

**PATHWAYS TO SUSTAINABLE BANKING AND PRODUCTS IN KENYA:
THE ROLE OF THE BANKING SECTOR**

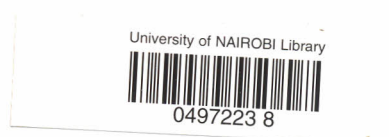
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**Research project Submitted to the University of Nairobi, Faculty of Law in Partial
fulfillment of the requirements for the Post Graduate Degree in Master of Laws,
2007/2008 (Under the Environmental Law Thematic Area)**

Prepared Under the Supervision of Prof. Albert Mumma

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DECEMBER, 2008



DECLARATION

I, **David Kiprop Melly Malakwen**, declare that the work presented in this thesis is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements of the award of the LL.M Degree in Environmental Law.

Signature: -----

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DATED this ----- Day of December, 2008

This Project has been submitted for examination with my approval as University of Nairobi Supervisor.

Signature: -----

PROF. ALBERT MUMMA

DATED this ----- Day of December, 2008

DEDICATION

This Project is dedicated to my Parents, my wife and children without whose perseverance and encouragement I could not have started this journey

ACKNOWLEDGEMENT

To the Almighty and Living God (to whom all Glory and Honour be Forever) through whom I have been led to be an instrument of restoration of our environment to its original status on creation day. My trust in Him has never failed me.

I would like to express my sincere gratitude to Prof. Albert Mumma under whose supervision this work was prepared for his support, expertise and counseling which proved invaluable. Thanks are also due to Biwott Ngeny, Anne Njao, Thirikwa Mureithi and also those who have provided their valuable time and input in various ways over days which preceded the completion of this work. I also thank most sincerely the management and staff of the University of Nairobi especially the Environmental Law lecturers.

I would also like to thank my colleagues in the 2007/2008 for the unforgettable constructive academic encounters which built in me a unique experience. May you be an inspiration to many generations. God Bless you all.

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CHAPTER ONE

INTRODUCTION

1.0 Background to the Study

The Banking sector has responded far more slowly than other sectors to the new challenges that sustainability presents. Bankers generally regard themselves to be in a relatively environmentally friendly industry (in terms of emissions and pollution). Given their potential exposure to risk due to environmentally unfriendly operations of their clients, banks have even been slower in examining the environmental performance of their clients. A stated reason for this is that for banks to demand environmentally friendly conduct by bank clients would constitute interference with the clients' activities. The role of banks in contributing toward sustainable development is, however, potentially enormous, because of their intermediary role in an economy. Banks transform money in terms of duration, scale, spatial location and risk and have an important impact on the economic development of nations.¹ The influence is both of a qualitative and quantitative nature because banks can influence the pace and direction of economic growth. Upto 1990, banks were indifferent to their own environmental situation or that of their own clients but the situation is now changing and banks are gaining pace to revise their role and interest in this respect. There is growing awareness in the financial sector that the environment brings risks (such as customers' soil degradation) and opportunities (such as environmental investment funds). On the risk side, there has been an enormous raising of concern since the last 1980s where banks could, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), be held directly responsible for the environmental pollution of clients and obliged to pay

¹ Marcel Jeucken in "Sustainable Finance and Banking – slow starters are gaining Pace" (A Paper based on the book "Sustainable Finance and Banking – The Financial Sector and The Future of the Planet" Marcel H.A Jeuken, (2002) Earthscan London, ISBN 1 8538 76610) [www.sustainability in - finance.com](http://www.sustainability.in-finance.com) (accessed 1.8.2008) Page 1

remediation costs.² European banks were not exposed to these liabilities and only began to develop policies towards environmental issues during the mid-1990s where focus was less on risk management and more on internal environmental care and later the development of new products such as environmentally friendly investment funds.³

Both risk and opportunity are now becoming established elements in banking policies towards the environment. Empirical research from 1995 on the environmental activities of the signatories of the UNEP Statement by Financial Institutions on the Environmental and Sustainable Development launched in Rio de Janeiro in 1992 showed that 80% of respondents (in the developed world) made some kind of assessment of environmental risks. Many banks had set up environmental departments and were developing environmentally friendly products.⁴ In Asia, South America and Eastern Europe changes in this regard are under way through the influence of environmental standards from multilateral development banks like the World Bank. In December, 2007 for example, the Reserve Bank of India issued a circular to all banks to address the issue of sustainability in banking operations and put in place a suitable and appropriate plan of action towards helping the cause of sustainable banking in India with their respective board approvals.⁵ The Reserve Bank of India further advised commercial banks to keep themselves abreast of the developments on an ongoing basis and dove tail/modify their strategies/plans in the light of such developments in sustainability finance.⁶

A survey conducted on state of the art sustainability and banking as elaborated by Jeucken in his book under reference indicate that mainstream international banks are actively involved in sustainable banking with most of them having signed banking specific codes of conduct like the UNEP Financial Services Initiative,

² Ibid Page 1

³ Ibid Page 1

⁴ Ibid Page 1

⁵ Vikas Srivastava, "Banking On Sustainability" Page 1 (accessed through Vikas@nibmindia.org on 2.8.2008

⁶ Ibid

adopted Environmental Management Systems in attempts to reduce the environmental impacts of their internal processes and some have gone as far as obtaining the highly respected general ISO 14001 certification; developed in house environmental policies and adopted environmental impact assessment as a tool for environmental risk assessment; developed environmental products for environmental care and involve themselves in social-economic activities in their areas of operation.

Underlying the transition to more environmentally sustainable development is the recognition that emphasizing financial and fiscal viability without fully understanding the resource costs involved may severely compromise the resource base of future generations.⁷ This brings into focus a discussion of the whole concept of sustainable development as underpinned by international environmental law and rolled down for implementation in national economies of member states of the United Nations System. An understanding of the concepts of sustainable development, integration and interdependence as the overarching paradigm for improving the quality of life particularly in the developing world in view of the dominant discussions around climate change and global warming as a result of environmentally unfriendly economic activities, is pertinent in the entire discussion of sustainability of global human activities. According to the 1987 Brundtland Commission on the Environment and Development, as stated in its Report referred to as “Our Common Future” sustainable development is “development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs”.⁸ The parameters of sustainable development are clarified in Agenda 21 of the Rio Declaration 1992. The Rio Declaration marked the formal acceptance of sustainable development as the goal of a modern economy and defined it as involving: Intergenerational Equity (Principle 3); the Integration of environmental protection into the development process (Principle 4), Intergenerational Equity

⁷ Towards Environmentally Sustainable Development in Sub-Saharan Africa, A World Bank Agenda, 1996 Washington ISBN 0 – 8213 – 3599-5; Page x11

⁸ World Commission on Environment and Development, Our Common Future (“The Brundtland Report”) 43 – 46, 364 – 66 (1987)

and the Alleviation of Poverty (Principle 5); Paying attention to countries with special development and environmental needs (Principle 6); Reduction of unsustainable production and consumption (Principle 8); reductions in population (Principle 8); and Effective environmental legislation (principle 11)⁹. Sustainable development also reflects a commitment to certain procedural standards, including broad public participation and access to information and judicial review (Principle 10); use of the precautionary approach where there are threats of serious or irreversible environmental damage (Principle 15), the internalization of costs (Principle 16), environmental impact assessment (Principle 17), notification and consultation with affected states (Principle 18 and 19) and the involvement of all groups of people, including those frequently excluded from development processes such as the women, the youth and indigenous people (Principles 20-22).¹⁰ On the framework of Rio Declaration, sustainable development has been confirmed as generally including three core components: environmental protection; economic development and social development.¹¹ Sustainable development has been incorporated in international declarations. Principle 4 of the Rio Declaration further clarifies that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation of it”. Principle 25 states that “peace, development and environmental protection are interdependent and indivisible”. It therefore means that Principles 4 and 25 makes it clear that policies and activities in various spheres, including environmental protection must be integrated in order to achieve sustainable development. The two Principles also make it clear that the efforts to improve society, including those to protect the environment, achieve peace, and accomplish economic development, are interdependent.¹² One of the commitments of Millennium Development Goal No.7 (Ensure environmental sustainability), is to integrate the principles of sustainable development into country policies and programmes. Integration in this

⁹ Earth Summit (1992), The United Nations Conference on Environmental and Development, Rio de Janeiro, 1992

