



# Forest Peoples Programme

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## **The UNFF fails indigenous peoples again**

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The seventh session of the United Nations Forum on Forests (UNFF7) was held from 16-27 April 2007, at UN headquarters in New York. After seven years of discussion within the UNFF (established in 2000) and five years of related discussions in the Intergovernmental Panel on Forests and Intergovernmental Forum on Forests, the UNFF has produced in this session a 'non-legally binding instrument on all types of forests' ("the instrument") and a multi-year programme of work that will end in 2015. These documents are damaging and regressive, failing to reference at any point the rights-based framework in which all international agreements are situated, and weakening existing gains in strengthening the link between human rights as a framework for action, and environmental challenges. In September 2004 we submitted a statement of concern to the UNFF outlining the serious risks posed by an instrument that did not comply with international human rights and best practice in environmental management. With this instrument, those fears have been realized<sup>1</sup>.

The instrument, as it has been adopted, fails to meet expectations because:

- It fails to stipulate that forest management should uphold international law, including HR law
- It fails to recognise, respect and support the implementation of customary rights of Indigenous Peoples and communities who live in and depend on forests, including the right to free, prior and informed consent for indigenous peoples for any activities affecting their traditional lands and resources
- It fails to address the underlying causes of deforestation and forest degradation, including the need for readjustment of financial flows and reduction of consumption;
- It fails to promote genuine community based forest management that empowers forest peoples
- It is inconsistent with the UN Declaration on the Rights of Indigenous Peoples
- It re-asserts, without qualification, the absolute nature of state sovereignty over natural forests
- It disregards consistent and clear guidance provided by indigenous peoples as a Major Group
- It fails to live up to the voluntary standards and proposed actions of the IPF and IFF

### **What do these two new documents mean?**

These two documents have been hailed by delegates to the 7<sup>th</sup> Session as milestones in the creation of international agreements on sustainable forest management. However both documents, and particularly the instrument, do not provide adequate or even partially adequate attention to the recommendations and input of indigenous peoples in international forest policy dialogue nor to internationally accepted standards for the protection of social and cultural aspects of forests.

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<sup>1</sup> To view the original text provided to the UNFF, please see  
[http://www.forestpeoples.org/documents/ifi\\_igo/unff\\_joint\\_stmnt\\_sept04\\_eng.shtml](http://www.forestpeoples.org/documents/ifi_igo/unff_joint_stmnt_sept04_eng.shtml)

Previous to the creation of this non-legally binding instrument and the associated work plan, the guiding documents of the UNFF's activities were the 'proposals for action' drafted and adopted during the IPF and IFF. Indigenous peoples engaged with the drafting of these, and managed to secure within them some mention of the key rights of indigenous peoples. These included secure land tenure, rights to access and manage traditional forest lands and protections for property rights over traditional forest related knowledge.

#### **Box 1: Some examples of IPF/IFF Proposals for Action**

“*Encouraged* countries, according to their national sovereignty...to develop, implement, monitor and evaluate national forest programmes, which include a wide range of approaches to sustainable forest management, taking into consideration the following:...recognition and respect for the customary and traditional rights of, *inter alia*, indigenous people and local communities; **secure land tenure arrangements**; holistic intersectoral and iterative approaches; ecosystem approaches that integrate the conservation of biological diversity with sustainable use of biological resources” (emphasis added)<sup>2</sup>

“*Invited* countries...to use national forest programmes...to involve indigenous and local communities and women to participate in the formulation and implementation of measures that aim to **protect their rights and privileges** in relation to forest lands, TFRK and forest biological resources” (as defined by the CBD)<sup>3</sup>

“*Encouraged* countries, within their respective legal frameworks...to **support land tenure policies** that recognize and respect legitimate access and use, and property rights in order to support SFM and investment, recognizing that institutionalizing tenure is a long-term and complex process which requires interim measures to address urgent needs, in particular of local and/or indigenous communities”<sup>4</sup>

However the proposals for action faced enormous difficulties with implementation<sup>5</sup>, and the creation of the new instrument and work plan now effectively supplants these PfA's with a new policy framework. The instrument references them only once, stating that the PfA's should be 'taken into account' under national policies and measures. As the new self-stated "framework for national action and international cooperation" it is important that the new instrument does not weaken hard-fought gains protecting the rights of indigenous peoples. Yet the documents do not reference the rights of indigenous peoples *at any point* nor do they even retain the existing commitments for tenure security previously contained in the PfAs.

#### **The UNFF as a multi-stakeholder platform?**

The UNFF is mandated, among other things, to "provide for continued policy development and dialogue among **governments, international organizations, and Major Groups, as identified in Agenda 21**, as well as to address forest issues and emerging areas of concern in a holistic, comprehensive and integrated manner". In other words, the mandate of the UNFF is to act as a multi-stakeholder platform for dialogue, not purely an inter-governmental discussion platform. Yet the

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<sup>2</sup> IA.17.a, Proposal for Action, Intergovernmental Panel on Forests

<sup>3</sup> II.D1.10, Proposal for Action, Intergovernmental Panel on Forests

<sup>4</sup> II.D.6.8.d, Proposal for Action, Intergovernmental Forum on Forests

<sup>5</sup> See, for detailed research, the International Alliance publications "Our Knowledge for Our Survival: Regional Case Studies on Traditional Forest Related Knowledge and the Implementation of Related International Commitments" and "Our Knowledge for Our Survival: National Case Studies on Traditional Forest Related Knowledge and the Implementation of Related International Commitments" available at: <http://www.international-alliance.org/publications.htm>

discussions at the most recent session were again a debate between state parties, with minimal space provided to multi-stakeholder parties, including indigenous peoples.

