⁰ – was made to intimidate the witness into not resisting Line 5.⁹¹

47. More recently, a group of fifty activists occupied the lobby of the Wisconsin Department of Natural Resources to protest the approval of a permit that would reroute part of Line 5 to a location upstream of the Bad River Band of the Lake Superior Tribe of Chippewa Indians (“Bad River Band”) reservation. The protest led to the arrest of at least one of the activists.⁹²
48. Such intimidation and protests reflect the heightened social conflict and personal insecurity generated by the continued operation of Line 5, and Canada has a responsibility to take measures to protect Beneficiaries’ right to security of the person through effective regulation of Enbridge.

c. Canada’s ineffective regulation of Enbridge constitutes a grave risk to the right to culture of the Beneficiaries

49. The Canadian government has an obligation to respect the right to culture under Article 13 of the ADRM, which provides that “Every person has the right to take part in the cultural life of the community...”⁹³ An imminent oil spill from Line 5 will seriously threaten the culture of the Beneficiaries.
50. As outlined above, an oil spill from Line 5 will seriously impact the water quality, and harm the plant and animal life around Lake Huron and the Straits of Mackinac. At the center of Beneficiaries’ culture and life is the reciprocal relationship they have with the environment, including the waters, animals,

⁸⁹ Affidavit, Jessica Lynn Steinberg at para 67. See also Sam Levin, “Dakota Access Pipeline: The who, what and why of the Standing Rock protests” *The Guardian*: online <theguardian.com/us-news/2016/nov/03/north-dakota-access-oil-pipeline-protests-explainer>.

⁹⁰ Shelia Hu, “The Dakota Access Pipeline: What You Need to Know,” *NRDC* (12 June 2024), online: <<https://www.nrdc.org/stories/dakota-access-pipeline-what-you-need-know>>.

⁹¹ Affidavit, Jessica Lynn Steinberg at para 68.

⁹² Henry Redman, “Activists Occupy Wisconsin DNR Offices to protest Line 5 pipeline permit approval,” *Michigan Advance* (14 January 2025), online: <<https://michiganadvance.com/briefs/activists-occupy-wisconsin-dnr-offices-to-protest-line-5-pipeline-permit-approval/>>.

⁹³ Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man* (1948) at art 13.

plants, and air.⁹⁴ This relationship would be irreversibly damaged if the plants and animals they rely upon are killed in an oil spill.⁹⁵

51. Witness statements demonstrate that the ability to collect plants, hunt and fish, and access the water in their traditional territories is an essential part of the beneficiaries' culture.⁹⁶ For example, the Bay Mills Indian Community uses Lake Whitefish and Lake Trout for naming ceremonies, feasting in celebration of children, ghost suppers, and burial ceremonies.⁹⁷ 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."⁹⁸ This right is so important that it was enshrined in treaties with the US.⁹⁹
52. Witness statements also demonstrate that Beneficiaries consider the fish, animals, and plants that reside within and around their communities to be their relations.¹⁰⁰ The Beneficiaries do not want to see their relations killed or leave the territory because of an oil spill from Line 5.¹⁰¹
53. Witnesses state that the ecosystem will be seriously affected by an oil spill, with critical habitats for fish, plants, and animal relatives being destroyed.¹⁰²
54. Sault Ste. Marie Tribe of Chippewa Indians have been leaders in restoring Mahnoomin (wild rice) beds, coastal marsh habitat along the St. Mary's river, and piloting an Adikameg (whitefish) stocking and rearing program to bolster the whitefish population.¹⁰³ Over the last 12 years, the Grand Traverse

⁹⁴ Affidavit, David M Arroyo at para 14; Affidavit, Jessica Lynn Steinberg at paras 29-32, 36-37; Affidavit, Austin Lowes at paras 3-4, 6-7, 17; Affidavit, Whitney Gravelle at para 12.

⁹⁵ Affidavit, David M Arroyo at para 21; Affidavit, Jessica Lynn Steinberg at para 32; Affidavit, Austin Lowes at paras 4, 12, 17-18.

⁹⁶ Affidavit, David M Arroyo at paras 14-24; Affidavit, Jessica Lynn Steinberg at paras 15, 18-19, 40; Affidavit, Austin Lowes at paras 7, 17; Affidavit, Whitney Gravelle at paras 11-12, 14-18.

⁹⁷ 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" (14 October 2022) at 3, online (PDF): <earthjustice.org/wp-content/uploads/bmic_scoping_comments_on_line_5_eis.pdf>; Affidavit, Whitney Gravelle at para 14.