¹⁰ David Hunter et al (Eds) in *International Environmental Law and Policy*, Third Edition, 2007 Foundation Press New York ISBN 978 – 1 – 59941 – 041 – 8; Page 200

¹¹ Ibid

¹² UNEP, *Training Manual on International Environmental Law*, UNEP 2006, ISBN: 92 – 807 – 2554 – 8, Page 25

context means mainstreaming environmental considerations such that environmental stewardship is not only a concern of governments but that societies also share the values underlying all aspects of environmental goods and services i.e. it requires substantive reforms not only in administrative structures, but also in institutional and human behaviour.¹³ A typical example is that while the United Nations System legislate (through international environmental agreements) co-ordinate, raise funds, transfer technologies and technical expertise on sustainable development, the national governments who have ratified and acceded to these agreements should concurrently legislate and regulate on them and even go further to include the environment in educational curricula, mainstream environment in planning and all financial decisions while participating and adhering to international conventions, carrying out research and development and compiling environmental indicators.¹⁴ The private sector in the mainstreaming state must immediately take steps to comply with environmental laws and regulations by making green investments and carrying out research and development on sustainable production and methods.¹⁵ While local companies adopt clean technologies and ensure social awareness of their appropriateness, local civil society groups raise environmental awareness, monitor management and manage local projects such as recycling of wastes. The individual citizen who is at the center of this mainstreaming must undergo a change in values.¹⁶ The citizenry at the local level have to undergo a paradigm shift in their approach to environmental issues at the local level to be sufficiently capable to monitor and manage developments in this respect. Mainstreaming the environment to the country development policies and agenda entails a national paradigm shift if sustainable development has to operationally manifest itself.

Environmental impact assessment (EIA) has become one of the most effective and practical tools to support the implementation of sustainable development and its

¹³ Jose I dos R. Furtado and Tamara Belt with Ramachandra Jammi (Eds) in *Economic Development and Environmental Sustainability: Policies and Principles for a Durable Equilibrium*, World Bank 2000, Washington DC ISBN 0 – 8213 – 4573 – 7, Page 12

¹⁴ Ibid, Page 13

¹⁵ Ibid, Page 13

¹⁶ Ibid, Page 13

integrative aspects.¹⁷ Majority of countries worldwide have accepted informal guidelines or mandatory regulations, applicable not only to public projects but also as a direct obligation of citizens. EIA is also widely accepted as a mechanism for public participation in planning processes and decision-making and a tool to provide information and data to the public regarding projects and other activities.¹⁸ In order to appreciate the vital role of EIA as a tool of environmental management an understanding of its definition is necessary. In Kenya, the Environmental Management and Coordination Act (Act No.8 of 1999) defines EIA as “a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment”. An EIA practitioner of twenty-five years standing defines EIA as a systematic process of:

- Determining and managing (identifying, describing, measuring, predicting, interpreting, integrating, communicating, involving, and controlling) the
- Potential (or real) impacts (direct and indirect, individual and cumulative, likelihood of occurrence) of
- Proposed (or existing) human actions (projects, plans, programs, legislation, activities) and their activities on the
- Environment (physical, chemical, biological, ecological, human health, cultural, social, economic, built, and interrelations).¹⁹

This definition is demonstration that EIA is a process that blends numerous activities and encompasses a broad definition of the environment, alternatives and proposed action.²⁰ It is a purposeful, normative activity which seeks to further specific environmental values and to operate with specific ethical limits. In this regard it has been considered one of the instruments for furthering specific environmental and societal objectives, especially sustainability.²¹ The recognition that the EIA Process should be systematic and should

¹⁷ UNEP Training Manual on International Environmental Law, UNEP 2006, Nairobi ISBN: 92 – 807 – 2554 – 8, Page 26.

¹⁸ Ibid, Page 26

¹⁹ David P. Lawrence (Lawrence Environmental) Environmental Impact Assessment – Practical Solutions to Recurrent Problems”, 2003, John Wiley & Sons Inc, Hoboken, New Jersey, ISBN 0 – 471 – 45722 – 1, Page 7

²⁰ Ibid, Page 8

²¹ Ibid, Page 8

incorporate such activities as alternatives and impact analyses is conducive to integrating rational planning process attributes and to applying rational planning methods. When the EIA process emphasizes tangible environmental improvement, it inevitably underscores the need to fully integrate environmental substance into its procedures and methods.²² It must be pointed out that the EIA process does not, in itself, obtain sustainable development, but it can guide policy makers in the right direction from the outset by including the costs of environmental protection measures and offering creative alternatives to harmonize the different requirements.²³

If the EIA Process can assist in the course of sustainability, where then is the interface between finance and sustainability in the banking industry? How can banks contribute to sustainable development in a national economy? Put in another way, can banks in Kenya operationalize sustainability while increasing shareholder and stakeholder value? Can banks or financial institutions use the tool of EIA to offer sustainable finance and banking services? These issues are best addressed when one understands the role of the financial sector in the environment. The financial sector is involved in the environment in four main ways:

- “
- (a) As investors, providing business with capital for investment.
 - (b) As developers of financial products that can strengthen sustainable development, such as energy saving, waste recycling or green investment funds.
 - (c) As stakeholders who have an interest in preventing business running environmental risks and;
 - (d) As polluters”.²⁴

²² Ibid, Page 9

²³ Guillerno Espinoza and Barbara Richards I “Fundamentals of Environmental Impact Assessment – Trainers’ Course on environmental Management and Assessment for Investment projects” Inter American Development Bank, Inter-American Association of Sanitary and Environmental Engineering – AIDIS 2002; Page 16

²⁴ Jan Prank, Minister of Housing, Special Planning and the Environment, The Netherlands, in April 2001 quoted in Marcel Jencken, Sustainable Finance and Banking, The Financial Sector and the Future of the Planet, Earthscan Publications Limited, London, ISBN 1 85383 766 0; Page x

Further the study will seek to indicate the need for legal intervention to compel banks to assess the environmental impact of their operations and demand the same of their clients and further, seek to achieve:

- (a) Liability for bank and customer pollution
- (b) Adoption of international best practise in environmental care by Kenyan banks
- (c) Creation of incentives to lend environmental products viably
- (d) Creation of a regulatory framework to ensure compliance with policies of sustainable banking.

1.1 STATEMENT OF THE PROBLEM

1. Banks, particularly those in developed world have towards the end of the 20th Century and the beginning of the 21st demonstrated a deliberate willingness to integrate sustainability in their activities. In this respect, there have been both internal and external forces stimulating activities towards this direction. Internally banks by the very nature of operations are environment friendly: their paper and energy consumption have little pollution influence on the environment. The Banking industry in Kenya is involved in conventional banking roles of financial intermediation in the economy i.e. extending credit thereby creating money and effecting the growth of the economy. The problem however is that in playing this intermediary role in the economy, commercial banks, is that they do not address the environmental impact of the activities of the clients they finance. Using examples from outside Kenya, many development projects have been known to cause ecological and environmental problems.²⁵ Human suffering through displacement and disease has disrupted communities' socio-economic and cultural structures.²⁶ Some projects like the Akosombo Hydro-Electric Dam in Ghana and the Narmada Valley Project in India are a sad reminder of what can

²⁵ Francis Okomo-Okello "The Role of Bankers in Promoting Compliance with Environmental Law" – A presentation to the Kenya National Judicial Colloquium on Environmental Law and Access to Environmental Justice; Centre for Advanced Studies in Environmental Law and Policy (CASELAP); Institute of Law and Governance (ILEG) and National Environmental Management Authority (NEMA), January, 2006, Page 8

²⁶ Ibid, Page 8

go wrong when no adequate provision for environmental impact assessment is given during project formulation. Technical and economic viability has been the major criteria used by banks in their funding procedures to promote economic growth.²⁷ By implication banks are more concerned with technical and economic viability of the projects they finance and less or not at all on their environmental impact. Bankers should therefore be legitimately concerned with, and sensitive to, their relationship to polluting activity; their relationship to land on which polluting activities take place or has taken place, and their relationship with enterprises engaged in polluting activity.²⁸ The nearest banks have been legally subjected to compliance with environmental stewardship is by virtue of Section 58(1) (2) of Kenya Environmental Management and Conservation Act which stipulates:

“Notwithstanding any approval, permit or licence granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall, before **financing**, commencing, proceeding with, carrying out, executing or conducting **or causing to be financed**, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the Second Schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee. (Emphasis supplied)

“The proponent of a project shall undertake or cause to be undertaken at his own expense an environmental impact assessment study and prepare a report thereof where the Authority, being satisfied, after studying the project report submitted under sub-section (1), that the intended project may or is likely to have or will have a significant impact on the environment, so direct”.

