

## **Self-Determination, Participation & Openness: Insights from Latin America to Canada's Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**

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### **Abstract:**

This policy brief analyses Canada's Action Plan 2023-2028 (Action Plan) under the lens of Indigenous self-determination as defined by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It assesses how Indigenous self-determination within the UNDRIP is not ontologically opposed to state sovereignty. Using Bolivia – the state with the largest Indigenous population in the Americas – as a comparative case study, it argues that effective Indigenous self-determination requires not only the implementation of Free, Prior, and Informed Consent (FPIC), but also a policy stance defined as Openness – the welcoming and active inclusion of Indigenous in the Canadian government institutional structure, both in formal advisory positions and as members of the workforce.

**Keywords:** UNDRIP, Canada Action Plan 2023-2028, State Sovereignty, FPIC, Indigenous self-determination, Participation, Openness

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Settler colonialism is not something that happened in the past but rather an ongoing structural process (Patrick Wolfe, 2006). It is a pervasive paradigm normalized through a series of apparently mundane societal practices, in what Rifkin (2013) called settler colonial common sense, which impacts how Indigenous people frame their existence and how non-Indigenous peoples (and state governments) see them. The UNDRIP must also be assessed as a process. Although often labelled as a “legally non-binding resolution”, it is important to stress that it is the result of a herculean effort of advocacy and cooperation between Indigenous peoples across the world. An effort that forced the United Nations (UN) to formally recognise its claims. More importantly, it underscores that Indigenous self-determination can operate within the state framework, including Canada.

### *Self-Determination, The UNDRIP, and Canada*

The UNDRIP acknowledges in its preface “...the fundamental importance of the right to self-determination of all peoples, by which they freely determine their political status and freely pursue their economic, social and cultural development” (UN, 2018, pp.5-6). This right is to be exercised within the context of international law (p.6) towards the “...harmonious and cooperative relations between the State and indigenous peoples” (idem). Article 3 affirms the right of self-determination so that Indigenous people can “...freely determine their political status and freely pursue their economic, social and cultural development” (p.8). Article 4 concludes that self-determination includes “...the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (idem). Articles 32 and 37 provide a framework to recognize and exercise those rights (pp.25-26).

The UN Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14, which incorporated the UNDRIP in Canada, mentions self-determination only in its Preamble (Government of Canada, 2024a). The Action Plan’s Chapter 1 provides the strongest

contribution as it recognizes the FPIC principles, which are part of the UNDRIP's Article 32 (Government of Canada, 2023; Rombouts, 2017; UN, 2018, pp.23-24).

### *Self-Determination: Participation & Openness*

Self-determination is a contentious topic because it is simplified in either one of two ways. It can be perceived as a threat to state sovereignty, as defined by international law and the UN, which has a historical tendency of not recognizing non-state entities vis-à-vis its state members (Ku & Yoo, 2013). A second and equally simplistic view equates it with some form of absolute veto power by Indigenous people against all forms of state legislation and policies (Rombouts, 2017). Traditional definitions equate it with secession rights, sovereignty claims, and some form of national security threat (Crosby & Monaghan, 2012; Midzain-Gobin, 2021; Rifkin, 2013). That is not how the concept is advanced in the UNDRIP, which refers to notions of autonomy, self-government, and control over land resources, but all within the state framework (Rombouts, 2017; UN, 2018). Attempts to define the UNDRIP outside of that frame are in fact illogical given the UN's institutional goals.

This policy brief proposes that self-determination should be approached through the lens of participation and openness. Participation speaks to the FPIC principles. The policy cycle process behind the UNDRIP itself is a perfect example of that. The UN worked directly with Indigenous nations and advocacy groups. Therefore, participation entails moving beyond legalistic notions that reduce it to some form of consultation, a formal step in a bureaucratic state-led process (Matsunaga, 2021). Fortuitously, the Action Plan points towards forms of participation with the capacity to preserve agency. See, for example, Point #32 (Government of Canada, 2023).

This leads to the idea of openness, which requires a paradigmatic shift. Participation is not enough to promote Indigeneity within the state framework, because it preserves the barriers that reproduce systemic structural injustices (Morgensen, 2011; Rifkin, 2013; Wolfe,

2006). It is necessary for the state not only to work with Indigenous people, but to be institutionally, administratively, and professionally open to them. Thus, the Action Plan should support the inclusion of Indigenous in the federal workforce. For example: Point #102 should have a broader approach (Government of Canada, 2023). While post-secondary education and skills training toward employment should be maintained, the federal government, unlike the private sector, is not limited to economic demand. Thus, Indigenous employment in the public sector should be one of the Plan's main priorities. This would not only provide training and skill development, which can later be transferred to the private sector, but also inclusion. Such a policy would act as positive feedback to other parts of the Plan, reinforcing change in the workforce culture and helping to reduce institutional barriers.

