



## **Compliance Complaint**

### **Nordea's International Corporate Social Responsibility and Human Rights Obligations**

*in its Role as Lead Arranger for Oy Metsä-Botnia in Uruguay.*

February 6, 2006

To Hans Dalborg, Chairman of the Board of Nordea, Member of CSR Europe's Advisory Board

Cc: John Ruggie (Special Representative of the UN Secretary-General on Business & Human Rights), CSR Europe, Nordic Partnership and Corporate Signatories, Martin Hancock (UNEPFI Chair), Klaus Toepfer (Executive Director UNEP), IFC and World Bank Pulp and Paper Industry Specialists, IFC Compliance Advisor Ombudsman, Inter American Commission on Human Rights, Secretary General of the Advisory Committee on International Investment and Multinational Enterprises of Finland (MONIKA - OECD), Mr. Vidar Lindefjeld (Director Nordic Global Compact Network), Botnia, ENCE, UPM, Business & Human Rights Resource Center, WBCSD, BankTrack, BBVA, ING.

The Center for Human Rights and Environment (CEDHA) denounces that Nordea's financial support to the Oy Metsä-Botnia project (henceforth Botnia) in the construction of the "Orion" pulp mill in Uruguay implicates Nordea and constitutes Nordea's complicity in:

- the violation of international human rights and international environmental law;
- the violation of the United Nations Global Compact;
- the violation of the United Nations Statement by Financial Institutions on the Environment & Sustainable Development (UNEPFI);
- violations to the UN Human Rights Norms for Transnational Corporations;
- the violation of the principles and standards set out by the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OECD);
- the violation of International Labor Organization (ILO) Conventions;
- the violation of the Universal Declaration on Human Rights;
- the violations to International Financial Corporation (IFC) Environmental and Social Safeguard Policy OP 4.01, and the IFC's Disclosure Policy;
- the violation of national laws in Uruguay;
- the violation of international bilateral law as established by the Uruguay River Treaty.

### Brief Project Background

The Oy Metsä-Botnia project (henceforth Botnia) is part of a massive industrial investment in Uruguay in the production of paper pulp, involving two industrial plants in construction by Botnia of Finland and ENCE of Spain. The investment, reaching nearly US\$2 billion of foreign direct investment (FDI), the largest single FDI in Uruguayan history, and the largest foreign private investment ever of a Finnish company abroad, in combination with the equally large ENCE investment, would be the world's largest production of Kraft System paper pulp, utilizing Elemental Chlorine Free technology, technology which has been phased out in European operations by 2007 and is against both European Union and World Bank best practice policy.

The industries will produce 1.5 million tons of pulp, utilizing 4 million tons of wood per year. The plants are sited on the Uruguay River forming the natural waterway border between Argentina and Uruguay, in the urban town of Fray Bentos (Uruguay) immediately across the river from Gualeguaychú, a much larger community in Argentina. The entire region around Fray Bentos is historically driven by tourism, watersports, local crafts, small scale fishing and other tourism related leisurely activity. The plants are expected to employ 3000 short term workers during construction and 300 low-paying long-term wage workers.

The government of Uruguay along with European private companies have been fomenting eucalyptus tree plantation to feed into the European pulp paper industry for over a decade. Both project sponsors have operated in Uruguay and in the industry in this context for this period, exporting trees for processing in Europe. Both companies had previously acquired land and constructed piers in Fray Bentos on the Uruguay River for receiving lumbered trees and producing wood chips for subsequent shipping to Europe. The recent decision to transfer processing technology from Europe to Uruguay coincides with tightening of European legislation and phasing out second-rate technology by 2007. This is a pitiful and unacceptable example of exporting contaminating industries to the global south. ENCE and several of its executives (including executives involved in the Uruguayan project), for example, have already been convicted of environmental crimes for pulp milling in Spain, received fines and jail sentences from European courts.

Project sponsors approached the IFC and the Multilateral Investment Guarantee Agency (MIGA) requesting approximately 20% of the nearly US\$2 billion in total project investment, paving the way for larger private investment, such as the investment sought from Nordea. The IFC have categorized the projects as "Category A Projects", the highest risk rating given to projects with expected **high** environmental and social risks. The IFC received applications and were to present the projects to the World Bank Board of Directors in mid 2005.

### Conflict over Project and Emergence of Opposition

Problems started with these projects in local communities who began to react to the installation of this contaminating industry in their locality and on the internationally protected waterway, as early as 2003, when the Environmental Assembly of Gualeguaychú (henceforth "the Assembly") was created in response and opposition to the projects. The Assembly is a self-created movement which came together with no financing, no lead NGO, no political motive, and no central authority or coordinator. It is a collective, spontaneous, self motivated and unharnessed social movement expressing the will of the community affected by the mills. It meets regularly since its founding **twice** weekly in local and public facilities and makes all decisions by collective consensus and popular vote.

As the Assembly gained force, stakeholder concern mounted over the installation of this contaminating industry, as did concerns over the quality of the studies (Environmental Impact Assessments – EIAs) coming from the project sponsors and later from the IFC-contracted consulting group (Pacific Consulting International -which were the same project sponsor contracted consultants) as well as concerns over serious flaws and deficiencies in stakeholder consultation processes, especially from stakeholder communities in Argentina who were **ignored and left out of the consultation** despite IFC obligations to consult all communities in the project's sphere of influence. Opposition escalated quickly and resulted in massive public stakeholder opposition to the plants, including 80,000 protestors which in April of 2005 took to the international bridge separating Uruguay from Argentina, calling for the freezing of construction of these industries.