Reference to “financing” or “causing to be financed” in the context of S.58(1)(2) of the Environmental Management and Conservation Act is an imposition of liability on the part of banks if they were to proceed to fund projects without an EIA. That is the furthest Kenyan banks can go towards factoring the environment into their operations. The main problem is that Kenyan banks have not moved beyond embracing the EIA process towards sustainability. There is no evidence of any effective action by commercial banks in adopting sustainable banking

²⁷ Ibid, Page 8

²⁸ Kwame Mfodwo, “The Environmental Liability of Lender and Financial Institutions in New Zealand: An analysis of the Current and Proposed Regimes” in the Australian Journal of Natural Resources, Law and Policy, Volume 2 (1995) page 16

practices and offering environmental products to any sectors of the economy and using the tools if EIA strategically to achieve sustainability outcomes

1.2 FOCUS AND OBJECTIVES OF THE STUDY

This Project proposes to explore by way of historical review and examination of the specific aspects of sustainable finance and whether sustainable banking constitutes a development towards domestic international banking law jurisprudence. The study will highlight the following:

1. Relevance of sustainability as a development agenda for Kenya.
2. Appropriate action for Kenya to benefit from environmental lending.
3. Necessary legal reforms.

1.3 JUSTIFICATION OF THE STUDY

Banks globally and particularly in the developed world are increasingly moving towards sustainable banking, where sustainable development is seen as an advantage and an opportunity for growth. Such a shift requires fundamental change in perspective.²⁹ Focus is shifting from environmental conformance as enshrined in systems like ISO 14001 to process performance, where the focus is on creating value in the process of achieving the financial institutions' business goals.

- (a) Banks in industrialized countries are recognizing that sustainable banking can bring sizeable business benefits by availing financial support to firms producing innovative products, services and business activities aimed at environmental care. Such banks have correspondent relationship with Kenyan banks who must attain sustainability for future acceptance of the relationship. In future banks in the developed world might demand environmental care by their correspondents in the developing world and Kenyan banks must be proactive and move in this direction in advance of the demand

²⁹ Ibid Page 9

- (b) Rising gas and oil prices are stimulating moves to alternative new sources of energy. The Kyoto Protocol which came into force in 2005 is creating commercial value in energy efficiency and renewable energy initiatives. Consumer demand for sustainable products and services, as well as tighter controls on imports by developed markets like the EU, are driving improvements in the technologies and business models. Kenyan banks and their customers need to take positive moves towards sustainable production and processes
- (c) Industrial trends and factors are leading to greater integration of the world's financial markets and intensification of moves towards sustainable banking. As competitive pressure from large foreign banks intensifies, banks in emerging markets are re-assessing business practices, including local lending and risk assessment practices. Kenya must play a role in this movement towards sustainable banking because of its level of economic development leadership role and integration of its economy to other global partners
- (d) The scope and responsibility for financial institutions in emerging markets is widening from environmental to social inclusion. Alleviating poverty and protecting human rights remain top priorities in emerging markets as a result of which local financial institutions are being called upon to help address a variety of social concerns through their core services for social sustainability. Kenyan financial institutions must take positive steps towards social sustainability and the Kenya Government must underpin this with the requisite legal platforms.

There is a dynamic business case for sustainable banking in emerging markets including Kenya and banks must devise their approaches and business cases for sustainability and align their business goals with market trends. With globalization, there is a risk of banks in emerging markets being locked out of

international banking instruments if they do not take urgent steps to embrace sustainability and implement it in accordance with international best practice.

1.4 HYPOTHESIS

The thesis will center around: -

1. The Banking Sector in Kenya is not ready for sustainable banking as the industry has not taken conscious and deliberate steps to incorporate the environment into its operations.
2. The environment as a business has not been integrated legally into the economic sectors in Kenya despite the country acceding to all international Conventions and protocols on the environment.
3. The Central Bank of Kenya has not exercised its supervisory role to introduce sustainable banking in the country by demanding as regulator of the banking sector necessary legislative reforms to banking laws and regulations and taking positive steps to ensure their implementation and; directing commercial banks to incorporate sustainable banking into their credit risk management framework.

1.5 RESEARCH QUESTIONS

This thesis will attempt to fill noticeable gaps by attempting to address the following questions:

- (a) Have banks in Kenya used EIA to exert their role in sustainable banking?
- (b) To what extent will integration of the environment into this economic sector assist the goals towards sustainable banking?
- (c) To what extent have banks in Kenya designed and implemented environmental risk management systems?

1.6 **LITERATURE REVIEW**

The subjects of EIA, sustainable development, sustainable finance and sustainable banking are quite contemporary as the world grasps with the global effort towards managing the urgent issue of environmental degradation through environmentally unsustainable human activities. A number of books, articles and reports have been written on these related subjects on their descriptive, historical or analytical approaches. It is however difficult, if not altogether impossible, to find a piece of literature which wholly addresses with pinpoint precision the issues raised by this study. The use of the internet to supplement existing literature on the subject will be useful in addressing the issues to a level of practical acceptability.

David P. Lawrence, an EIA practitioner for more than twenty-five years, has written a major treatise on this subject which challenges the deep-rooted assumption that EIA should be structured around a unitary process by addressing recurrent problems in EIA practise, describing and assessing residual problems and providing details to solve those problems. The book:

- Discusses conventional choices for controlling and shaping the EIA process.
- Shows how each problem-reducing process would operate at the regulatory level as well as at the applied level.
- Addresses how each process satisfies ideal EIA process characteristics.
- Incorporates summary overviews after each analysis.
- Demonstrates links between the conceptional analysis and practice examples.
- Examines how to link and combine EIA processes to operate in situations with multiple overlapping problems.

As the name connotes, the book practically analyses all possible scenarios to be applied to the variety of environmental circumstances obtaining in various economic sectors which benefit from bank financial support.³⁰

Neil Graik, an associate Professor of law at the University of New Brunswick where he teaches and researches in the fields of international environmental law and domestic (Canadian) environmental law, in his book assesses whether EIA, a method of implementing international environmental law, is a sound policy strategy, and how international EIA commitments structure transnational interactions in order to influence decisions affecting the international environment. Of particular relevance to this study is that through a comprehensive description of international EIA commitments and their implementation within domestic and transnational governance structures, drawing on specific examples, the author examines how international EIA commitments can facilitate interest co-ordination, and provide opportunities for persuasion, and for the internalization of international environmental norms.³¹

Kees Bastmeijer and Timo Koivurova have with other editors come up with a volume with a chapter dedicated to sustainable development and EIA in the financial sector analyzing critically the World Bank EIA policies and the voluntary Equator Principles, thoroughly analyzing CSR and sustainability in banks.³² The book traces the international origin of EIA and its application in a domestic context. Further, the book shows how international normative developments have played a role in placing pressure on states to create national EIA legislation and enhancing the role of such instruments in implementing the goals of sustainability. David Hunter, James Salzman and Darwood Zaelke have

³⁰ David P. Lawrence; *Environmental Impact Assessment – Practical Solutions to Recurrent Problems* (2003) John Wiley & Sons Inc, Hoboken, New Jersey, ISBN 0-471-45722-1

³¹ Neil Graik; *The International Law of Environmental Impact Assessment – Process, Substance and Integration* (2008) Cambridge University Press New York, ISBN 978-0-521-87945-3

³² Kees Bastmeijer and Timo Koivurova (Eds); *Legal Aspects of Sustainable Development: Theory and Practise of Transboundary Environmental Impact Assessment* (2008) Martinus Nijhoff Publishers Leiden and Boston ISBN 978-90- 04-16479-6

jointly edited a treatise on the concept of law and policy in the international environmental context.³³

Robert B. Gibson has edited a book on sustainability assessment whose main theme is that this kind of assessment is emerging as a more transparent, comprehensive, integrated and far sighted approach to decision making. The message in this book is that all significant undertakings must make a positive contribution to sustainability and to apply this test, decision makers need criteria based on the core requirements of sustainability and the peculiarities of the context underpinned by a very supportive policy framework. This book explicitly links EIA to Sustainable development as elaborated in the landmark Voisey's Bay Mine and Mill Undertaking.³⁴

Marcel Jeucken, as a senior economist at Robobank Group in the Netherlands, has written an interesting view of sustainable banking from inside the sector. His work combines countless examples, blueprints and analyses to provide a detailed overview of the trend towards sustainable banking. In scope and knowledge, it is the first book to deal integrally with all aspects of sustainability and banking and will form the core reference text in this project.³⁵

A discussion on sustainability and specifically the prevention of environmental harm by public or private interests, is incomplete without incorporation of the various journals and articles produced by international financial institutions like the International Finance Corporation (IFC), the World Bank and international NGOs like the World Wide Fund for Nature, Friends of the Earth, Bank Track whose practical exposure to this subject has led them into producing useful works based on first hand information and sometimes insider information. Reference to appropriate legislation will also be made as is necessary.