### *The Bolivian Case: Advances and Limitations*

Latin American countries, although not defined as settler colonial states like Canada, bear many of the same historical legacies. For instance, it is possible to find cases of forced assimilation, such as the missionary settlements established to "civilize" local Indigenous populations in what are today Argentina, Brazil, and Paraguay (Hellinger, 2020; Vanden & Prevost, 2021).

Bolivia is a relevant case study because it has the largest proportional Indigenous population in the Americas. In 2009, Bolivians enacted a new constitution reframing their country as a "Plurinational State" (Hellinger, 2020; Vanden & Prevost, 2021). Under the new constitution, Indigenous autonomy is expressively recognized. The Bolivian national legislative branch, equivalent to the Canadian Parliament, reserves seats for Indigenous nations' representatives. The constitution also established pathways through which Indigenous communities can acquire self-governance. This is a good example of how self-determination can be applied within the state framework. Indigenous territories that attain self-governance resemble municipalities in Canada. However, they have a higher degree of autonomy and discretion over the local government's

institutional design. Many Indigenous autonomous units have three branches: executive, legislative, and deliberative. The last one is a unique expression of Indigenous traditions based on community participation and direct participatory democracy. The deliberative branch works as an open popular assembly that meets regularly to discuss local issues and inform the other branches. Its role is both to legitimize the local political structure and to educate the population. However, its implementation faced challenges. For instance, the assemblies are voluntary and time-consuming, which makes it difficult for low-income segments of the population to participate (Tockman, Cameron, & Plata, 2015).

Bolivia's relevance lies in the issues that it encountered in adopting the UNDRIP. Two are of particular importance. First, the Bolivian constitution kept non-renewable natural resources with the national government (Tockman, Cameron, & Plata, 2015). This goes against the FPIC (Rombouts, 2017; UN, 2018). Second, there is evidence that one of the barriers to Indigenous self-determination lies in the national bureaucratic structure and workforce (Rice, 2017; Tockman, Cameron, & Plata, 2015). For instance, the Bolivian self-governance policies impose considerable costs and require interested communities to navigate complex policy pathways. Those issues derive not from the legislation, but from bureaucratic rules-making and workforce interaction, which lacks cultural training. This is a country where more than 50% of the population is Indigenous (Vanden & Prevost, 2021). Nunavut provides a similar parallel. Even though most of its population is Inuit, the majority of the government workforce is not (Rice, 2017). Thus, while training the public workforce is important, as exemplified by the Plan's Points #14-18, bringing Indigenous people inside that structure is crucial (Government of Canada, 2023). Policy benchmarks that prove the effectiveness of openness can already be found in Canadian municipalities with Aboriginal Advisory Committees and Indigenous liaison positions (Heritz, 2021).

*Conclusion: Promoting Substantive Self-Determination*

Self-determination is a process between Indigenous people and the state government. Its foundations are present in the Action Plan and elsewhere in Canada (Government of Canada, 2023; Heritz, 2021). While the Plan provides a starting framework when it comes to participation, it lacks in terms of openness. Therefore, openness is the critical point that should be considered in maintaining it as an “evergreen document” (Government of Canada, 2023). The Canadian government should encourage strategies and policies that bring Indigenous into the government workforce.

### *Policy Recommendations*

- The full adoption of the FPIC principles, as framed by the Action Plan. Nunavut provides a tentative template (Government of Canada, 2024b). Other possible benchmarks are the Tripartite Framework Agreements (Government of Canada, 2020; Government of Canada, 2024c).
- The creation of Indigenous Advisory Committees and/or Indigenous liaison positions in the federal structure; and
- The establishment of Indigenous training and employment target numbers across the federal workforce.

These recommendations can be implemented through a tiered approach, as some sectors demonstrate a higher need for Indigenous inclusion, due to historical/institutional reasons. For instance, pilot program could include Correctional Service of Canada, Crown-Indigenous Relations and Northern Affairs Canada, Environment and Climate Change Canada, Health Canada, Indigenous Services Canada, Justice Canada, Energy and Natural Resources of Canada, or the Royal Canadian Mounted Police (Government of Canada, 2023). Local indigenous populations can be used to set federal employment target numbers.

A thorough approach should account for all federal departments, agencies, and Crown Corporations, besides setting standards and practices to help provinces implement similar policies.

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