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By Fax and Email

Tuesday, 8th of August 2006
Cordoba, Argentina.

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And

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Request for Environmental Information concerning the Nordic Investment Bank's Involvement in Uruguayan Pulp Projects

The Center for Human Rights and the Environment (CEDHA) is a legal person based in Cordoba, Argentina, and has been the legal representative of the persons affected by the Botnia and ENCE pulp mill projects on the River Uruguay.

The Nordic Investment Bank (NIB) is named as a risk sharing partner by Metsä Finance, Botnia's financial operation,¹ and is similarly named as a collaborating finance arranger by Nordea Bank, the mandated lead arranger of external finance for the Botnia project in Uruguay.² On the 2nd of August 2006, the Nordic Investment Bank announced the signing of a contractual framework with Uruguay indicating its intentions to finance projects located in Uruguay.³

The government of Finland, as a shareholder of NIB,⁴ and as a ratified party to the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, is requested to supply information pertaining to involvement in the project(s), and the past, present or anticipated future provision of any type of loans, technical, or financial assistance for the Orion Pulp Mill sponsored by Botnia of Finland and/or the Celulosas de M'Bopicuá pulp mill sponsored by ENCE of Spain. It is important to stress that while these projects are physically located in Uruguay, they are situated on the Uruguay River which is a shared natural resource and constitutes the international border with Argentina, and as such its use is subject to a bilateral treaty between both countries. In their present location, the projects' direct zone of influence includes 50% of territories in Argentina.

The following information is requested:

- A) What is Finland's position regarding the provision of support, financial or otherwise, to projects with a high risk of producing environmental degradation and/or cause human rights violations?**
- B) What is Finland's position regarding the provision of support, financial or otherwise, to the Botnia and/or ENCE projects, both of which may produce environmental degradation and contribute to human rights violations, and are cited in submissions currently under consideration by regional and international tribunals, as well as international financial institution access to justice mechanisms?⁵**
- C) Is the Nordic Investment Bank involved in any form, be it financial or otherwise, in the Orion Pulp Mill (Botnia) and/or the Celulosas M'Bopicuá Pulp Mill (ENCE)? Involvement refers to a previous or continuous relationship with either or both companies, including a speculative relationship which may be under consideration.**

In the case a positive response to Request C, CEDHA requests Finland provide the following information with respect to the Nordic Investment Bank and the Uruguayan projects:

- 1) The nature of the transaction(s), amounts to be financed or allotted to these projects;
- 2) The structure of the loan(s), such as a direct or syndicated loan;
- 3) The type of loan(s), such as project finance or corporate loan;
- 4) The actual or likely terms and conditions of each loan;
- 5) Internal NIB documentation that shows environmental and social risk assessment, ongoing or otherwise, and the NIB's conclusions of the risk assessment;
- 6) Documentation concerning NIB's promotion and realization of public participation in the decision-making process relating specifically to these projects under relevant provisions of the Aarhus Convention;

¹ Ville Jaakkonsalo, 'Project Orion: Funding a Pulp Mill Investment in Uruguay,' Metsä Group Financial Services Oy, presented at the Latin American Paper Industry Conference 2005, slide 6.

² Mikko Piili, 'Export and Project Finance: Project Finance in Latin America, Helsinki, 24th of August 2005', Nordea Bank, presented at the Latin American Paper Industry Conference 2005, slide 6.

³ NIB Press Release, 2 August 2006, <http://www.nib.int/annen/1154500778.html>

⁴ <http://www.nib.int/en/index.html>

⁵ For example, see cases under consideration by the Inter-American Commission on Human Rights, International Court of Justice and dealt with by the International Finance Corporation's Compliance Advisor Ombudsman.