³³ David Hunter, James Salzman, Durwood Zaelke (Eds); International Environmental Law and Policy (2007) Foundation Press New York ISBN 978-1-59941-041-8

³⁴ Robert B. Gibson (Ed); Sustainability Assessment – Criteria and Process (2007) Earthscan ISBN 978-1-84407-051-0

³⁵ Marcel Jeucken; Sustainable finance and Banking – The Financial Sector and the Future of the Planet (2002) Earthscan London ISBN 1-85383-766-0

In Kenya Francis Okomo-Okello has written on the Role of Bankers in Promoting Compliance with Environmental Law, focusing mainly on need for sectoral reforms to embrace sustainable development and bank liability for environmental pollution³⁶

1.7 **THEORETICAL FRAMEWORK**

On the theoretical framework, I will rely on the four-phases of sustainable banking developed by Marcel Jeucken.³⁷ According to this framework the move towards sustainable banking is achieved by banks through defensive, preventive, offensive and sustainable phases. In defensive phase, the bank is a follower who is ignorant of the issue of sustainability since its direct or indirect self-interest is threatened. Cost savings in its internal environmental care are not considered and all environmental laws and regulations are thought to be a threat to its business. Environmental care is looked at only in terms of costs with no money to be earned from it. In the preventive banking phase, potential cost savings are identified through reduction of costs by internal environmental care i.e. reducing energy, paper and water use and lowering of risks by environmental risk assessment policies. This stance is no longer defensive but it is also passive for it does not go beyond applicable environmental laws. In the third phase, the offensive phase, banks identify opportunities in environmental care; see new marketing outlets for products aimed at customers with a sustainability need like environmental technologies, funds and investments. The stance taken by banks at this stage can be described as proactive, creative and innovative and primarily focused on the bank's business and customers. The target in this phase is not sustainability although coincidentally some aspects of it are sustainable due to economic payoffs but because there is no integration of the economy and ecology, the element of sustainability is wanting. Offensive strategy is implemented by banks to look for win-win opportunities, which will lead to sustainability as long as negative environmental costs are internalized within the current price system, although in reality not all environmental costs are internalized and sustainability

³⁶ Francis Okomo-Okello, Ibid

³⁷ Ibid Page 38

in this regard can only remain a goal for banks to achieve. Nevertheless, through this phase, banks will have been approaching the goal of sustainable banking at maximum.

In sustainable banking stage, the bank lays down qualitative preconditions so that all its activities are sustainable. At this stage, banks take a conscious policy to ensure that all activities are sustainable. Sustainable banking is defined as a *modus operandi* in which the internal activities meet the requirements of sustainable business and in which the external activities (such as lending and investments) are focused on valuing and stimulating sustainability among customers and other entities in society. At this stage banks can decline credit requests on account of non-sustainability despite the request containing a higher financial return in terms of earnings i.e. banks holistically work on sustainability issues and take steps that are not just driven by commercial objectives alone.

1.8 RESEARCH METHODOLOGY

The research is mainly library based and involves a great deal of secondary data. Also involved are analytical, descriptive and prescriptive research method. Internet sources with downloads from World Bank, IFC and other major international financial institutions and NGOs are made. There are also downloads from UNEP and other agencies on sustainability. Text books and case law are also sufficiently referred to.

1.9 LIMITATION OF THE STUDY

Banking and sustainability is a relatively new phenomenon and as such literature on it is scarce and when available, is at their formative stages. Further all available literature are either the analysis or other address of sustainability issues by the developed worlds banks and financial institutions. As at the time of this study there were only three banks in sub-Saharan Africa which had initiated moves towards sustainable banking.³⁸ The main challenge, therefore, is that

³⁸ These are Afriland First Bank (Cameroon), Nedbank Group South Africa and First Rand Bank (South Africa). This information was obtained from Banking on Sustainability – Financing Environmental

reference has to be made to practices and standards of the developed world. The legislative developments in African countries towards sustainability is very limited in scope and context and in most cases, integration of the environment into various economic sectors including banking is non-existent. There is evidently a need for the development of African jurisprudence on the African economic sphere with environmental conservation playing a pivotal role as a reference point in the development of sustainable development as a concept. Finally, the practice in the banking industry in Kenya is couched in secrecy to the extent that the sharing of information even between the players in the industry is minimal and valueless to a fundamental study like this.

1.10 SUMMARY OF THE CHAPTERS

The study is divided into five chapters

Chapter One: Introduction

This is the introductory Chapter which provides the context in which the study is set, the focus and objective of the study, its significance and other preliminary issues including the statement of the problem, the theoretical framework, literature review, hypothesis, research questions and lastly, the limitations of the study.

Chapter Two: EIA And Banking

This Chapter discusses briefly the role of EIA in environmental conservation and its use as a tool of environmental risk assessment by banks. The Chapter discusses the role of EIA as a tool for analyzing internal and external environmental care by banks as a step towards sustainability. In this Chapter EIA is presented as one of the tools banks can use to achieve sustainability banking. The link between EIA and sustainable development is also presented.

Chapter Three: Banking Regulatory Framework in Kenya

This Chapter focuses on the state of banking regulatory situation in Kenya with a view to indicating that as it is now, there are no regulatory guidelines for banks to rollout environmental products. The Chapter also makes a comparison with international best practise and recommend adoption through Central Bank of Kenya intervention, with legislative support, commercial Banks to roll-out sustainability products and services. The Chapter recommends that commercial banks adopt the environmental risk management (ERM) framework as a step towards sustainable banking. Finally the Chapter indicates the extent to which banks are liable for environmental degradation due to non-compliance with existing laws and regulations and further that NEMA Regulations in so far as banking operations is concerned do not demand constructive compliance with sustainability needs and requires amendment suitably.

Chapter Four: Sustainable Finance and Banking

This Chapter discusses the various sustainable finance and banking products available, the demand for those products and legal interventions required for their viable rollout.

Chapter Five: Conclusions And Recommendation

This is the final Chapter of the study which seeks to draw conclusions and give recommendations on the way forward.

CHAPTER TWO: EIA AND BANKING

2.0 EIA Process

Environmental Impact Assessment (EIA) can be a useful risk assessment tool for banks especially in assessing compliance with environmental care regulations. Internally, the banks can use EIA as a tool for compliance with environmental care principles in the bank's operations so that bank operations can be construed not to have any negative impact in the environment. The banks can also use EIA to promote sustainable development by its clients. This part of the study intends to indicate, through empirical evidence, how banks use the EIA process to attain their sustainability objectives and the level of success in the usage of this tool.

The roots of EIA as a formalized (i.e. action forcing) procedure for assessing the potential environmental effects of proposed actions was in the United States through the 1969 National Environmental Policy Act (NEPA) and since then its field has rapidly expanded and is now applied in almost 100 countries.³⁹ The definition of the environment has broadened from an early emphasis on physical and biological effects to an increased concern with social, cultural, human health, and ecological effects. In the early years direct impacts, usually from large capital projects, tended to be the focus but now much emphasis is placed on indirect and cumulative effects and on interconnections with other projects and activities. EIA requirements have now been applied to varying degrees, to policies, plans, programs, legislative proposals, technologies, development assistance, products and trade agreements. It has also been adopted to different jurisdictional types and settings (e.g. third world and transitional economies, indigenous decision-making regimes)⁴⁰

Apart from the definition by David Lawrence in Chapter One, EIA is understood to refer to: -

1. A study of the effects of a proposed project on the environment;

³⁹ David P. Lawrence; Environmental Impact Assessment – Practical Solutions to Recurrent Problems, 2003 John Wiley & Sons, Hoboken, New York ISBN 0-471-45722-1 Page 9.