⁹⁸ Charles E Cleland, *The Place of the Pike (Gnoozhekaaning): A History of the Bay Mills Indian Community* (University of Michigan Press, 2004) at 83; See also Bay Mills Indian Community, "Resolution No 21-05-10A: 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" (10 May 2021), online (PDF): <narf.org/nill/documents/20210510BayMills_banish_Enbridge.pdf>.

⁹⁹ "Letter to President Biden, Re: Administration Support for Michigan Tribal Nations and Governor Whitmer to Decommission the Enbridge Line 5 Pipeline" (4 November 2021), online (PDF): <baymills.org/_files/ugd/869f65_f8e5288d82084540a9f0e7d5d6c0921f.pdf>; See e.g. Treaty of Washington (28 March 1836), 7 Stat 491; Treaty with the Chippewa (1837), 7 Stat 536; Treaty with the Chippewa (1842), 7 Stat 591; See also *United States v Bouchard*, 464 F Supp 1316 at 1358 (WD Wis 1978).

¹⁰⁰ Affidavit, Jessica Lynn Steinberg at para 54.

¹⁰¹ *Ibid*; Affidavit, Austin Lowes at para 17.

¹⁰² Affidavit, Austin Lowes at para 18.

¹⁰³ *Ibid* at para 14.

Band of Ottawa and Chippewa Indians has undertaken significant wetland restoration and dam decommissioning to allow for the redevelopment of Mahnoomin beds and restoration of the wetland habitat.¹⁰⁴ These habitats and restoration efforts will be irreparably affected by an oil spill from Line 5 and will not recover in the lifetime of the current generation.¹⁰⁵ This violates the Beneficiaries' right to culture, because their culture is inextricably bound to the land. The Inter-American Court has recognized this vital connection between Indigenous Peoples, their traditional territories, and their culture:

[T]he close ties of Indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For Indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.¹⁰⁶

55. The shores alongside the Great Lakes and the Straits of Mackinac also present cultural significance as burial grounds.¹⁰⁷ Given the location of Line 5 and its proximity to these burial sites, a spill would harm or destroy the burial sites, causing harm to the communities to whom they belong.¹⁰⁸

V. THE PRECAUTIONARY MEASURES MUST BE ISSUED TO CANADA TO PROTECT BENEFICIARIES LIVING IN THE UNITED STATES

56. The Commission and the Inter-American Court have established that precautionary measures have a dual nature, one being protective and the other being precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. With regards to their precautionary nature, these measures have the purpose of preserving legal situations while the bodies of the Inter-American System analyze a petition or case.
57. The protective nature of a precautionary measure is to prevent harm from happening. The harm resulting from an oil spill from Line 5 will be instantly irreparable. The water will be immediately affected by an oil spill and will continue to spread without intervention.

¹⁰⁴ Affidavit, David M Arroyo at para 12.

¹⁰⁵ *Ibid*; Affidavit, Austin Lowes at paras 17-18.

¹⁰⁶ *Case of Mayagna (Sumo) Awas Tingni Community v Nicaragua, Merits, Reparations and Costs* (2001), Inter-Am Ct HR (Ser C) No 79 at para 55.

¹⁰⁷ Affidavit, Eric Paul Hemenway at paras 10-15.

¹⁰⁸ *Ibid*.

58. Precautionary measures are required to protect the Beneficiaries who are at risk of imminent harm that will occur when the Line 5 pipeline spills. The Beneficiaries are at risk of experiencing physical, economic, and mental insecurity, a lack of access to food and water, as well as significant threats to health, livelihood, welfare, and cultural and religious knowledge and practices.
59. Inadequate action by Canada regarding the risk posed by Line 5 will affect both Canada and the US, as the oil spill will spread across the transboundary waters and onto the shores. While this will necessarily affect every person and living being in both States who resides or relies on the Great Lakes waters, the Beneficiaries will experience the most devastating impacts of a catastrophic oil spill from Line 5.
- a. Canada is responsible for the integrity of Lake Huron and Canada's responsibilities extend to Beneficiaries living in the United States**
60. Although the Beneficiaries reside in the US, an oil spill within the Great Lakes falls within Canada's responsibility and prevention of such irreparable harm falls within Canada's control and authority.
61. In the case of a spill, the affected area—which begins in the Straits of Mackinac, where Line 5 currently remains unprotected—will spread into Lake Huron and Lake Michigan, as well as their connected waterways and shores. Canada and the US share the longest border in the world, with the province of Ontario sharing water-boundary borders with the states of Minnesota, Michigan, Ohio, Pennsylvania, and New York. The transnational boundary runs through Lake Huron, one of the major bodies of water that will be affected by a Line 5 oil spill.
62. Given the shared waters between Canada and the US, there is uncertainty over the exact borders within which a spill will take place and spread. The ever-changing waters and the water flows of the Straits of Mackinac have been heavily discussed by researchers, who have found that a spill will spread quickly and widely.¹⁰⁹ The oil will make its way past the borders within Lake Huron, and it will affect both Canada and the US regardless of where it began. The effects of an oil spill will be felt by people on both sides of the national border and will be irreparable and serious due to the shared waters. Inaction by Canada will mean the threat will persist and continuously seriously impact victims transnationally.
63. Bilateral agreements between Canada and US recognize the shared responsibility of the two States with respect to the Great Lakes. In 1909, the governments of Canada and the US signed the *Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising*

