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By Fax and Email

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Request for Environmental Information concerning the Nordea 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.

Oy-Metsä Botnia (Botnia) has publicly confirmed that Nordea Bank will act as one of two main arranging banks to secure external finance for Botnia's pulp mill project in Uruguay.¹

The Government of Sweden, is the largest shareholder in Nordea Bank, responsible for 19% of the bank² and as a ratified party to the *Aarhus Convention*

¹ Nordea ja (sic) Calyon are the main arranging banks for Botnia's pulp mill project in Uruguay, Botnia Press Release, 28-04-06, <http://www.metsabotnia.com/en/default.asp?path=204,208,210,211,1097,1261>

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, 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. It is important to stress that while these projects are physically located in Uruguay, they are situated on the Uruguay River which 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 Sweden'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) Does the Swedish Government take an interest in projects financed by Nordea that may have adverse environmental impacts or cause human rights violations?**
- C) What are the options available to the Swedish Government to influence Nordea's decisions concerning project-finance or any other support for projects with potential negative environmental impacts or human rights breaches?**
- D) What role does the Swedish Government play with respect to Nordea's decisions concerning project-finance or any other support for projects with potential negative environmental impacts or human rights breaches?**
- E) What is Sweden's position regarding the provision of support, financial or otherwise, to the Botnia project via Nordea Bank AB, 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?³**
- F) Does the Swedish Government consider it adequately exercises its ownership rights in Nordea Bank to ensure the bank's compliance with its own human rights and corporate social responsibility obligations concerning support for projects that may have adverse environmental impacts?**
- G) The following information is requested from Sweden concerning Nordea Bank's involvement, be it a previous, continuing or speculative relationship which may be under consideration, with the Botnia Orion pulp project in Uruguay:**
 - 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 Nordea Bank documentation that shows environmental and social risk assessment, ongoing or otherwise, and Nordea Bank's conclusions of the risk assessment;
 - 6) Documentation concerning Nordea Bank's promotion and realization of public participation in the decision-making process relating specifically to these projects;

² <http://www.nib.int/en/index.html>

³ 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 Nordea Bank by the public as a result of public participation and Nordea Bank's assessment of this information;
- 8) Contracts between Nordea Bank and the project sponsors or government of Uruguay regarding the project, or parts thereof obliged to be supplied under the Aarhus Convention;
- 9) Any and all evidence concerning demands or conditions imposed by Nordea Bank or by any of the private companies on Uruguayan legislation reforms as preconditions for investments;
- 10) Any and all evidence showing that Nordea Bank has properly conducted environmental, social and economic risk assessment of the project;
- 11) Any and all evidence that illustrates Nordea Bank's compliance with its own environmental policy (please address each point of Nordea Bank'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 Nordea Bank 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 Nordea Bank 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 Nordea Bank regulations, as well as EU law and regulations;
- 15) Any and all evidence showing that Nordea Bank 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; and
- 16) Any and all evidence showing that Nordea Bank 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.

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 Gualaguaychu, filing complaints under national and international law as well as to the International Finance Corporation's Compliance Advisor 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.

Obligations in Relation to the Aarhus Convention

Sweden has signed the Aarhus Convention 25 June, 1998 and ratified it on 20th of May 2005. Along with the obligation to comply with all the provision of *Aarhus Convention*, Sweden must ensure that its public authorities possess and update environmental information related to their activities (art. 5. 1-a), and when Sweden, through its state-owned Nordea 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.

Obligations in relation to European Directives

As per European Directive on *Public Access to Environmental Information* 2003/4/EC the Swedish Government and Nordea Bank 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.

Sweden, as the largest shareholder in Nordea Bank, is asked in Request G (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).

Obligations under Swedish Law

The Swedish Constitution's *Freedom of the Press Act*, Article 1, Chapter 2 On the Public Nature of Official Documents Article 1 considered in the light of Chapter 14 General Provisions, Article 5, impels the Swedish Government to provide access to official documents to Swedish citizens and foreign nationals alike. With respect to the *Banking and Financing Business Act*, the applicants assert that the secrecy provisions do not apply as the information requested does not deal with the bank's client or identity, but rather the actions of the Swedish Government and Nordea Bank.

Relative to other obligations under International Law

Sweden 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 Sweden is no doubt aware, nations have higher responsibilities compared to multinational enterprises such as Botnia, so that as part owner of Nordea Bank and conscious of the potential human rights breaches by the proposed project, Sweden 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 Botnia pulp project in Uruguay, including all forms of information considered by the appropriate legislation. The Swedish 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, Nordea 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 to G including points G 1 to 16. Further, to promote responsible resource use, the respondents are kindly requested not to send printed duplicates of digital information that could be easily sent in electronic format.

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

Sincerely,

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