Protests were followed by political and diplomatic efforts coming directly from the Entre Rios Governor (the Province in Argentina adjacent to Fray Bentos), and from the Argentine President and Foreign Minister to their Uruguayan counterparts, to reconsider plant design, technology and site location. **Site location** was and continues to be a key factor in this protest, as company authorities **never** analyzed site choice as is

mandated by the IFC and by international best practice. A Binational Commission established by the Uruguay River Treaty (a bilateral agreement between Argentina and Uruguay as to how the river waters will be co-managed) began unfruitful efforts to reach an understanding and common accord. The Binational Commission has met 12 times since August of 2005 on this case, and has just recently concluded its final session and reports (January 31, 2006). Meanwhile the projects continued construction and the IFC continued its process to grant loans to Botnia and ENCE.

The conflict escalated rapidly when physical construction of the plants began in mid 2005 resulting in two parallel complaints filed by CEDHA (legal representative to 39,688 stakeholders of local communities as well as the Governor of Entre Rios, where the plants are being built). Complaints were filed to the IFC's Compliance Advisory Ombudsman (1) for project violations to IFC Environmental and Social Safeguard Policies as stated in OP 4.01 and to Disclosure Policy and consultation procedures, as well as to the Inter-American Commission on Human Rights (henceforth "the Commission") for violations of international human rights of local stakeholders as established by the American Convention on human rights (2). The filing to the Commission was the **first ever** filing of a human rights complaint to an international human rights tribunal directly involving a World Bank-financed industrial project.

Subsequently, and to this date, the conflict continues to escalate, positing Argentina against Uruguay (two otherwise historically friendly state), local communities against the companies (resulting in numerous international road blocks of free flowing transit between the countries as well as of trucks carrying supplies to the companies from Argentina for construction), as well as massive coverage in local and international press related to this case.

Further complaints on these projects have since been filed, including two **Equator Principle Compliance Complaints** (3) to BBVA and ING Group which are acting as financiers of the project, as Nordea; a **criminal complaint** (4) in Argentina against company executives of Botnia and ENCE (which has recently been admitted and has now opened the criminal investigation process); a civil suit involving corruption charges in the granting of environmental permits in Uruguay (a case that has also been admitted by the Federal Prosecutor in Uruguay and which is currently under investigation); and injunction orders which are in process to stop trucks crossing the border to take supplies to the companies for construction of the mills. It is estimated that 200 trucks carrying construction materials are either, on route to or will soon be on route, to Uruguay, through Argentina, and are expected to also have to face blockades at the border due to protests and legal action. Further litigation and extra judicial complaints are also underway against company executives and financiers in European and international courts. Finally, and to further complicate matters for these projects and to the political scenario faced by the private companies and by the World Bank, Argentina has decided to take the case to the International Court of Justice, in the Hague, grounding its complaint on violations to the Uruguay River Treaty.

### Response of the CAO

CAO reaction and actions to this case are key, as the CAO is the only truly independent actor to take action, and furthermore is **the** established institutional control mechanism available to gauge and measure World Bank investment projects financed by the IFC and MIGA relative to compliance with environmental and social standards and regulations.

CEDHA filed the complaint to the IFC's independent Compliance Advisory Ombudsman (CAO) in September of 2005. The CAO received and formally admitted this complaint, traveling shortly thereafter to the project site to visit with affected communities and project sponsors, and to review compliance with IFC's environmental and social safeguards and with international waterway policy. The CAO's Preliminary Assessment Report (5), expressed its serious concern for the rights and expected impacts on local stakeholders which were not properly consulted, and explicitly recognizes not only the deficient nature of the Environmental Impact Assessments (EIAs) as well as the "questionable" nature of IFC's due diligence in complying with policy, but also the legitimate and coherent position of the claimants in the case, including the same claimants presenting this complaint to Nordea. The CAO concluded its preliminary investigation deciding to proceed to a formal audit, which is already completed but not yet public. The audit is expected to

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1 [www.cao-ombudsman.org/html-english/complaint\\_cmb.htm](http://www.cao-ombudsman.org/html-english/complaint_cmb.htm)

2 [www.cedha.org.ar/es/iniciativas/celulosa/peticion-cidh-final.doc](http://www.cedha.org.ar/es/iniciativas/celulosa/peticion-cidh-final.doc)

3 [www.cedha.org.ar/docs/compliant-letter-ing-eng.pdf](http://www.cedha.org.ar/docs/compliant-letter-ing-eng.pdf)

4 [www.cedha.org.ar/docs/denuncia-penal.pdf](http://www.cedha.org.ar/docs/denuncia-penal.pdf)

5 [www.cao-ombudsman.org/html-english/documents/preliminary\\_assessmentFINAL.pdf](http://www.cao-ombudsman.org/html-english/documents/preliminary_assessmentFINAL.pdf)

reaffirm violations to IFC policy and make strong recommendations to the IFC as to how past wrongs must be corrected if these projects are to proceed.