⁴⁰ Ibid, Pages 9-10

2. The study in terms of technology, design and site and an identification of which alternative represents the best combination of economic and environmental costs and benefits.
3. The prediction of the possible environmental changes that the project could cause.
4. The design which enables the environmental effects of a project to be weighed on a common yardstick with economic cost benefits.⁴¹

The EIA therefore, is a tool for decision making which enables the decision maker to take environmental issues into account in the early stages of project conception and development. EIA does not necessarily eliminate altogether projects that have adverse impact on the environment.⁴² Its primary function is to enable the project sponsor and the regulators to choose projects with the full knowledge of their environmental impacts and where projects are to proceed with the knowledge of their impacts, the opportunity to develop plans and policies to mitigate such impacts.⁴³ The steps to be taken in every EIA process are similar across many applications and include:

- “
- Screening to determine whether a certain project should be subject to EIA;
 - Scoping to decide which impacts should be taken into account by EIA;
 - Impact analysis to evaluate the type of likely environmental impacts;
 - compensate for negative environmental effects;
 - Reporting to catalogue and track the results of EIA for decision makers and other interested parties, including the public;
 - Review of EIA quality to examine whether the EIA report includes all of the information required by the decision makers and the public;

⁴¹ John Ntambirweki; Environmental Impact Assessment as a Tool for Industrial Planning – A Paper presented to a colloquium on Industries and Enforcement on Environmental Law in Africa held in Kisumu from 27th November, 1997 to 1st December, 1997 under joint UNEP/UNDP Sponsorship

⁴² Ibid

⁴³ Ibid

- Decision making to approve or reject project proposals and, if indeed the project is to proceed, the terms and conditions thereof and;
- Implementation and follow-up to ascertain whether the project is proceeding as planned, monitoring the effects of the project, and taking actions to mitigate problems that arise during the course of the project.^{44,,}

As the main theme of this study is about sustainability, the following sub-sections will attempt to elaborate any relationship between EIA and sustainable development and, whether such integration leads to environmentally benign outcomes i.e. is EIA an effective environmental risk assessment tool. Clarity will be obtained once the implementation of EIA across the entire spectrum of banking risks has been analyzed.

2.1 EIA and Sustainable Development: Voisey's Bay Case

EIA has often been described as a tool for sustainable development. According to the International Association or Impact Assessment, EIA aims to:

“Promote development that is sustainable and optimizes resource use and management opportunities”⁴⁵

This calls for integration of EIA into sustainability at three levels: the conceptual level (theory and research), the regulatory level (sustainability EIA requirements), and the applied level (integrating sustainability concerns into EIA practice).⁴⁶ Both EIA and sustainability are concerned with maintaining and enhancing ecological, economic and social environments. The two principles can reform, manage, and apply science and technology, institutional arrangements and human environmental interventions. Additionally, sustainability can and should provide a means for re-defining EIA and EIA can and should be an instrument for

⁴⁴ Training Manual on International Environmental Law; UNEP 2006, Nairobi ISBN 92-807-2554-8; Page 307

⁴⁵ International Association for Impact Assessment & Institution of Environmental Assessment UK 1999, Principles of Environmental Impact Assessment Best Practice, Page 3 Available http://www.1919.org/Members/Publications/Guidelines_Principles/Principles%20of%201A (accessed 3.9.2008)

⁴⁶ David P. Lawrence, Ibid Page 177

facilitating sustainability.⁴⁷ True, procedural elements like transparency and public participation are all enshrined in the EIA process but sustainability has gone beyond the traditional focus on material well-being and has argued that greater attention must be paid to social and cultural factors that cannot be reduced to a single, usually economic metric.⁴⁸ On the other hand part of the difficulty with expanding EIA processes to account for a broad range of social-economic factors is that it risks minimizing the clear range of economic impacts as environmental matters are conflated with economic and social factors under the rubric of sustainability.⁴⁹ The original role of EIA was defined based on the understanding that environmental considerations in the formative stage of EIA were often ignored in favour of agency economic and development objectives by bringing other considerations into the assessment process resulting in environmental considerations losing their privileged positions, with the potential loss of bargaining power for those with environmentally benign outcomes.⁵⁰ The success of EIA processes to bring about outcomes that reflect the environmental values is dependent on interactions based on principled justifications.⁵¹ It is the attempt to achieve interactions based on principled justifications that is the main outcome of the Voisey's Bay Case.

The Voisey's Bay Mine and Mill Project was initiated by Inco Limited to extract copper, cobalt and nickel in the Bay, an area shared by Labrador and Newfoundland in Canada. For Inco Limited, its main interest was recouping its investment and maximizing its financial returns having paid Cdn\$4.3 billion for mining claims and drilling information.⁵² To the Provinces of Newfoundland and Labrador, the mining of the mineral deposits was seen as an economically important development. But this area was home to indigenous communities of Indian extraction: the Innu and Inuit to whom the prospect of a nearby mining

⁴⁷ Ibid, Page 177

⁴⁸ Neil Graik; *The International Law of Environmental Impact Assessment, - Process, Substance and Integration*; Cambridge University Press, (2008) New York, ISBN 978-0-521-87945-3 Page 264

⁴⁹ Ibid, Page 264

⁵⁰ Ibid Page 264

⁵¹ Ibid Page 264

⁵² Robert G. Gibson (Ed); *Sustainability Assessment – Criteria and Process*, 2005 Earthscan London ISBN 978-1-84407-051-0; page 2

project raised hopes and fears. On the bright side it brought the promise of new economic opportunities and associated improvements in regional infrastructure and services. On the negative side it meant less control over traditional lands, more disturbance of wildlife and damage to local ecosystems, and further disruption to already fragile social conditions. Moreover, the gains would be brief and the negative effects permanent.⁵³ The EIA on this project was a landmark in Canadian and global assessment practise because it introduced “sustainability” as the basic test of acceptability.⁵⁴ The Panel constituted drafted terms of reference for review of the impact assessment of the project through public hearings in the relevant communities including the Innu and Inuit. In its Environmental Impact Statement Guidelines for the Review of the Voisey’s Bay Mine and Mill Undertaking, the Panel established “Contribution to Sustainability” as the key evaluative test.⁵⁵ It stated: -

“It is the Panel’s interpretation that progress towards Sustainable development will require the following:

- “Preservation of ecosystems integrity, including the capability of natural systems to maintain their structure and functions and to support biological diversity.
- Respect for the right of future generations to the sustainable use of renewable resources; and
- The attainment of durable and equitable social and economic benefits.”

Therefore in reviewing the EIS (environmental impact statement) and other submissions, the Panel will consider: -

- The extend to which the Undertaking may make a positive overall contribution towards the attainment of ecological and community sustainability, both at the local and regional levels;

⁵³ Ibid Page 4

⁵⁴ Ibid Page 5

⁵⁵ Ibid Page 6

- How the planning and design of the Undertaking have addressed the three objectives of sustainable development stated above;
- How monitoring, management and reporting systems will attempt to ensure continuous progress towards sustainability; and
- Appropriate indicators to determine whether this progress is being maintained”⁵⁶.

It must be pointed out here that a mining undertaking is a highly soil extractive business and if unmanaged could lead to a very high level of soil loss for the indigenous inhabitants of the site. The short mine life also has boom and bust effects on the local population hence concerns on durability of project benefits and avoidance of negative effects. To address these concerns the Panel in the Voisey’s Bay case urged the Canadian decision making authorities to ensure:

- that the lifespan of the project was sufficient to permit establishment of lasting benefits;
- that land claim negotiations were completed before the project was allowed to proceed;
- that specific agreements were reached with the Inuit and Innu communities on project impacts and benefits, and on co-management of environmental reviews during project implementation.⁵⁷

In June, 2002 the Panel approved the Voisey’s Bay Mine and Mill Project with specific conditions to cover minimization of negative effects and enhancement of local benefits and participation over the whole project life to include:

1. An environmental co-management agreement that establishes a joint body (with two representatives from each of the governance parties) to monitor project effects; review new and to-be specified project-related actions including tailings and waste rock disposal options, and recommend necessary adjustments.

