

***Oral Statement of Indonesia Focal Point to The First Session of The Open-ended
Intergovernmental Working Group on TNCs and Other Business Enterprises With Respect
To Human Rights - Panel V, July 8, 2015***

Excellency Madam Chair,

My name is Wensislaus Fatubun, Papuan Indigenous human rights defender, from International NGO Forum on Indonesian Development (INFID). This statement is supported by Indonesian Focal Point on Legally Binding Treaty Initiative and Fransiscans International. And we are also part of Treaty Alliance and Global Campaign to Dismantle Corporate Power.

We welcome the position of the Government of Indonesia who voted in favor of the resolution 26/9 on the process of the treaty. We also recognize its effort to have dialogue with civil society, we remain critical on its policy on development project in Papua which fails to protect the human rights of the indigenous Papuans

In 2010, the government launched a program of food development and large-scale energy, called MIFEE (Merauke Integrated Food and Energy Estate) in Merauke, southern part of the province of Papua. The government allocated land and forest area of 2.5 million hectares for mega development projects in food and energy, based on large capital corporations, plant export commodities, modern technology. Increasingly, big companies (Transnational Corporations) are interested in investments, such as Korindo Group, LG Internasional, Daewoo Internasional, Wilmar Internasional. They controlled the indigenous people land. To date, there were 36 companies that obtain " permit of location" covering an area of 1,586,979 hectares.

On acquiring the land, those companies employs different ways which could enforce an issue of "legal" establishment, and imposing manipulation and confiscation against local peoples. It is estimated that more than 50,000 people, including people of Malind and of Yeinan, indigenous people of Papua in coastal area and in inland Merauke. They affected and threatened directly of those giant project. The biggest threat is public loss of rights and access to land, loss of livelihood and important living place, damage and loss of ecological environment and the destruction of social and cultural life. Social and political situation experienced by Papuans indigenous are still poor, marked by limitations and lack of freedom in the opinion and association, the violence out of court with the involvement of military personnel military/police, intimidation, manipulation and restriction of information is still happening. The operation of transnational corporations in MIFEE impose a redefinition of law, with limit which can only be exercised by themselves.

The transnational corporations domination are capable of affecting the creation of global and national economic model of development which eventually resulted in the unequal development system through the model of the structure of international relations that create human rights violations at the national level. In the past, Transnational Corporations creates colonialism, followed later, developmentalism in the post-colonial era, and now creating a neo liberalism. Creation of a model of economic development that in turn leads to a capital violence on Human Rights.

However, in the development of the economic model of the 21st century, due to the formation pattern of relations in international law which encourage the harmonization of the laws and regulations of national legislation with international treaties that want to ensure the provision of market access and investment protection of transnational corporations, have led to the loss of state responsibility in upholding human rights protection.

Referred to the statement of UN Experts published On June, 2015, related to the adverse impact of free trade agreements and international investment towards human rights⁵: "They state that FTAs and Investment Protection Agreements have an impact on the deterioration on the

promotion and protection of human rights. Even FTAs and investment protection agreement also negatively affect the democratic system of international order and justice. And undoubtedly, they also mentioned that the existing dispute resolution mechanisms in bilateral investment treaties and FTAs have raised the risk of the regulatory function of the State to protect Human Rights. The Experience of Investor-State Dispute Settlement (ISDS) demonstrates that the regulatory function of many States and their ability to legislate in the public interest have been put at risk.

Regarding to the obligation of the State to guarantee the respect of Human Rights by TNCs:

- 1. States must ensure that all forms of policies, laws, and legislation has already contained provisions on human rights protection.**
- 2. States must ensure the national economic development plan do not violate Human Rights of the people, particularly the indigeneous people.**
- 3. States must ensure that trade and investment agreements do not constrain their ability to meet their human rights obligations.**
- 4. State must ensure that there is continuous dialogue with all state holders and the affected communities, including indigenous peoples, in any development projects.**
- 5. State should willingly and ably perform their duty to promote and protect human rights.**
- 6. Within the framework of Vienna Convention on Law on Treaties, state should develop an international framework for national and extraterritorial obligation.**

Thank you Madam Chair.