The CAO Preliminary Assessment Report lends validity to a great number of CEDHA's accusations and transmits to the IFC the same concerns expressed then and now by local community stakeholder groups both in Uruguay and in Argentina. The report states that:

- the Environmental Impact Assessments (EIA) did not adequately identify people potentially affected;
- cumulative impacts were not considered;
- stakeholder consultation was inadequate; and
- the IFC's due diligence and appraisal process were questionable, and permitting procedures for projects on international waterways were not followed

#### Filing to and Response of the Inter-American Commission on Human Rights

The complaint lodged by CEDHA before the Inter-American Commission on Human Rights (IACHR) denounces violations of the following human rights, which are occurring, and will occur as a result of the advancements of these projects and the production paper pulp in the region:

- Articles 1(1), 2, 4, 5, 19, 25, 26 of the American Convention on Human Rights (6)
- Articles 1, 10, 11 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador" (7)
- Articles I, VII, XI of the American Declaration of Rights and Duties of Man (8)

The violations to the American Convention on Human Rights, Additional Protocols and the American Declaration of Rights and Duties of Man has direct correlation to violations of the Universal Declaration of Human Rights (which Nordea explicitly promises to uphold and project).

Additionally, additional and very serious evidence was also gathered and verified by CAO staff during the CAO site visit, consisting of threats and harassment by unidentified individuals who are taking secret photos of Uruguayan advocates against the mills, as well as of gun shot fire and damage to the vehicles of such advocates by unknown sources. This evidence, suggesting that the projects and case are generating **extremely worrying physical danger to local citizens**, was submitted to the Commission.

This complaint was the first time that a World Bank-financed project was presented to the Commission as the source of massive alleged human rights violations. The placement of a highly toxic industry planned in the heart of pristine environmental surrounding places the lives, health, livelihoods, and human rights of thousands of local residents at great risk. The case is especially sensitive to the Commission since it not only involves the denunciation of affected stakeholders, as is commonly the case with complaints going to international human rights tribunals, but also involves unprecedented backing of another State (Argentina) resulting in diplomatic disputes between Argentina and Uruguay, as well as evidence presented by the financial sponsors own independent control agency (the CAO) stating clearly that there are severe problems and policy violations with these projects.

The Commission responded quickly and favorably to the complainants, opening the investigative process and requesting the government of Uruguay to provide information regarding the allegations of the complaint. Important developments from the Commission case are expected shortly.

#### IFC's and Company Response to Escalating Conflict of the Case

6 Art. 1 – Obligation to Respect Rights; Art.2 – Obligation to Adopt Internal Measures; Art. 4 – Right to Life; Art. 5 – Right to Physical Integrity; Article 19 – Rights of the Child; Art.25 – Right to Judicial Protection; Art. 26 – Progressive Realization of Economic, Social and Cultural Rights.

7 Art. 1 – Obligation to Adopt Measures, Art. 10 – Right to Health, and Art. 11 – Right to a Healthy Environment

8 Art. I – Right to Life, Liberty and Security of Person; Art. VII – Right to Protection of Mothers and Children; Art. XI – Right to Preservation of Health and Well Being

The IFC's early efforts to quickly push through the loan consideration and Executive Directors vote on the two projects to receive IFC financing, with poor and negligent attention to its own safeguard policies, including a gross omission of consulting Argentine stakeholders clearly within the projects immediate sphere of influence, began falling apart quickly with the complaint filed to the CAO and the CAO's quick response and unfavorable Preliminary Report findings.

The IFC realized its gross violations of policy and began an effort to correct these errors with new cumulative study (referred to as "the CIS") and a new consultation process, however, unfortunately, rehiring the same environmental consultants who had done the company assessments and which had provided the IFC with impact analysis, incredibly ignoring combined impacts of the two plants(9). PCI, the consulting group in question, had already generated widespread opposition and great suspicion in the case. Stakeholders requested that the IFC change this consulting group for a legitimate and non-partial consulting group. IFC's refusal to change PCI naturally deepened stakeholder suspicion and opposition to this new proposed study and consultation process. IFC unfortunately continued to commit errors in its handling of the case, failing to correct the previous consultative procedural errors, ignoring its own policy which states that consultation MUST happen before the terms of reference of the impact study are drafted. As it stands, the CIS is completed in its first draft. It leaves out critical issues such as impacts to tourism, wind flows and impacts, river flow directions, and other key elements, which are of central concern of the local stakeholders. The design of the CIS, clearly is a key factor, as it is an unacceptable baseline study upon which IFC intends to generate debate and construct analysis. Its flawed design lends not only to its own unacceptable content as a starting document to analyze project impact, but it also lends to the illegitimacy of the subsequent process of consultation and information gathering. The IFC defends its CIS and process, however, it has generated in-doing so, massive stakeholders refusal to accept the terms and methodology of analysis, impact analysis and measurement, which is also the position of the Argentine state as well as of many internationally recognized environmental experts.