⁵⁶ Ibid Page 6

⁵⁷ Ibid Page 7

2. Impact and benefit adjustments – one between the company and Innu Nation and one between Labrador Inuit Community Association – that allow the project to continue on traditional lands in return for certain special arrangements for revenue sharing, local employment and contracting, training programmes and community roles in on-going review of project implementation;
3. Commitments to address additional details in Special Voisey's Bay Chapters in land claim final agreements with the Inuit and Innu.⁵⁸

The Voisey's Bay Project agreement provides the clear link of EIA and process, and the fact that it can be designed and managed to achieve sustainability outcomes. The higher test of "Contribution to Sustainability" shifted the focus from the mitigation of negative environmental effects during the life of the mine to net gains over the long term.⁵⁹ Any bank wishing to achieve sustainability in its operations should accept in practise the design of the Voisey's Bay project implementation. The responsibilities here are reciprocal as between the contracting parties. The Voisey's Bay Project is presented as an example of how project stakeholders including banks can manage it effectively to achieve sustainable outcomes.

2.2 Environmental Impact of Banks

In order to fully appreciate the environmental risks (or environmental impact) of banks, a distinction has to be made between internal and external environmental issues. Internal environmental issues are related to the business processes within banks, while external environmental issues are connected to the bank's products. Banks operate in a relatively clean sector because the environmental burden of their energy, water and paper use is not as severe as it is in many other sectors of the economy. However, the size of the banking sector in absolute terms is large enough to make the environmental impact significant.⁶⁰ Banks particularly in

⁵⁸ Marcel Jeuken, Ibid Page 10

⁵⁹ Ibid Page 10

⁶⁰ Ibid Page 10

Europe used measures to evaluate and measure their environmental impact in energy use and concluded that it was by far the most serious impact. Such banks were Credit Suisse, UBS, Natwest and Triodes who ended up using renewable energy, particularly solar energy to achieve savings in energy costs and their environmental impacts⁶⁷ Other initiatives included the more efficient use of water and transport policies and the development of more benign credit cards. The Co-operative Bank in the UK developed and introduced the first bio-degradable credit card in 1997 in support of the efforts of Greenpeace.

On the external environmental issues bank products by their very nature and on their own do not pollute. Rather it is the users of these products who can have a considerable impact on the environment.⁶⁰ Banks have not been able to estimate the environmental impact of their funded customers and have avoided directly involving themselves in such estimation since they feel it is tantamount to interfering with customer affairs. The extent to which banks are liable for pollution caused by companies funded or financed by banks will be clarified when discussing environmental liability for banks below.

2.3 Environmental Liability for Banks

The most clear legislative imposition of liability on banks and lenders for pollution by their clients is the 1980 Comprehensive Environmental Response; Compensation and Liability Act (CERCLA) which extended the tools of the Environmental Protection Agency to recover cleaning costs caused by pollution damages from the liable parties. In particular, banks who finance the firms causing environmental damages may be considered liable. In various court cases, banks have been found liable, while they may have been exempted in others.⁶¹ In the case of specific assignment of liability for pollution, CERCLA specifies that the parties responsible for pollution and therefore provider of the necessary clean up costs following an environmental accident may include, among others,

⁶⁷ Ibid Page 10

⁶⁰ Ibid Page 10

⁶¹ Ibid Page 10

the current and past owners and operators of the polluting facility.⁶² When a bank has been relatively closely involved in the supervision or monitoring of a firm's activities it may be considered by the courts as an operator and therefore liable for cleaning up the damages.⁶³ In the case of Maryland Casualty Company –vs- State Bank and Trust Company,⁶⁴ the Bank and Trust company was held liable for an environmental clean up problem on real estate it had foreclosed on. In Fleet Factor Corporation -vs- Bandolene Industrial Corporation, the Fleet Factors Corporation (the financial institution was held liable for 100% site and clean up on a foreclosed property. Ruling on appeal of this case, the Circuit Judge Kravitch wrote the following criteria for lender liability;

“Our ruling today should encourage potential creditors to investigate thoroughly the waste treatment systems and policies of potential debtors. The risk of CERCLA liability will be weighed into the terms of the loan agreement. Creditors, therefore, will incur no greater risk than they bargained for and debtors, aware that inadequate hazardous waste treatment will have a significant adverse impact on their loan terms, will have powerful incentives to improve their handling of hazardous wastes. Similarly, creditors' awareness that they are potentially liable under CERCLA will encourage them to monitor the hazardous waste treatment systems and policies of their debtors and insist upon compliance with acceptable treatment standards as a prerequisite to continued and future financial support. Once a secured creditor's involvement with a facility becomes sufficiently broad that it can anticipate losing its exemption from CERCLA liability, it will have a strong incentive to address hazardous waste problems at the facility rather than studiously avoiding the investigation and amelioration of the hazard.”⁶⁵

⁶² Marcel Boyer and Jean Jacques Laffont, *Environmental Risks & Banking Liability*; University of Montreal; January, 1995, Page 1

⁶³ Ibid , page 1

⁶⁴ Ibid Page 2

⁶⁵ Ibid Page 5

The import of Circuit Judge Kravitch's writing above is that the bank liability for environmental pollution is allocated on the basis of the level of its involvement in the management of the polluting firm: full responsibility if the bank is involved and no responsibility otherwise.⁶⁶ The underlying principle in CERCLA was the "Polluter pays" principle and was primarily aimed at securing financing for soil remediation. Apart from strict liability, joint and several liability for environmental damage was introduced here and even applied retrospectively.⁶⁷ From the time of the Fleet Factors Case, US banks either modified their credit risk policies to avoid environmental liability or altogether abandoned property as collateral than take title in fear of direct environmental risks leading to the rising costs of extending credit and the resultant difficulty for small companies to obtain credit.⁶⁸ In September 1996, the Asset Conservation, Lender Liability and Deposit Insurance Protection Act explicitly stated that a bank in the US is liable only in the event that the bank has an actual (and no longer potential) say in the environmental activities of the borrowing company or in the event of there being going concern activities by the bank.⁶⁹

Drawing from the lessons of CERCLA, the EU in 2000 introduced a White Paper dealing with liability relating to environmental damage (EU Commission 2000) which does not assume complete retroactive effect and states that "the person who exercises control of an activity by which environmental damage is caused should be the liable party under an EU environmental liability regime i.e. the proposed regime excludes banks from liability as long as they have no operational responsibility."⁷⁰

Another aspect of bank risks are those risks to the bank's reputation which are difficult to estimate in financial terms but lead to the bank missing to acquire new clients and losing the existing ones. These risks are common in cases of large infrastructural investments (such as roads, railways and dams) with new

⁶⁶ 425 F.2d 979

⁶⁷ Journal on Environment

⁶⁸ Marcel Boyer and Jean Jacques Laffont; Ibid page 26

⁶⁹ Marcel Jaucke; Ibid page 136

⁷⁰ Ibid page 137

technologies (such as GMO's) and when dealing with developing countries.⁷¹ Most risks to reputation are related to project finance activities and extends through the entire line of business in the bank i.e. retail, corporate and investment banking and asset management. This demands that any project financier will have to evaluate the project's environmental impact before rolling it out to avoid such pressures like the following;

- ABN AMRO was targeted in 1998 for the financing of a company which was supposedly operating in extremely environmentally polluting copper and gold mine in West Papua New Guinea.
- In a campaign labeled Funding Forest Destruction, AiDenvironment 2000 called to account all major Dutch banks and other major international banks like HSBC, UBS, BNP, Citigroup, Commerzbank and Bank of Taiwan for their financial ties with palm oil plantation project in Indonesia.
- In 2000 some NGO's called for boycott of Morgan Stanley Dean Wilter and Credit Suisse Group in connection with their substantial participation in a government bond for the Three Gorges Dam in China.
- Sumitomo Mitsui Financial Group had to deal with boycott action in connection with its co-financing of the Sardar Sarovar Dam in India.⁷²

The cases of pollution indicated set precedents which will call for government and polluting companies to account and further direct attention to projects, leading to reputational damage to banks.⁷³ To ensure compliance with or assurance that environmental considerations have been factored into the project design and implemented, there is need for an investigative tool to be applied before finances can be arranged. The selected tool will be one capable of analyzing both bank and customer risks because sustainability outcomes are reciprocal as between bank and customer.

