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FIAN INTERNATIONAL
FOR THE RIGHT TO FOOD & NUTRITION



Joint Oral Statement

Sixth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)

Thank you Mister Chairperson, this statement is on behalf of FI, FIAN, FIDH, ESCR-Net and CIDSE.

Article 12 Mutual Legal Assistance and International Judicial Cooperation

First, we support the suggestion made by Panama regarding adding a provision to also consider cases where States are not party to the LBI, similar to what is in Article 87(5)(a) of the Rome Statute of the International Criminal Court. Under this particular article of the draft, it seems to be a very interesting and useful proposal.

We also suggest adding language in regards to mutual assistance and cooperation with other entities, such as international organizations or agencies within the European Union for example.

In regards to Article 12(4)(b), there should be a more explicit obligation on States to prosecute if they do not extradite. This would be in line with the principle of “aut dedere aut judicare.”

We note that language from the previous draft on “*ordre public*” (previously under Article 10.3) has been improved. However, we note our concern in regards to Article 12(9)(c), where recognition and enforcement may be refused if contrary to the *ordre public*; this exception may be especially problematic in regards to state-owned enterprises.

It is unclear as to why certain human rights abuses would not be covered by the treaty, as under Article 12(10)(a).

We also note that Article 12(10)(b) seems to be inconsistent with Article 7(2). States must not withhold information key to corporate accountability. In other words, we are concerned that according to this article, the second revised draft LBI allows States to refuse to provide necessary legal assistance to initiate and carry out effective, prompt, thorough and impartial investigations, prosecutions, judicial and other criminal, civil or administrative proceedings in relation to all claims covered by the LBI, including access to information and supply of all evidence at their disposal that is relevant for the proceedings. **This provision should be removed**, as it is contrary to the duty to protect and fulfil the right to information.