¹⁰⁹ See e.g. Affidavit, Eric Anderson at 2.

Between the United States and Canada (the “Boundary Waters Treaty”), which provides mechanisms for resolving any dispute over any waters bordering the US and Canada, mainly with respect to issues regarding water quality and quantity. This is due to the nature of ever-changing waters and the difficulty in determining the responsibilities arising from the invisible border and the water that flows between the two States.

64. The Boundary Waters Treaty was followed by *The Great Lakes Water Quality Agreement* (also known as The Great Lakes Water Quality Protocol of 2012, or “GLWQA”). The purpose of GLWQA is to restore and maintain the integrity of the waters of the Great Lakes, where both Canada and the US agreed to cooperate and collaborate as well as eliminate or reduce environmental threats to benefit the present and future generations of both States.¹¹⁰ The GLWQA acknowledges that the shared boundary waters of the lakes are something that will inherently affect both States and their citizens;¹¹¹ Article 3.1(b) of the GLWQA establishes that the objectives placed for the lake ecosystem are of binational responsibility with the exception of Lake Michigan, which the US has sole responsibility over under the circumstances of the agreement.¹¹²
65. Due to its geographical location, Lake Huron—including any ecological damage within it—remains the responsibility of both Canada and the US. Additionally, Lake Huron and Lake Michigan are hydrologically the same lake, meaning that any spill that happens in Lake Michigan will also impact Lake Huron. Thus, Canada will have a responsibility to remedy the damages that occur within and surrounding Lake Huron in the case of a Line 5 oil spill.
66. In addition to the obligations arising from bilateral arrangements governing shared waters, the transnational nature of Canada’s responsibilities – specifically to Indigenous peoples located outside Canada’s territorial borders – is also recognized within Canadian law. The Supreme Court of Canada has recognized that Indigenous groups located in the US may still be considered “Aboriginal peoples of Canada”, with their Aboriginal rights protected under the Canadian constitution.¹¹³ The Supreme Court explained that Indigenous groups residing outside of Canada enjoy such rights without having any additional requirements to prove their Aboriginal right because to do so:

... would place a higher burden on Aboriginal communities who seek to claim rights if the group moved, was forced to move, or was divided by the creation of an international border between

¹¹⁰ *The Great Lakes Water Quality Protocol of 2012*, US and Canada, 7 September 2012, at art 2.

¹¹¹ *The Great Lakes Water Quality Protocol of 2012*, US and Canada, 7 September 2012.

¹¹² *Ibid* at art 3.1(b).

¹¹³ *R v Desautel*, 2021 SCC 17 at paras 59-60.

Canada and the United States. It would risk defining Aboriginal rights “in a manner which excludes some of those the [Canadian constitution] was intended to protect” ... Moreover, it would raise myriad practical difficulties, such as which group within Canada has a say in the recognition of a claimant located outside Canada, ... which body can represent a collective residing in Canada ... and what happens if there is no related modern collective residing in Canada.¹¹⁴

67. Similarly, international law recognizes that environmental issues and Indigenous peoples’ rights, as well as States’ related obligations, stretch beyond borders. The Inter-American Court notes that “climate damage, is, by definition, transboundary damage because it does not remain within the territory of the State that contributes to its production; rather, and necessarily, it extends beyond its borders.”¹¹⁵ Moreover, in implementing the United Nations Declaration on the Rights of Indigenous Peoples, Canada itself recognized that “the rights and principles affirmed in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples *of the world*, and must be implemented in Canada”.¹¹⁶ Canada also reaffirmed its “solemn commitment to respect, promote and advance the rights of Indigenous peoples of the world”, not only in Canada.¹¹⁷
68. Thus, geographic borders ought not to be a barrier to issuing a precautionary measure to Canada for a potential Line 5 oil spill affecting the human rights of Indigenous communities residing in the US.