⁷¹ Ibid page 137

⁷² Ibid page 138

⁷³ Ibid page 139

2.4 EIA as Bank Risk Assessment Tool

EIA is a tool for analyzing and assessing risk of banks in that as we saw in Chapter One operationally it involves project screening, site selection, baseline data, environmental impacts and risk assessment, analysis of alternatives and environmental mitigation plans. EIA is also called Environmental Assessment, Environmental Audit, Risk Assessment or Environmental Action Plan or combination thereof.⁷⁴ During the project cycle, EIA is the most important environmental policy used by the World Bank to safeguard project development towards sustainability.⁷⁵ EIA is based upon the preventive approach in the move towards sustainability in that at this stage its aim is to prevent, minimize and mitigate environmental impacts and some selected social impacts that might result from the proposed project. It is generally accepted that the cost of conducting EIA is borne by the borrower with any necessary assistance from the Bank. Categorization of the project, usually referred to as screening, is the initial and critical stage in that it determines likely adverse impacts of the proposed project and hence the degree of EIA requirements. IFC has categorized projects into A, B and C where Category A projects require full EIA since they are likely to cause significant adverse impacts; Category B will need an EIA but on a narrower scale than Category A and is usually decided on a case by case basis; Category C projects have minimal or no adverse environmental impacts and no further EIA action is required.⁷⁶ For projects under Categories A and B public consultation is usually required in order to get the buy in of the local people who have a better understanding on the local environmental matters and avoid negative public reaction to, or outright rejection of, the project. Under World Bank Guidelines on EIA which have been adopted by many banks in the developed world, the bank will use the EIA recommendations in project appraisal and approval plans to determine whether to approve the project funding or not. If the project is approved, the borrower has to report to the lending bank on;

- (a) Compliance with the EIA agreements

⁷⁴ Robert B. Gibson (Ed); Ibid page 15

⁷⁵ Table I, Environmental Assessment at the World Bank, Pollution Prevention and Abatement Handbook, Operational Policy 4.01, Pages 22-26

⁷⁶ Hao Guo, Ibid page 19

- (b) The status of mitigation factors
- (c) The findings of the monitoring process.⁷⁷

The lending bank can also use the findings of EIA to supervise the project in order to ensure compliance with terms of EIA.⁷⁸

In best practice, banks need to assess the environmental risks of a project in four stages;

1. Before the loan is granted
2. During the term of the loan
3. At the time of undertaking a financial workout with a defaulting borrower; and
4. At foreclosure and liquidation

Does an EIA process take full cognizance of all environmental risks for a bank? This is not usually the case as an EIA will already have been conducted before banks are drawn in and, even if banks will have been involved from the start, an EIA usually does not provide an environmental risk assessment suitable for banks.⁷⁹ Although it is an important step in assessing the bank's reputational risks, an EIA does not fulfill requirements for analyzing direct or indirect financial risks to banks. More important assessing reputational risks is understanding that;

- "The degree of participation by a bank in a project is largely irrelevant; simply being associated with the detrimental environmental effects (e.g. in a solely advisory function) is not enough for the reputational risk to arise;
- Geographical and cultural differences exist; a project in a developing country may have positive socio-economic effects which do not pose a threat to the environment in the eyes of the local population, but may still backfire on a bank if clients in developed countries disagree with this environmental optimism.

⁷⁷ Ibid Page 19

⁷⁸ Jeucken, Ibid Page 140

⁷⁹ Ibid, Page 142

- Accumulation is an issue; while one isolated problem may be forgotten, a series of reputational issues can be very damaging for a bank;
- The objectives and actions of NGOs are hard to predict, while emotion plays a role alongside scientific arguments; ignoring the views of NGOs might prove devastating;
- The greater the scale of a project, the greater the chance of detrimental environmental effects and/or explicit attention from NGOs; and
- Project financiers will underestimate the risk when it is not quantifiable, “making the seal” in project finance might cut short the assessment of reputational risks.⁸⁰,

A current project under construction and where all the aspects outlined above are present is the Three Gorges Hydroelectric Power Scheme in China’s River Yangtse whose construction runs from 1994 to 2009 and is expected to cost between USD 28 billion upto USD 75 billion. The dam will be 3,000 meters wide and 185 meters high and create a 600 km long lake submerging 160 towns and cities, and 770 villages, 880 ancient sites (including temples and unexcavated ruins of archaeological interest), 657 factory and mining sites, 130 power stations, 956 km of roads and 23,800 hectares of crop land. Moreover, 1.5 million Chinese will be relocated from their homes to less fertile lands and smaller holdings; compensation per family has been set at approximately four month’s earnings. That sheer size and impact has led to World Bank refusal to fund the project or parts thereof.⁸¹

The World Bank was able to decline the request to finance the Three Gorges Hydroelectric Power project in China because it had its own EIA policy to internally analyze all requests for project funding. The policy is reproduced below as Table I.

⁸⁰ Ibid, Page 143

⁸¹ Ibid, Page 143

Table I

ENVIRONMENTAL ASSESSMENT AT THE WORLD BANK GROUP

The World Bank Group has developed the Pollution Prevention and Abatement Handbook for its internal EA process (World Bank, 1999). It is used as an input by all members of the group, though the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) complement the overall policies with somewhat different environmental analysis and review procedures. Commercial banks use the handbook as reference material for financing projects in developing countries as well. In what follows the EA of the World Bank (i.e. the overall policy) is considered. The primary responsibility for the EA process lies with the borrower.

EA became standard procedure of the World Bank (WB) IN 1989 (Operational Directive 4.00; in 1991 amended to Operational Policy 4.01. OP 4.01 made EA a flexible process in which EA became an integral part of project preparation. An EA involves five stages (WB, 1999, pp22-26).

Stage 1 involves the screening of the project once a project is identified. The WB determines the nature and magnitude of the project's potential environmental impacts. It then assigns the project to one of three categories (A, B, or C;). For category A projects an EA is always required but category C doesn't require an EA. Between 1989 and 1995 about 10 per cent of the screened projects were category A projects and about half were category C projects (WB, 1999, p23). In fiscal year 1999 half were category C projects (Barannik and Goodland, 2001, p342).

Stage 2 involves a scooping process to identify key issues and terms of reference for an EA. The likely environmental impacts are identified more precisely and the project's area of influence will be defined. The process also involves dissemination of information about the project and its likely environmental effects for affected local communities and NGOs, followed by consultations.

At stage 3 the EA report is prepared. This has to be the case for any category A project. Category B projects are subject to a more limited EA, the nature and scope of which are determined on a case –by-case basis. A full EA will consist of an executive summary, a policy, legal and administrative framework, a project description, baseline data, an impact assessment, an analysis of alternatives, a mitigation plan, an environmental monitoring plan and public consultation.

At stage 4 the EA report is reviewed and a project appraisal follows. The borrower has to submit its EA report to the WB, which is then reviewed by WB's environmental specialists. If the EA is found to be satisfactory, the WB's project team can go ahead with the project appraisal.

Stage 5 involves the implementation of the project by the borrower subject to the agreements which followed from the EA process. WB monitors the environmental

quality of the project and the agreed mitigation measures.

Because the IFC usually works more closely with commercial banks, it uses an additional category: financial intermediaries (FIs). Where IFC finances a project through a FI which could have adverse environmental impacts, or IFC finances a project through a FI and IFC targets sub-projects which could have adverse environmental impacts, the project is classified as a category FI project. In all other circumstances IFC finances projects through a FI, the project will be classified as category C, so no EA will be required. For certain types of category FI projects, IFC requires training of FI's staff and disclosure of FI's project-related environmental performance. For all its projects IFC has an exclusion list:

- Production or activities involving harmful or exploitative forms of forced labour/harmful child labour.
- Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements.
- Production or trade in weapons and munitions.
- Production or trade in alcoholic beverages (excluding beer and wine)
- Production or trade in tobacco
- Gambling, casino and equivalent enterprises.
- Trade in wildlife products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
- Production or trade in radioactive materials.
- Production or trade in or use of unbounded asbestos fibres.
- Commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest (prohibited by the forestry policy).
- Production or trade in products containing poly-chlorinated biphenyls (PCBs).
- Production or trade in pharmaceuticals subject to international phase-outs or bans.
- Production or trade in pesticides/herbicides subject to international phase-outs or bans.
- Production or trade in ozone depleting substances (like CFCs) subject to international phase-out.
- Drift net fishing in the marine environment using nets in excess of 2.5km in length.