- 7) Information provided to NIB by the public as a result of public participation and NIB's assessment of this information;
- 8) Contracts between NIB and the project sponsors or government of Uruguay regarding these projects, or parts thereof obliged to be supplied under the Aarhus Convention;
- 9) Any and all evidence concerning demands or conditions imposed by NIB or by any of the private companies on Uruguayan legislation reforms as preconditions for investments;
- 10) Any and all evidence showing that NIB has properly conducted environmental, social and economic risk assessment of the project;
- 11) Any and all evidence that illustrates NIB's compliance with its own environmental policy (please address each point of NIB's environmental policy separately and show how these have been complied);
- 12) Any and all evidence showing that NIB has internally assessed the project for compliance of EU Directive 2003/35/CE Article 2 regarding public participation, 1996/61/CE which concerns Integrated Pollution Prevention and Control and 'Best Available Techniques', and 2003/4/EC referring to access to environmental information;
- 13) Any and all evidence showing that NIB has internally reviewed project cost-benefit or other economic analyses and assumptions, particularly regarding siting and no-project alternatives;
- 14) Any and all evidence showing that NIB has internally reviewed existing company contracts with the Government of Uruguay to determine that these are in compliance with environmental assessment procedures and that they uphold NIB regulations, as well as EU law and regulations;
- 15) Any and all evidence showing that NIB has internally reviewed compliance of this project with established international bilateral law between Argentina and Uruguay, particularly as pertains to the Uruguay River Treaty established to project the international waterway to be contaminated by the mills;
- 16) Any and all evidence showing that NIB has reviewed, and is in agreement with, project sponsors on the use of the technology chosen, particularly as concerns the use Elemental-Chlorine Free (ECF) technology; and
- 17) Any and all evidence showing that NIB has internally reviewed project compliance with the European Principles for the Environment, especially with regard to European Directives that take into account Best Available Techniques (IPPC) and Environmental Assessment Procedures;

CEDHA's Right to Request Environmental Information

CEDHA's main objective is the promotion and protection of the environment and human rights and is legally in compliance with national law. CEDHA has been the legal representative for the 40,000 members of the People's Assembly of Gualeguaychu, filing complaints under national and international law as well as to the IFC Compliance Advisory Ombudsman concerning the negative social, economic, and environmental impacts.

In the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), the "**public concerned**" is defined as the public having an interest in the environmental decision-making process, and for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting requirements under national law shall be deemed to have an interest.

Finland, as an owner of the NIB and as a ratified party to the Aarhus Convention, is obliged to comply with provisions of the Convention and European Union Directive on *Public Access to Environmental Information* 2003/4/EC, as well as with the Government's own policies on access to information. Under these circumstances, CEDHA requests Finland furnish the information related to the projects mentioned above.

Obligations relative to the Aarhus Convention

Finland has signed the Aarhus Convention 25 June, 1998 and ratified it on 1st of September 2004. Along with the obligation to comply with all the provision of Aarhus Convention, Finland must ensure that its public authorities possess and update environmental information related to their activities (art. 5. 1-a), and when Finland, through its state-owned Nordic Investment Bank, is financing this project, it has the obligation to disclose the environmental information related to the case. Where the public authority does not hold the environmental information requested, Article 4.5 of the Aarhus Convention compels the public authority to obtain it and inform the applicant as quickly as possible.

The applicants stress that Article 4.6 of the Aarhus Convention applies to any documentation that includes information requested and covered by the convention, and impels that governments furnish relevant sections of documents pertaining to the information requested that otherwise may be covered by the exclusions. The requested institution is kindly asked to assess all documentation, confidential or otherwise, to ensure that those parts covered by the Aarhus Convention will be supplied to the applicants with, according to Article 4.4, a restrictive interpretation placed on grounds for refusal.

The five Nordic countries and three Baltic countries that own the Nordic Investment Bank have all signed the Aarhus Convention, and all have ratified the Convention apart from Iceland which is a signatory, and Denmark who have approved the Convention. It is brought to the attention of the respondents that countries which have signed but not yet ratified the Convention must not act in a manner contrary to the agreement in accordance to provisions of the *Vienna Convention on the Law of Treaties*. Consequently, 100% of NIB's funds are owned and controlled by institutions obliged to comply with the Aarhus Convention. Likewise, NIB's actions can be attributed to the owners subject to these obligations.

If NIB were not to concede this request, Aarhus nation states' will avoid compliance with the Aarhus Convention by hiding behind a supranational entity, thereby contravening the spirit of the Convention and obstructing the course of justice, so that the respondents avoid the governmental responsibility to promote transparency and accountability.