b. Canada is responsible for regulating the transnational activities of non-State actors within its jurisdiction and Canada must cease its support of Enbridge

69. As discussed above, Canada has a duty to protect the Beneficiaries from human rights abuse by third parties within its jurisdiction, which includes Enbridge. To date, Canada has taken no measures to decommission Line 5 to prevent a catastrophic oil spill by the aging pipeline. Canada has also failed to comply with the State duty to protect through its continued support of Enbridge, which it must cease to prevent irreparable harm to the Beneficiaries.
70. Notably, not only has Canada failed to adequately regulate Enbridge and address the urgent situation caused by Line 5, but the government has also actively subsidized the company. Export Development

¹¹⁴ *Ibid* at para 60.

¹¹⁵ Inter-American Court of Human Rights, *Advisory Opinion AO-32/25 of May 29, 2025* at para 295, online (PDF): <corteidh.or.cr/docs/opiniones/seriea_32_en.pdf>.

¹¹⁶ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, at preamble [emphasis added]. See also Government of Canada, *The United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan*, online (PDF): <justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf>.

¹¹⁷ *Ibid*.

Canada (“EDC”), a Canadian Crown corporation, has provided financing for Enbridge at least 44 times since 2001, including “working capital,” “support in relation to oil or gas transportation and storage,” and “financing renewals.”¹¹⁸ EDC provided Enbridge \$100-200 million in relation to oil or gas transportation and storage in the US in 2023, and renewed a \$200-300 million loan to Enbridge in July 2024.¹¹⁹

71. Such support for Enbridge from Canada runs contrary to recent advisory opinions on climate change issued by the ICJ and the Inter-American Court. The ICJ Advisory Opinion on the Obligation of States in Respect of Climate Change affirmed that States have binding obligations under customary international law to take preventative and precautionary measures to avoid significant harm to the environment, and emphasized that climate change and environmental degradation are inseparable from the protection of fundamental human rights.¹²⁰ The ICJ noted that climate protection has attained the status of obligations erga omnes, which means all States, including Canada, have an obligation to protect the climate system and other parts of the environment from anthropogenic GHG emissions.¹²¹ The ICJ specified that State failure to protect the climate system may include fossil fuel production and consumption, the granting of fossil fuel licenses, and the provision of fossil fuel subsidies.¹²²
72. Similarly, the Inter-American Court’s Advisory Opinion on Climate Emergency and Human Rights noted that States have binding obligations to prevent, reduce, and remedy harms of the climate crisis,¹²³ and underscored that environmental harm and climate change disproportionately affects Indigenous communities.¹²⁴ In such circumstances, States have an obligation to take progressive measures that reinforce the recognition of Indigenous self-government and autonomy and ensure respect for Indigenous consultation and free, prior and informed consent.¹²⁵
73. Canada has also actively intervened in support of Enbridge and the continued operation of Line 5 in legal proceedings. Canada’s position with respect to the purported primacy of the 1977 *Agreement*

¹¹⁸ Bay Mills Indian Community, *Re: Information on the Line 5 pipeline for consideration in EDC financing decisions regarding Enbridge Energy* (2024), online (PDF): <earthrights.org/wp-content/uploads/2024/09/Bay-Mills-EDC-Letter-Line-5.pdf>.

¹¹⁹ Bay Mills Indian Community, *Re: Information on the Line 5 pipeline for consideration in EDC financing decisions regarding Enbridge Energy* (2024), online (PDF): <earthrights.org/wp-content/uploads/2024/09/Bay-Mills-EDC-Letter-Line-5.pdf>.

¹²⁰ International Court of Justice, *Obligations of States in Respect of Climate Change* at paras 132-136, and 373, online (PDF): <icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

¹²¹ *Ibid* at para 440.

¹²² *Ibid* at para 427.

¹²³ Inter-American Court of Human Rights, *Advisory Opinion AO-32/25 of May 29, 2025* at paras. 227, 296, 540, and 541, online (PDF): <corteidh.or.cr/docs/opiniones/seriea_32_en.pdf>.

¹²⁴ *Ibid* at para 596.