There are two key issues at stake in the results of the UNFF 7<sup>th</sup> Session: the distortions and weaknesses of both the instrument and the associated programme of work; and the problems surrounding the financial mechanism (the funding) which have yet to be resolved.

The instrument is a purely voluntary statement of principles and agreements with no associated financial provisions as yet. It is dependent entirely on the national legislation of each member country and as such it is difficult to see any added benefit that may be drawn from this additional agreed document, *even if the document was stronger* on the rights and responsibilities of indigenous peoples. Indeed the first two principles of the instrument underline these two facts and weaken any meaning that may be derived from the remainder of the instrument.

The emphasis on national legislation and national policies is also worrying. The Corobici Declaration, a collective statement formulated by indigenous peoples at a UNFF inter-sessional meeting in Costa Rica in 2004, states that "the greatest obstacles for the implementation of international standards and mechanisms related to the human rights and fundamental freedoms of indigenous peoples are the lack of political will of nation states, unfair and discriminatory laws, and the lack of sufficient funds and resources to allow the autonomous development and full participation of indigenous peoples in all processes."<sup>6</sup>

Given the weaknesses in the protections for indigenous rights provided for at national level in many countries, it becomes more urgent for international agreements to reference and site themselves within international human rights law. Yet as shown above, these instruments are sited solely within the framework of existing national legislation, with no mention of human rights nor of the need to ensure 'rights and privileges' of indigenous peoples are recognized or protected. The argument against a legally binding agreement, forwarded by many developing countries, is that it would weaken or undermine state sovereignty over the natural resources within their boundaries. The opposite position of strengthening state sovereignty is, however, put forward without any recognition of indigenous peoples' sovereignty over their own resources.

Instead the instrument takes national sovereignty to the opposing extreme, reassuring all government signatories that there is no extra-territorial commitments in forest management that could impinge on national sovereignty. Indeed, even the minimal provision of involving Major Groups in national forest policy dialogue was opposed in the 7<sup>th</sup> Session, although the text was finally retained. The lack of reference to international and regional agreements protecting indigenous peoples' rights means that these latest additions to the paper produce of the UNFF are regressive and damaging.

On a more general level, references to indigenous peoples are few and far between in the instrument, ostensibly one that took into account indigenous peoples' submissions to the Forum. Nowhere in the preamble to the instrument, the purpose, principles or global objectives are indigenous peoples mentioned, reflecting the low level of importance accorded to indigenous peoples' rights in the instrument and programme of work.

The primary principles that indigenous peoples have been advocating for inclusion in the UNFF discussions and outputs are the inalienable right to self-determination of all peoples, and the principle of free, prior and informed consent in any decision which could affect indigenous peoples' territories, lands, forests or control over the course of their own development.

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<sup>6</sup> *Corobici Declaration*, Indigenous Preparatory Meeting, Expert Meeting on Traditional Forest-Related Knowledge, 6-7 December 2004, San Jose, Costa Rica. PP 6 [http://www.international-alliance.org/tfrk\\_expert\\_meeting.htm](http://www.international-alliance.org/tfrk_expert_meeting.htm)

## **Box 2: The Corobici Declaration**

This declaration affirmed, *inter alia*

1. Indigenous peoples have the right to self-determination. We have legal and juridical systems based on our collective rights to our territories and natural resources, including subsoil resources.

2: The application of the principle of free and prior informed consent is fundamental in any decision which could affect our territories, lands, forests and development planning<sup>7</sup>.

The final issue discussed at great length with no conclusion in the 7<sup>th</sup> Session is the possible establishment of a financial mechanism for the implementation of the instrument and the associated programme of work. The wording of the final resolution, "to develop and consider, with a view for adoption at UNFF8, a voluntary global financial mechanism / portfolio approach / forest financing framework" clearly reflects the lack of agreement reached in the Session itself.

Key issues to watch out for in the development of this financial mechanism (in whatever form) over the next year prior to UNFF8 will be where the funds are to be situated, under the oversight of which agency or organization. Financial resources for environment-related work are significant already, with the Global Environment Facility, the Collaborative Partnership on Forests, the controversial World Bank proposal for the Global Forest Alliance and many others competing for donor funds and government commitments. Further mechanisms or funds may only serve to increase this fracturing of available resources.

In addition to the large number of funding mechanisms of various forms already in existence, the creation of a new fund now would have the net effect of taking limited resources away from other, more socially inclusive and rights-cognizant funds. Without a significant improvement in the instrument and the programme of work, any financial mechanism will be a waste of funds – and there is no change likely to the adopted text.

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<sup>7</sup> *Corobici Declaration*, Indigenous Preparatory Meeting, Expert Meeting on Traditional Forest-Related Knowledge, 6-7 December 2004, San Jose, Costa Rica. PP 6 [http://www.international-alliance.org/tfrk\\_expert\\_meeting.htm](http://www.international-alliance.org/tfrk_expert_meeting.htm)