Attempting to address its failure to include Argentine stakeholders in the analytical process, the IFC redesigned the consultation process under an unacceptable, tight and unrealistic schedule, in an effort to quickly obtain stakeholder input into an already illegitimate and flawed consultation process. IFC hired a consulting group called Consensus Building Institute, which further complicated relations with local stakeholders when they arrived on-site with no previous advertisement, and began holding meetings with local actors, yet not having established any rules of engagement. Concerned groups and stakeholders were hesitant to meet with CBI, skeptical and with little faith in the IFC-imposed unrealistic consultative process(10), with no clear rules. CBI further complicated the process by **forcing** interviews and threatening stakeholders who refused to meet with them if rules of engagement were not established. CBI threatened stakeholders that they would be penalized in the process if they did not answer questions. Eventually, CBI had to leave the region **without** consulting with the Assembly or with local residents in Argentina who massively opposed the mills and refused to meet with CBI under the circumstances imposed by IFC.

IFC finished discrediting their own consultation process when they convened the Assembly of Gualeguaychú in late January of 2006 to discuss engagement and then failed to arrive to the town meeting leaving over 800 people from all sectors and of all ages had arrived to the municipal theater to hear IFC present their process, waiting fruitlessly for their arrival. The excuse from the IFC for not showing up was ridiculous and unacceptable, stating that they didn't have a translator available at the hour of the meeting. Conversations with the facilitating team (once again, CBI), however, revealed that the IFC delegation was merely a few kilometers away from the site, afraid to meet with such a large assembly of concerned stakeholders. They had, however, met throughout the previous days, with pro-mills actors in Uruguay and in Fray Bentos.

The consultation period for the new CIS, as suggested by IFC, will close February 19<sup>th</sup>, failing to legitimately harness the opinion of local Argentine stakeholders, comprising the majority of stakeholders affected by these mills, and the IFC will likely elevate the projects to the World Bank's Board of Director for vote, claiming as they always have, the innocuousness of these mills, but ignoring the massive upheaval and protest of the entire region that will be adversely affected by the air, water, earth and visual contamination of this highly contaminating industry, and who, as a collective community, **do not want the mills** in their vicinity.

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9 This is both unethical as the consultants are already biased, as they were hired by the companies, in addition to the fact that they have been entirely rejected by local communities for the poor quality of their assessment reports, which contained gross errors and misrepresentation of data.

10 The CAO and Stakeholders had made very explicit to the IFC that clear rules of engagement were necessary in order to carry forth a legitimate and binding consultation process. The IFC ignored this recommendation as did CBI.

## Nordea's Corporate Social Responsibility and Legal Liability

This **Corporate Social Responsibility and Human Rights Compliance Complaint** highlights Nordea's legally binding, self-proclaimed moral and ethical obligations to comply with international law, human rights, industry standards and internationally accepted codes of corporate social and environmental responsibility.

Nordea's Corporate Citizenship Principles state a strong environmental ethic and commitment to sustainable development. Further, Nordea has promised to act in a way that compliments democracy and promotes a responsible market economy, conducting business in a manner that is ethical, honest and sincere. Nordea is committed to international initiatives which promote respect for human rights, and environmental stewardship. Specifically, Nordea is a signatory to the UN Global Compact and supports the Universal Declaration of Human Rights, ILO Conventions, UNEPFI and OECD Guidelines for Multi National Enterprises. Nordea is also a member of Corporate Social Responsibility (CSR) Europe and has signed the Nordic Partnership Manifesto 2002. The following is a summary of trespasses to the aforementioned accords that Nordea violates by acting as lead arranger for Botnia's pulp mill in Uruguay, making it complicit in these violations and responsible, legally before national and international tribunals, as well as morally and ethically responsible to its stakeholders and to the general public for the crimes and abuses committed by these projects.

### *Violations Relative to the Universal Declaration of Human Rights*

As stated in its Corporate Citizenship Principles, Nordea has promised to uphold the UNDHR (11). By collaborating with Botnia in Uruguay, Nordea will violate of the following Articles of the United Nations Declaration of Human Rights:

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

These are grave and serious violations of international law, which Nordea has displayed intentions of absolute compliance. The articles listed above reflect the assertions of the submission before the Inter American Commission of Human Rights, where you can find all the evidence validating these claims.<sup>12</sup>

### *Violations Relative to the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*

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<sup>11</sup> [www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html)

<sup>12</sup> [www.cedha.org.ar/en/initiatives/paper\\_pulp\\_mills/](http://www.cedha.org.ar/en/initiatives/paper_pulp_mills/)

The responsibility on business entities to avoid complicity in Human Rights abuses is established by the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises (13) with regard to Human Rights (henceforth the UN Norms). Transnational Corporations such as Botnia and its financial supports such as Nordea, have the following responsibilities to human rights and environmental protection.

A. General Obligations

1. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

G. Obligations with regard to environmental protection

14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.

This complaint highlights evidence of Botnia's involvement in the violation of specific instruments that directly correlate to the violation of the UN Norms. Nordea will also violate these norms by acting in a way that is complicit. The definition of 'complicity' cited by the *2005 Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights* (14) is as follows:

A company is complicit in human rights abuses if it authorizes, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse.<sup>15</sup>

Nordea should also be aware of the monitoring and verification requirements of the United Nations. Article 16 of the norms is as follows:

16. Transnational corporations and other business enterprises shall be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms. This monitoring shall be transparent and independent and take into account input from stakeholders (including non-governmental organizations) and as a result of complaints of violations of these Norms. Further, transnational corporations and other business enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Norms.