¹²⁵ *Ibid* at paras 596, 606-610.

between the Government of the United States and the Government of Canada Concerning Transit Pipelines (the “Pipeline Treaty”) has been advanced in two separate lawsuits in the US concerning Line 5: Canada has filed *amicus curiae* briefs in *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.* (“the Wisconsin Litigation”), which is currently being appealed by Enbridge at the US Court of Appeals for the Seventh Circuit,¹²⁶ as well as litigation at the US District Court concerning the State of Michigan’s shutdown order of Line 5 due to the company’s numerous safety violations.¹²⁷ Canada’s intervention seeks to enforce the Pipeline Treaty at the cost of the Beneficiaries’ rights under the ADRM and fails to consider the State’s international obligations to protect human rights.

74. Specifically, in 2019, the Bad River Band sued Enbridge due to the company’s continued operation of Line 5 through parcels of the Bad River Band’s territory even after Enbridge’s easements for such parcels expired in 2013 and were not renewed. In June 2023, the US District Court for the Western District of Wisconsin held that Enbridge is “a conscious or willful trespasser” on the Bad River Band’s property,¹²⁸ and ordered Enbridge to decommission the stretch of Line 5 on the Bad River Band’s property, granting Enbridge up to three years to re-route the pipeline.¹²⁹
75. In response to the Wisconsin Litigation, Canada invoked the Pipeline Treaty—a bilateral treaty that limits either State’s ability to unilaterally close off the flow of hydrocarbons. Although the Pipeline Treaty, which lay dormant for nearly 50 years, has clear exceptions for environmental protection and other key governmental concerns (which would include protection of sovereign tribal rights),¹³⁰ Canada contended that the Pipeline Treaty overrides the US District Court’s decision in the Wisconsin Litigation.

¹²⁶ *State of Michigan et al v Enbridge Energy, Limited Partnership et al*, (WD Mich 2021) (Amicus Brief, Government of Canada), online (PDF): <canada.ca/content/dam/nrcan-rncan/documents/GOC%20Amicus%20-%20EN%20FINAL.pdf>.

¹²⁷ *State of Michigan et al v Enbridge Energy, Limited Partnership et al*, (WD Mich 2021) (Amicus Brief, Government of Canada), online (PDF): <canada.ca/content/dam/nrcan-rncan/documents/GOC%20Amicus%20-%20EN%20FINAL.pdf>; Government of Canada, “Statement by Minister O’Regan Regarding Line 5” (11 May 2021), online: <canada.ca/en/natural-resources-canada/news/2021/05/statement-by-minister-oregan-regarding-line-5.html>.

¹²⁸ *Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Rsrv. v. Enbridge Energy Co.*, No. 19-cv-602-wmc, 2023 U.S. Dist. LEXIS 105397, page *45 (W.D. Wis. June 16, 2023).

¹²⁹ *Id.* at pages *63-66.

¹³⁰ Governor Gretchen Whitmer, “Gov. Whitmer on Efforts to Protect the Great Lakes from Line 5 Oil Spill After Canada Invokes Treaty with United States” (4 October 2021), online: <michigan.gov/whitmer/news/press-releases/2021/10/04/gov--whitmer-on-efforts-to-protect-the-great-lakes-from-line-5-oil-spill-after-canada-invokes-treat>.

76. Meanwhile, after the Governor of Michigan revoked Enbridge’s easement for the segment of Line 5 running through the Straits of Mackinac, Canada’s advocacy intensified.¹³¹ In response to lawsuits in Michigan, Canada formally invoked a dispute resolution provision of the Pipeline Treaty and filed a letter and three briefs as *amicus curiae*, advocating for Enbridge to continue pipeline operations.¹³²
77. Canada and the US have engaged in at least three rounds of bilateral negotiations under the Pipeline Treaty.¹³³ However, there is no indication that these negotiations have considered the human rights situation of the Beneficiaries, as Sovereign Indigenous Nations have been excluded from the ongoing negotiations despite their requests to participate in negotiations that directly affect their rights.¹³⁴

VI. PRIOR REPORTING TO DOMESTIC AUTHORITIES

78. The Beneficiaries have brought the serious, urgent, and irreparable situation caused by the continued operation of Line 5 to the attention of the Canadian government through letters, domestic court cases, direct meetings, and submissions to international bodies.
79. For example, Beneficiaries have raised the serious, urgent, and irreparable situation brought about by the operation of Line 5 to the attention of the Canadian government through its meeting with a Canadian Deputy Consul during the 2023 UNPFII, and through a meeting with the Canadian UN Ambassador at the 2024 and 2025 UNPFII.¹³⁵
80. The Beneficiaries also made an Early Warning Urgent Action request to the Committee on the Elimination of Racial Discrimination (“CERD”), which has expressed concerns over reports of Canadian corporations impairing the rights of Indigenous Peoples outside of Canada.¹³⁶ In a letter to Canada, CERD expressed concern that the “continued operations of Line 5 and the risk of an oil spill

¹³¹ Native American Rights Fund, *Enbridge’s Line 5 Pipeline (Bay Mills Indian Community)*, online: <narf.org/cases/enbridges-line-5-pipeline/>.