European Principles for the Environment

NIB has recently acceded to the European Principles for the Environment (EPE) which consist of the guiding environmental principles enshrined in the EC Treaty and the project-specific practices and standards incorporated in EU secondary legislation. Accordingly NIB, like the European Community, is bound by the Aarhus Convention, which is also broadly reflected in the European Directives and relevant legislation determining 'Best Available Techniques' and standards for environmental impact assessment and public consultation.

Obligations in relation to European Directives

As per European Directive on Public Access to Environmental Information 2003/4/EC the Finnish Government and NIB are to comply with accessibility provisions concerning environmental information. CEDHA, having the status of a legal person requesting environmental information has the right to access this information under the European Directive. The information requested comes under the definition and outside of the exceptions of Environmental Information as defined by the directive.

NIB shareholder countries are asked in Request C (12) to assess compliance of the project with European standards on public participation for projects (2003/35/CE) and 'Best Available Techniques' contemplated by Integrated Pollution Prevention and Control (1996/61/EC).

The application of European law to environmental information held or obtainable by governments concerning the actions of the NIB follows reasoning similar to the application of the Aarhus Convention in this situation, such that if the respondents and NIB were not to comply with European directives, it would provide a loophole to avoid European law contrary to government and institutional responsibility for 100% public entity.

Obligations under Finnish Law

The Act on the *Openness of Government Activities 1999* extends to enterprises owned by the state or that carry out government mandates such as NIB. The main principle under Finnish law is that everybody has access to documents in the public domain and secrecy is the exception. This right is protected by the *Finnish Constitution*. Access may thus not be restricted without a lawful reason or more than necessary for the interest being protected. The information sought does not come under the categories of secret information provided by the act.

Relative to other Obligations under International Law

Finland and other NIB state-owners should also note the Inter-American Commission on Human Rights has received a submission that alleges the Republic of Uruguay non-compliance with Organization of American States (OAS) regional human rights treaties, international law that closely reflects broader international treaties and conventions. As Finland is no doubt aware, nations have higher compared to multinational enterprises such as Botnia, such that as part owner of NIB and conscious of the potential human rights breaches by the proposed project, Finland should ensure that their actions or omissions will not provide practical assistance, encouragement, or moral support, which will have substantial effect on the perpetration of human rights violations. Further, Article 2 of the ICESCR obliges state parties to effect the realization of economic, social and cultural rights like Article 12, the right to health (which embodies the right to a healthy environment) not only within that state itself, but on an extra-territorial basis.

Form of information requested

The information requested pertains to the pulp mill projects in Uruguay including all forms of information considered by the appropriate legislation. The Finnish Government is obliged to provide information, including any form of communication or correspondence about the pulp mill, and parties may include the Government of Uruguay, the Nordic Investment Bank and its business partners. Information can be all or part of the document in question. The information requested concerns information in written, visual, aural, electronic or any other material form. Information is to be supplied in digital or written format, or in any other format and corresponding to time requirements established by the applicable legal instruments.

When responding to this request, CEDHA respectfully asks that each point of the request be addressed separately by the respondents, with reasons given explaining why the documentation supplied adequately responds to each of the points request A, B and C including points 1 to 17. Further, the respondents are kindly requested not to send printed duplicates of digital information that could be easily sent in electronic format. When responding to this request, please address all electronic correspondence to David Barnden (david@cedha.org.ar) and Victor Ricco (victor@cedha.org.ar). Physical items can be sent by mail to Centro de Derechos Humanos y Ambiente (CEDHA), General Paz 186, 10A, Cordoba 5000, Argentina.

The Government of Finland is notified that the applicants have simultaneously requested the same from the NIB and remaining NIB government owners. They are Denmark, Estonia, Iceland, Latvia, Lithuania, Norway and Sweden. With regard to request C including points 1 to 17, it is suggested that institutions

collaborate to avoid the unnecessary waste of resources and duplication of physical documents provided to the applicant. Each country is however, bound by their own national laws to which they must adhere.

The Finnish Government is kindly asked to notify CEDHA upon receipt of this request.

Sincerely,

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