The United Nations Special Representative on the issue of human rights and transnational corporations and other business enterprises has been notified of this complaint and Nordea is urged to provide a periodic evaluation to the Special Representative on its activities pertinent to this case and denunciation.

*Violations Relative to International Labor Organization (ILO) Conventions*

Nordea supports the International Labor Organization Conventions that promote minimum workplace standards to ensure the safety, integrity and appropriate treatment of employers. Botnia has no option but to produce chlorine on-site, an essential component of the Kraft Pulp Mill bleaching process, as chlorine cannot be transported legally to the factory site. Botnia has provided no assurances of workplace safety and is at risk of violating a range of ILO Conventions. Nor does Botnia have a contingency plan for eventual emergencies caused by accidents. Nordea will be culpable as an informed, complicit party to the project

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13 [www.business-humanrights.org/Categories/Principles/UNNormsonbusinesshumanrights](http://www.business-humanrights.org/Categories/Principles/UNNormsonbusinesshumanrights)

14 [www.globalpolicy.org/soecon/tncs/2005/0215untncreport.pdf](http://www.globalpolicy.org/soecon/tncs/2005/0215untncreport.pdf)

15 The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity: OHCHR Briefing Paper", in UN Global Compact/OHCHR, p. 19.

realization in the eventual violations of human rights and labor rights that shall occur in such instances. An example of ILO Convention violation is of Article 16 of the *Occupational Safety and Health Convention, 1981* (16):

2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.

Nordea is requested to evaluate Botnia's workplace commitment to ILO Conventions as mentioned above, to ensure that it complies with the appropriate standards. Another more disturbing advance in research is the link between hydrogen sulfide discharges of Kraft Pulp Mills and the onset of depression and occurrence of suicide.<sup>17</sup> Nordea should carefully consider the risks of being involved in a project that may face future class actions as this evidence.

#### *Relative to UNEP Statement by Financial Institutions on the Environment & Sustainable Development*

The preamble to UNEPFI (18) asserts (of which Nordea is signatory) that 'sustainable development depends upon a positive interaction between economic and social development, and environmental protection, to balance the interests of this and future generations'. Currently there is no harmony between the economic interests of Botnia and the economic, environmental and social interests of the thousands of affected stakeholders in Orion's area of influence. The company was granted 25 years of tax free investment, imports **all** of its technology, exports **all** of its product, fosters the cultivation of invasive contaminating species (eucalyptus trees) which make unsustainable use of local natural resources which would otherwise go to sustainable industries, provides low-wage jobs in a highly dangerous work environment, and works against the already existing economic interests of an entire economic region, grounded on tourism and dependency on pristine environmental conditions. Serious questions and criminal investigations are in process about project design, environmental permit authorization, violation of human rights and to sustainable livelihoods due to these projects.

Nordea further 'recognizes that sustainable development is the collective responsibility of government, business, and individuals' putting itself in a position of culpability in the pursuit of non-sustainable development. In addition Nordea is 'committed to working cooperatively with these sectors within the framework of market mechanisms toward common environmental goals', but as yet, has not consulted with any of the surrounding communities who hold competing environmental goals, nor has it taken into account any of the mentioned conflicts or the opinion of independent control agencies like the CAO, in its decision to involve itself with these projects.

The following principles of the UNEP Statement by Financial Institutions on the Environment & Sustainable Development will be violated by Nordea if it proceeds with acting as lead arranger for Botnia. Brief reasons are given.

#### Commitment to Sustainable Development

1.4 We recognize that sustainable development is a corporate commitment and an integral part of our pursuit of good corporate citizenship.

The Botnia project is unsustainable due to, amongst many things, environmental contamination and damage to local economy. Nordea must act in an appropriate manner to fulfill its corporate commitment to sustainable development.

#### 2. Environmental Management and Financial Institutions

2.1 We support the precautionary approach to environmental management, which strives to anticipate and prevent potential environmental degradation.

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16 [www.ilo.org/ilolex/cgi-lex/convde.pl?C155](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C155)

17 [www.medicalnewstoday.com/medicalnews.php?newsid=33330](http://www.medicalnewstoday.com/medicalnews.php?newsid=33330)

18 [www.unepfi.org/signatories/statements/fi/](http://www.unepfi.org/signatories/statements/fi/)

The project does not satisfy the precautionary principle, forming part of the largest pulp producing facility in the world in an area heavily reliant on tourism and fisheries for local livelihoods.

2.2 We are committed to complying with local, national, and international environmental regulations applicable to our operations and business services. We will work towards integrating environmental considerations into our operations, asset management, and other business decisions, in all markets.

The project violates international law with respect to human rights conventions and the Uruguay River Treaty, it violates the Argentine criminal code and relevant World Bank Environment and Social Assessment Safeguards.

2.3 We recognize that identifying and quantifying environmental risks should be part of the normal process of risk assessment and management, both in domestic and international operations. With regard to our customers, we regard compliance with applicable environmental regulations and the use of sound environmental practices as important factors in demonstrating effective corporate management.

Nordea has not made public that it will take into account legitimate independent assessment of environmental risks such as published by the Argentine Foreign Ministry and the Binational Commission governing the use of border waters between Argentina and Uruguay.<sup>(19)</sup> Neither should it rely on the CIS that has been produced by a defective process disregarding the independent recommendation by its own regulatory supervisor, the CAO.