¹³² Anishinabek Nation et al, “Canada’s Support for the Line 5 Crude Oil Pipeline” at para 26, online (PDF): <earthrights.org/wp-content/uploads/2023/04/2023_Canada-UPR_FINAL-APRIL-5.pdf>.

¹³³ Beth LeBlanc, U.S., Canadian delegates continue Line 5 treaty negotiations in D.C., THE DETROIT NEWS (19 April 2023), online: <detroitnews.com/story/news/local/michigan/2023/04/19/u-s-canada-delegates-continue-line-5-treaty-negotiations-in-d-c/70129795007/>.

¹³⁴ Letter to President Biden, Re: Administration Support for Michigan Tribal Nations and Governor Whitmer to Decommission the Enbridge Line 5 Pipeline (4 November 2021), online (PDF): <baymills.org/_files/ugd/869f65_f8e5288d82084540a9f0e7d5d6c0921f.pdf>.

¹³⁵ EarthRights International, “UN Permanent Forum on Indigenous Issues Calls for Canada and the US to Decommission Enbridge’s Line 5 Pipeline” (26 April 2024), online: <https://earthrights.org/media_release/un-permanent-forum-on-indigenous-issues-calls-for-canada-and-the-us-to-decommission-enbridges-line-5-pipeline/>.

¹³⁶ Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada*, 2007, UN Doc CERD/C/CAN/CO/18, at para 17; Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada*, 2012, UN Doc CERD/C/CAN/CO/19-20, at para 14.

could cause disproportionate harm to the Anishinaabe Indigenous Peoples, to their way of life and to the right to their lands, resources, culture, health, and could also cause their forced displacement”.¹³⁷

81. Additionally, Canada has been made aware of the serious situation created by the operation of Line 5 through comments from the UNPFII and the UN Special Rapporteur on the Rights of Indigenous Peoples. In 2024, the UNPFII brought the situation caused by Line 5 to the attention of the Canadian government when it stated that the pipeline poses a threat to the human rights of Indigenous Peoples in Canada and the US and recommended that Line 5 be decommissioned.¹³⁸ In 2025, the UNPFII once again called for Canada to “decommission the Enbridge Line 5 oil pipeline, which poses a real and credible threat to the Great Lakes and Indigenous Peoples.”¹³⁹ The Special Rapporteur on the Rights of Indigenous Peoples has also called on Canada to cease operation of Line 5 until free, prior and informed consent of the Indigenous Peoples affected is secured.¹⁴⁰ The Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation reiterated this recommendation.¹⁴¹

VII. PRECAUTIONARY MEASURES

82. Precautionary measures for the most seriously affected groups, namely the Bay Mills Indian Community, Little Traverse Bay Band, Sault Ste. Marie Tribe of Chippewa Indians, Grand Traverse Band of Ottawa and Chippewa Indians, and Little River Band of Ottawa and Chippewa Indians are required to avoid irreparable harm.
83. In this Request, entire Nations are named as Beneficiaries because they view themselves as holding the rights discussed above, collectively as a community, rather than each individual community member holding these rights separately. The Commission has previously granted precautionary measures on behalf of whole communities to protect its members who are in danger of suffering irreparable harm,¹⁴² and it is respectfully requested to do so here as well.

¹³⁷ Letter from Verene Shepherd, Chair, Committee on the Elimination of Racial Discrimination to H.E. Mrs. Leslie Norton, Permanent Representative of Canada to the United Nations Office, UN Doc CERD/EWUAP/111th Session/2023/MJ/CS/ks (8 December 2023).

¹³⁸ *United Nations Permanent Forum on Indigenous Issues, Report on the Twenty-Third Session* (15-26 April 2024).

¹³⁹ *United Nations Permanent Forum on Indigenous Issues, Report on the Twenty-Fourth Session* (21 April-2 May 2025) at para 12.

¹⁴⁰ U.N., Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31/Add.2 (24 July 2023) at para 96(i).

¹⁴¹ U.N., Visit to Canada: Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation, Pedro Arrojo Agudo, A/HRC/57/48/Add.1 (11 September 2024) at para 84.

¹⁴² Case of Persons of Haitian Origin and Dominicans of Haitian Descent v. Dominican Republic, Granting of Precautionary Measures, Inter-Am. Comm’n H. R., (22 November 1999); Case of La Granja, Ituango Municipality v. Colombia, Granting of

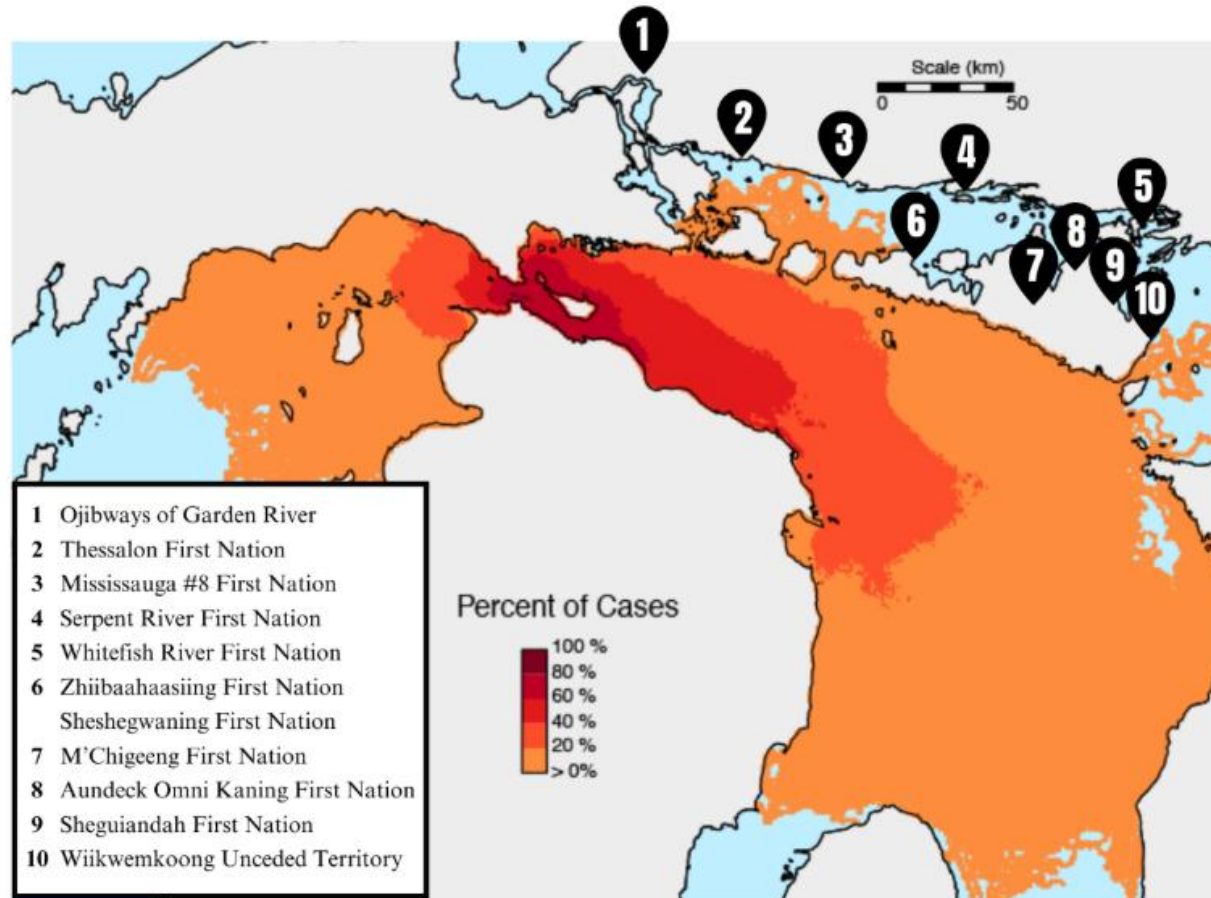
84. We respectfully request that the Commission order the Canadian government to:

- Withdraw its invocation of the Pipeline Treaty and its positions in US litigation opposing decommissioning Line 5;
- Cease all advocacy before US courts in support of Enbridge's operation of Line 5;
- Withdraw support from Line 5, both the pipeline and tunnel project, including subsidies to Enbridge;
- Regulate Enbridge and ensure the company does not cause or contribute to threats to human rights;
- Include members of the Beneficiaries in future Pipeline Treaty negotiations as an important step towards protecting the rights of the communities at risk.

Precautionary Measures, Inter-Am. Comm'n H. R., (5 September 2001); Case of National Association of Peasant and Indigenous Women v. Colombia, Granting of Precautionary Measures, Inter-Am. Comm'n H. R., (2 March 2001).