2.4 We will endeavor to pursue the best practice in environmental management, including energy efficiency, recycling and waste reduction. We will seek to form business relations with partners, suppliers, and subcontractors who follow similarly high environmental standards.

Nordea will provide funding to Botnia that will use Elemental Chlorine Free (ECF) technology which is not recommended nor considered as best available technology by the World Bank Pollution Prevention and Abatement Handbook.<sup>(20)</sup>

### 3. Public Awareness and Communication

3.3 We will foster openness and dialogue relating to environmental matters with relevant audiences, including shareholders, employees, customers, governments, and the public.

As a concerned corporate citizen, Nordea has made no effort to promote an open dialogue with relevant audiences such as the representatives of the government of Argentina, the assembly of Gualeguaychú and has not informed its shareholders, employees, customers, government and the public of the implications involved in acting as lead arranger for Botnia.

3.4 We ask the United Nations Environment Programme (UNEP) to assist the industry to further the principles and goals of this Statement by providing, within its capacity, relevant information relating to sustainable development.

UNEP has not been consulted to help or advise Nordea on how to comply with UNEPFI on this extremely delicate issue.

Nordea has signed the UNEPFI agreement, endorsing every and all of the principles and promises to ensure that its policies and business actions promote the consideration of the environment and sustainable development. Clearly, this commitment will be broken if Nordea continues to act as lead arranger for Botnia.

Both the UNEPFI Latin American and Central and Eastern Europe Regional Task Force will be notified of the allegations against Nordea, and will study Nordea's compliance referring to the triple bottom line approach. This refers to environmental credit risk assessment incorporating economic, social and

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<sup>19</sup> *Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, ANÁLISIS Y OBSERVACIONES AL BORRADOR DE ESTUDIO DE IMPACTO ACUMULADO DE LA CORPORACIÓN FINANCIERA INTERNACIONAL, 16 DE ENERO DE 2006*

<sup>20</sup> Page 395, paragraph 7 and page 396, paragraph 2

environmental benefits of investments as the cornerstones for evaluation, factors which Nordea have neglected in their previous assessment of Botnia's credit risk rating.

#### *Violations Relative to the OECD Guidelines on Multi National Enterprises*

Nordea is bound by the OECD Guidelines for Multi National Enterprises.(21) Nordea is committed to operate with 'consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally ... conduct their activities in a manner contributing to the wider goal of sustainable development.'(22) As a supporter of Botnia's enterprise, Nordea is an accessory to violations of international agreements such as the Uruguay River Treaty and the Universal Declaration of Human Rights, in addition to previously mentioned World Bank and IFC environment and social safeguards. Furthermore, in Nordea's role with respect to financing Botnia, it violates the following sections of Chapter V of the OECD Guidelines for Multi National Enterprises.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

Nordea has not made an assessment of the foreseeable environmental, health, and safety related impacts related with Botnia's proposed pulp mill. Nor do the documents produced by other project sponsors, including Botnia, ENCE or IFC, offer evidence to sustain these projects under these obligations. The CIS, which was produced by the IFC in contravention of its own procedural rules and ignoring independent assessment, and which has already been countered and debunked by the Argentine/Uruguayan Binational Commission, is an example of such illegitimate and insufficient supporting project documents.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize such damage.

Nordea has not taken into consideration the full range of environmental assessment for this project which, as evidenced by its Category A rating (the IFC's highest environmental risk category), threatens serious damage to the environment. The options for minimizing damage to human health and safety have not been considered by Botnia, subsequently Nordea is a confederate in a project flawed in terms of this OECD section.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

There exist no contingency plans for the prevention, mitigation and control of serious environmental and health damage from the operation of Botnia's Orion plant.

6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:  
a) Adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise.

The production methods incorporated by Botnia utilize second-rate ECF technology that is contrary to World Bank best practice and will be outlawed by new European environmental regulations to come into force in 2007.

Finland, as a member of the OECD has a National Contact Point that reviews compliance with OECD Guidelines. This Corporate Social Responsibility Compliance Complaint has been forwarded to the Finland National Contact Point, requesting action be taken against Nordea for the above breaches. This document has also been made available to peers for the important process of peer review to trigger peer pressure

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21 [www.oecd.org/document/24/0,2340,en\\_2649\\_34889\\_1875736\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/24/0,2340,en_2649_34889_1875736_1_1_1_1,00.html)

(23). CEDHA advises that Nordea will be included in the upcoming report to the OECD 'specific instances' accountability mechanism for Botnia's malfeasance with OECD Guidelines.

#### *Violations Relative to the United Nations Global Compact*

Signatory to the Global Compact, Nordea has committed to 'embrace, support and enact' the ten Global Compact Principles which are a set of core values in the areas of human rights, labor standards, the environment, and anti-corruption. Nordea will violate the following principles if it acts as lead arranger for Botnia's project in Uruguay.

1 Businesses should support and respect the protection of internationally proclaimed human rights;

The numerous violations to human rights have already been cited above, principally violations to the Inter-American Convention on Human Rights as stated in CEDHA's submission before the IACHR.

2 Make sure that they are not complicit in human rights abuses.

Violations to human rights by Botnia as mentioned above and Nordea's role in facilitating this action infers that Nordea is complicit in human rights abuses.

7 Businesses should support a precautionary approach to environmental challenges;

The installation of the Orion plant and Nordea's support does not support a precautionary approach to environmental challenges.

9 Encourage the development and diffusion of environmentally friendly technologies.

Botnia and Nordea have not encouraged the development, diffusion and more importantly the use of environmentally friendly technology, and are reluctant to promote the use of cleaner manufacturing processes.

Nordea is violating the Global Compact in its financial support to a project that will cause a range of human rights abuses. Nordea is called on to assume its global responsibility relative to the concerned stakeholders and adverse economic and environmental effects these plants will have on the local environment and community, and subsequently, to Nordea's public image, shareholder confidence and international reputation. The Global Compact Nordic Network has been sent this complaint to review Nordea's compliance. In addition, CEDHA is requesting the United Nations Global Compact to facilitate policy dialogue by action-oriented meetings on local, national and international levels that focus on this situation, and in accordance to Global Compact recommendations, requests Nordea undertake a partnership project with CEDHA to address non-compliance.

#### *Violations Relative to the Nordic Partnership Manifesto 2002*

Nordea signed the Nordic Partnership Manifesto 2002 with the intention of building capacity in the area of sustainable development and incorporating these principles into every day operations and risk assessment at the bank. Along with 17 other Nordic countries, Nordea is committed to the following:

COMMIT OURSELVES to working towards sustainable development in partnerships with governments, private organizations and other stakeholders, and...

CALL on governments, non-governmental organizations and international institutions to create changes in market regulation to reward sustainable business practices and to support democracy and a free flow of information on sustainability and related issues.<sup>24</sup>

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<sup>23</sup> See Pagani, F, PEER REVIEW: A TOOL FOR CO-OPERATION AND CHANGE: An Analysis of an OECD Working Method, OECD, 2002 available at [www.oecd.org/dataoecd/33/16/1955285.pdf](http://www.oecd.org/dataoecd/33/16/1955285.pdf)

<sup>24</sup> Nordic Partnership 2002 Manifesto, available at [www.nordea.com](http://www.nordea.com)

The Nordic Partnership is yet another example of Nordea's aspirations to work towards sustainable development, yet Nordea defies this rhetoric as financier to Botnia, by complicity of violations of human rights and obstruction of sustainable development. Nordea calls on governments, non-government organizations and international institutions to establish an even playing field that promotes sustainable business practices, but has so far shown no action to undertake an assessment of its own complicity in this extremely controversial project which has already generated international attention and concern. The very least Nordea should do in this case, is initiate an investigation of conditions and cease consideration of financing until such issues and concerns are clarified and resolved.

CEDHA is providing Nordea with a free flow of information on sustainability and related issues through this report. CEDHA is also attempting to create a level playing field by promoting the use the Compliance Advisor Ombudsman and International Agreements as an independent appraisal and benchmarks of environment assessment, to which Nordea should adhere. In accordance with Nordic Partnership aims, this document has been sent to the sixteen fellow Nordic Partnership signatories, establishing a partnership with private organizations with the aim of promoting sustainable development. By doing this, CEDHA has fulfilled Nordic Partnership obligations as a member of civil society, even though it is not a signatory, and requests Nordea, as a signatory, do the same.

#### Actions before Other Lead Arrangers BBVA and ING

As signatories to the Equator Principles both ING Group (Holland) and BBVA (Spain) have received Equator Principle Compliance Complaints that explains the grave violations as proven by the independent and legitimate IFC Ombudsman, requesting affirmation of their commitment to the principles, and seeking reassurance of promises not to finance non-compliant projects such as these.

ING has responded showing concern, promising not to provide finance in the case of Equator Principles non-compliance and if the Bi-national Commission, composed of representatives from Uruguay and Argentina, does not support the project. Last week, at the close of a 12 meeting process over 180 days, and following Argentina's decision to take the case to the International Court of Justice at the Hague, the position of the Bi-National Commission was made public, strongly rejecting project support. Likewise, ING and BBVA are having to seriously assess their role as lead arrangers in the negotiations given the complex situation these mills face at the international level.

#### Other Financiers Cease Pulp Mill Finance

There is a growing trend for environmentally and socially responsible banks to cease funding of the contaminating pulp industry to be constructed in inappropriate locations. On the 19th of January 2006, Deutsche Bank pulled out of its role as financial advisor for the United Fiber System (UFS) pulp mill and chip mill planned for South Kalimantan and the Kiani Kertas pulp and paper mill in East Kalimantan in Indonesia.<sup>25</sup> Like Nordea, Deutsche Bank is a signatory to the Global Compact and follows the OECD Guidelines for Multi National Enterprises. Deutsche Bank could not provide any evidence to counter-act the environmental concerns that indicated the mill would cause loss fisheries reserves and destroying the livelihood of 1200 local inhabitants. Nordea cannot ignore the weight of evidence that has lead to the myriad of national and international legal actions for this case, the undisputed opinion of the CAO and the nationwide-birth of the environmental movement in Argentina. Nordea must re-consider its role as lead arranger.