APPENDIX A

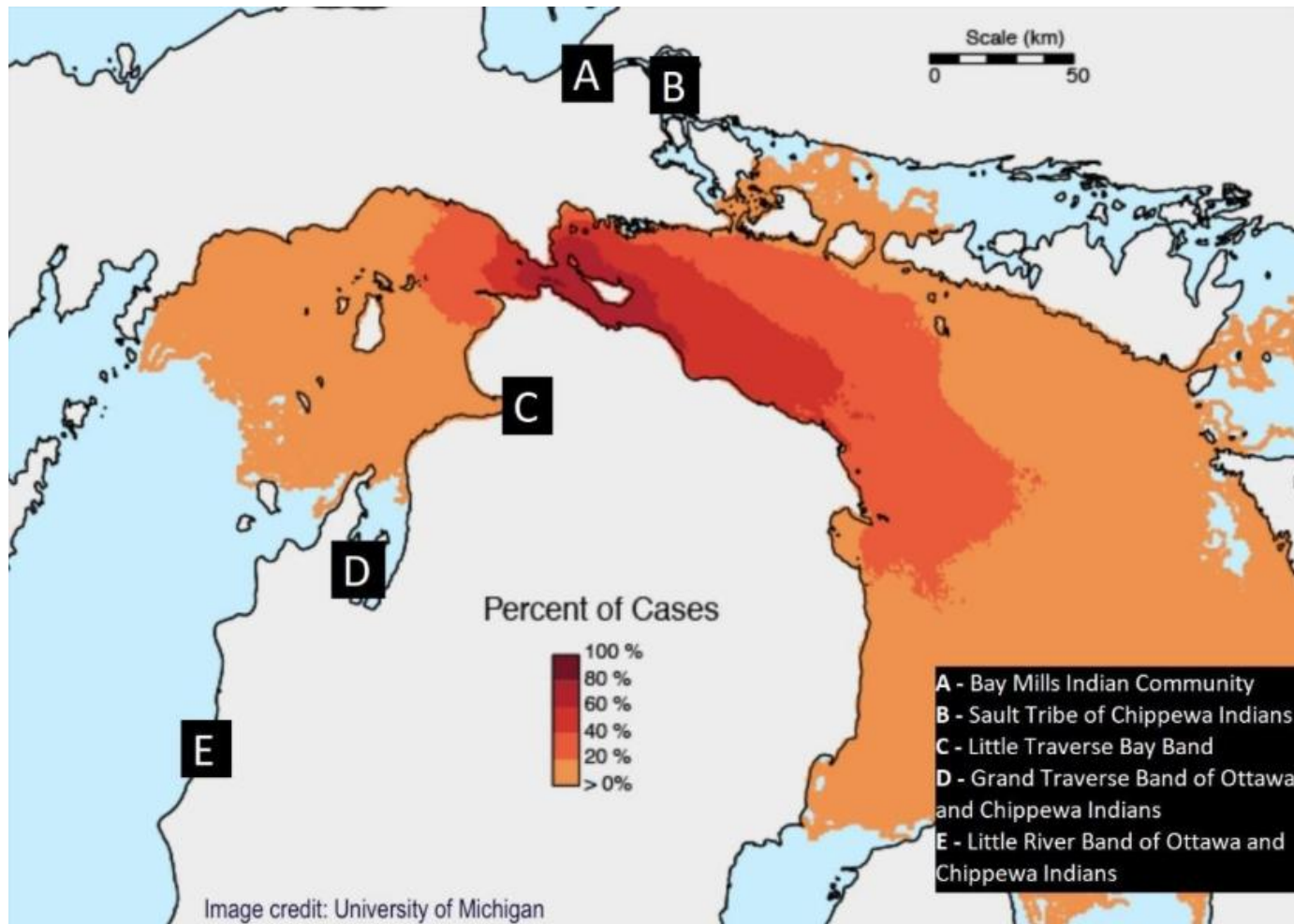
Map 1 – Proximity of Member First Nations in the Anishinabek Nation to a Spill from Line 5



Source: Graham Sustainability Institute, “Worst Case Oil Spill Straits of Mackinac,” online: <<https://graham.umich.edu/project/mackinac-oil-spill>>.

APPENDIX B

Map 2 – Proximity of US Tribal Nations to a Spill from Line 5



Source: Graham Sustainability Institute, “Worst Case Oil Spill Straits of Mackinac,” online: <<https://graham.umich.edu/project/mackinac-oil-spill>>.