#### What this means for Nordea and Chairman Hans Dalborg

By continuing to act as lead arranger for financing the pulp mill project, Nordea is not only involved in a development project that is violating all of its international commitments, but also an incredibly risky investment facing imminent problems due to substantial and co-ordinated social, political and legal opposition against projects, not to mention the impacts these projects have on the health and lives of local communities. Botnia's investment entails direct financial risk, indirect financial risk and policy risk, all of

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<sup>25</sup> [www.foe.org.au/download/ Indonesian\\_pulp\\_mill\\_Jan\\_2006.doc](http://www.foe.org.au/download/Indonesian_pulp_mill_Jan_2006.doc)

which should have been analyzed using appropriate evaluation methodologies by Botnia (and in its complicity, by Nordea's) risk assessment officers. Clearly this has not occurred. It is telling that in the construction phase, the Orion pulp mill has triggered massive local protests in both Argentina and Uruguay, caused never-before-seen diplomatic tensions between otherwise amicable neighboring countries and violates international and national environmental and human rights norms. Yet Botnia chooses, despite reiterated requests by Argentine stakeholders and the Argentine government, to stop construction until the dispute is resolved.

As a member of CSR Europe, Nordea is privy to fruits of this business network that helps companies integrate corporate social responsibility into the way they do business. To ignore such compelling evidence concerning Botnia's actions in Uruguay and CSR Europe's mission, Nordea places itself in an extreme position subject to public and professional scrutiny of its contradictory environmental and social policies. Nordea also cannot ignore its ambition as active participant of the Nordic Partnership, to strive to 'make sustainability a rewarding business' and must be aware of damaging international publicity and failing shareholder confidence that will result from this investment. This inflammatory contradiction is exacerbated by Nordea's Chairman, Hans Dalborg, in his role as member of the CSR Europe Advisory Board.

Furthermore, Hans Dalborg's role as Chairman of Nordea, Board Chairman of the Swedish Code of Corporate Governance, member of CSR Europe Advisory Board and winner of Anne Wibble's prize for outstanding pioneer work and socially conscious leadership in 2002, does not sit well with the status of co-conspirator for human rights abuses. Nordea's project acquiescence will be incredibly destructive to Mr. Dalborg's hard-earned reputation as a down-to-earth businessman with exemplary cultural awareness. The personal and corporate fronts of Mr. Dalborg's reputation will be acutely damaged by controlling a company that, if Nordea continues to arrange finance for Botnia, will be complicit in the aforementioned violations of human rights, international law and environmental obligations. As Nordea's chairman of the Board and former Group CEO, Mr. Dalborg has the power to positively influence Nordea's decision to associate or **disassociate** itself with Botnia in Uruguay, and rectify this potentially embarrassing situation in line with the institution's strategic vision.

It is fundamental that Mr. Dalborg and Nordea take full responsibility to ensure that any financing or assisting the financing of these project sponsors follows a full policy compliance review process, ensuring the respect for human rights, sustainable development and the environmental and social protection policies enshrined in the Universal Declaration of Human Rights, UN Norms, UNEPFI, Global Compact, OECD Guidelines, and ILO Conventions for Multi National Enterprises, as well as other human rights and corporate social responsibility guidelines.

Compliance should include compliance with stipulated national, transnational and international environmental social protection laws and treaties, and the agreed environmental and social guidelines and policies applicable to the IFC Safeguard Policies and the World Bank.

#### CEDHA Requests to Nordea

CEDHA requests Nordea to:

1. Suspend previous, and cease all present and future consideration of financing of these projects until the projects prove to comply with ALL Nordea's environmental and social obligations published on Nordea's Corporate Citizenship Principles and environmental policy, and in compliance with local statutes and international human rights and environmental law, norms and guidelines;
2. Initiate any and all internal investigations into the allegations made in this compliance complaint and be informed of and consider evidence presented in claims made on these projects to all international and local tribunals based on issues relevant to the Nordea's stated environmental commitments;
3. Publicly inform clients, customers, stakeholders and the general public on its position with respect to the suspension of financing, or any consideration of financing these projects and the grounds for doing so (or not);
4. Assess and inform itself of project compliance with UNEPFI, the Global Compact, the UNDHR, the UN Norms, ILO Conventions and OECD Guidelines and only proceed to

provide finance should it be perfectly clear that environmental and social impacts have been properly addressed and mitigated.

Nordea, as a signatory to the UNEP Environmental Guidelines for Financial Institutions, as an institution committed to upholding the OECD Guidelines for Multinational Enterprises and the Global Compact, and as a supporter of International Labor Organization (ILO) Conventions and the UN Declaration on Human Rights, and bound by the UN Human Rights Norms for Transnational Corporations, is called upon to acknowledge violations of the aforementioned agreements and declarations and cease all consideration of financing of Botnia S.A. in Uruguay. Nordea is called on to cease actions in their role as lead arranger for Botnia complying with Corporate Social Responsibility commitments in accordance with Nordea's Corporate Citizenship Principles in addition to the inherent moral and ethical responsibility as international project financier.

CEDHA is available to meet with Nordea staff and management to provide you with any and all relevant information and evidence that Nordea may need to bring clarity to any of the issues presented in this and other legal and/or procedural complaints brought against these projects and/or project sponsors. CEDHA is traveling to Europe in early February to meet with ING Group to discuss the issues related to their role as lead arranger and will happily make time for Nordea to do the same.

Respectfully,

Jorge Daniel Taillant

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