Other MDBs, such as the European Bank for Reconstruction and Development (EBRD, 1995), have similar EAs and protocols as WB/IFC.

Source: World Bank Pollution and Abatement Handbook (1999), Operational Directive 4.01, Page 22-26

As can be seen from Table I, the World Bank has in its EIA Policy an IFC exclusion list which indicates projects the bank cannot fund. IFC of course is the arm of the World Bank which lends to private sector projects. While the World Bank lends to government (public) projects, the IFC lends to the private sector and can also partner with commercial banks in that lending.

This section has given an indication to the effect that banks can use the tool of EIA to analyse the environmental aspects of all customer requests for funding before deciding on whether to avail credit facilities or not. The challenge is that the banks themselves must internalize and operationalize EIA other than rely on the regulatory EIA process since the regulatory EIA might not capture all the salient environmental features in a project.

In a bid to clearly understand the requirements of the EIA regulatory requirements in Kenya, the provisions of the Environmental Management and Co-ordination Act (Act No. 8 of 1999, Laws of Kenya) (EMCA) must be understood. Section 58(1) and (2) of EMCA stipulates that before a proponent of a project proceeds with financing of a project an EIA must be submitted. The rest of the clauses in this section are purely procedural and do not indicate what information is required for what sector of the economy since banks lend to various sectors of the national economy whose operations have an impact on the environment. As already pointed out, banks are not involved in the initial project formulation and even requests for EIA comes at a later stage when the project site and costings have been concluded. An all-inclusive framework including banks and project proponents is desirable if EIA has to play its role in environmental conservation and management. For a bank to possess internal EIA capabilities, it must take deliberate policy action to recruit and train qualified environmental officers or, acquire the services of external EIA consultants on a retainer basis. Other banks have fully fledged environmental departments manned by qualified personnel including environmental economist and lawyers to analyse customer application for funds and liaise with other EIA functionaries on related functions.

CHAPTER THREE: BANKING REGULATORY FRAMEWORK IN KENYA

3.0 Credit Risk Management Framework

Critical credit risk management framework is a critical function of commercial banks since credit provision is the core function of banks. Each commercial bank has a department dealing with management of credit specifically in:

- Internal policies and procedure
- Risk concentration and limits
- Credit culture
- Risk segmentation and classification risk identification and measurement
- Risk identification and measurement
- Post suction surveillance
- Risk ratings and scoring models
- Stress testing portfolio
- Credit risk portfolio modeling⁸⁸

Credit risk management framework in every bank aims at enforcing the ability of the bank to identify measure and control the overall level of credit risks underwritten. The credit risk management process is delegated in some banks to the credit committee (in others it is referred to as risk committee) whose main functions are:

- (i.) Review and oversight of the overall lending policy.
- (ii.) Deliberation and consideration of all loan applications not under management discretion.
- (iii.) Review of advances approved by management
- (iv.) Review of quality of the loan book
- (v.) Decisions or recommendation on write-offs, write backs and provisioning.

⁸⁸ Clause 5.3.1 of Central Bank of Kenya Prudential Guidelines, CBK/PG/01, January, 2006

CBK PRUDENTIAL GUIDELINES

Table II clarifies that there are no CBK Guidelines on environmental lending. By equal analogy, since CBK Prudential Guidelines are derived from the Banking Act Section 33(4) which empowers CBK to issue guidelines to maintain a stable and efficient banking and financial system in the country, it can be concluded that there does not exist in the banking regulatory system a framework designed for environmental compliance by the banking industry. Further the CBK Prudential Guidelines are aimed at ensuring that each bank has enough liquidity to sustain its lending and avoid dealings considered criminal like money laundering. Although Kenyan banks have recently introduced new products like SMEs and Islamic banking with Central Bank approvals, there is no evidence of regulatory initiatives towards introduction of environmental lending in Kenya.

TABLE II

REFERENCE		TITLE
1.	CBK/PG/01	Licensing of New Institutions
2.	CBK/PG/02	Corporate Governance
3.	CBK/PG/03	Capital Adequacy
4.	CBK/PG/04	Risk Classification of Assets and Provisioning
5.	CBK/PG/05	Liquidity Management
6.	CBK/PG/06	Foreign Exchange Exposure Limits
7.	CBK/PG/07	Prohibited Business
8.	CBK/PG/08	Proceeds of Crime and Money Laundering (Prevention)
9.	CBK/PG/09	Appointment, Duties and Responsibilities of External Auditors
10.	CBK/PG/10	Publication of Financial Statements and Other Disclosures
11.	CBK/PG/11	Opening of New Place of Business, Closing Existing Place of Business or Changing Location of Place of Business
12.	CBK/PG/12	Mergers, Amalgamations, Transfers of Assets and Liabilities
13.	CBK/PG/13	Enforcement of Banking Laws and Regulations

Source: Central Bank of Kenya Prudential Guidelines, 2006 Accessible at: fin@centralbank.go.ke

3.1. Environmental Risk Management Framework

Credit Risk Management framework as seen in 3.0 above is undergoing an important transition. This is because banks are no longer treating environmental and other social issues as peripheral to their business concerns, they no longer focus simply on recycling paper or using energy efficient light bulbs⁸⁹

Research studies indicate that a majority of the world's largest banks agree that integrating environmental and broader social issues into their core credit risk management process is essential to managing credit risk in the 21st Century.⁹⁰ Leading banks such as Citigroup, ABN AMRO, Westpac and Barclays among others view these "non-traditional" issues as real credit risk variables that may potentially affect their clients' bottom lines as well as their own. They are simply no longer a Corporate Communication (Investor/Public Relations) issue, but a real credit issue that involves:

- Credit / Risk policy officers
- Account officers from structured finance, other line businesses and operational staff, plus
- Investor / Public relations officers (i.e. Communications)⁹¹

One is bound to ask a very fundamental question – What prompted this change? Banks being held liable for non-compliance with environmental conservation and management led to necessity of formulation of environmental risk management framework i.e.

- (a) The Fleet Factors Case in 1990 when Fleet Financial was held 100% liable for the clean-up on a foreclosed property in the U.S of A
- (b) In 1991 a handful of banks (Westpac, Natwest, Royal Bank of Canada, Deutsche Bank, HSBC and Bank of America) met amongst themselves with a UNEP representative to discuss the idea of establishing a global private sector environmental finance initiative.
- (c) The publishing of the Federal Deposit Insurance Companies (FDIC) Guidelines to all US Chartered domestic and foreign banks on environmental considerations in February 1992

⁸⁹ John Ganzi, Reed Huppman and Carlo Alberts Marcelli; Credit Management – Banking Industry integrating Environmental and other Social Issues

⁹⁰ Ibid

⁹¹ Ibid

- (d) UNEP's sustainable Banking Declaration, signed by 26 international banks (no US participation) prior to the Earth Summit in Rio de Janeiro in 1992
- (e) During the early 1990's, the creation of environmental credit risk units at banks like Bank of America, The Royal Bank of Canada, Barclays, Fleet, Natwest, UBS and others
- (f) In 1993 the first major industry standard for bank environmental due diligence was established by the American Standards and Testing Materials organization (ASTM), with the introduction of a standard protocol for real estate transfers.
- (g) The worldwide asbestos and environmental risk associated with property and casualty insurance claims was estimated in 1996 at over US\$300 billion equivalents
- (h) The ISO 14000 series was introduced in 1998, giving creditors a new evaluation tool for potential borrowers
- (i) In 1998 a major UK bank began to lower credit rates to clients with good Environmental Management Systems
- (j) The Dow Jones Sustainability index was launched in 1999
- (k) In 2001, the FTS "4 Good" Index was introduced.
- (l) A group of the worlds' largest commercial banks met in the fall of 2002 to discuss the idea of establishing a private sector driven set of credit risks principles
- (m) UNEP F1 initiative was launched in 1992
- (n) The Environmental Bankers Association was initiated in the US in 1993
- (o) The World Business Council on Sustainable Development began to focus on these issues in 2000⁹⁶

What then is environmental risk? Various attempts have been made at arriving at a universal definition but an all embracing one that defines it as the likelihood of an adverse impacts arising from financial, legal or reputation risks and even loss of the industrial business and its lending banks due to any issues related to the environment⁹⁷

⁹⁶ Ibid

⁹⁷ Hao Guo, Ibid Page 12

The existence of a comprehensive environmental risk management policy is one of the analytical tools required by commercial banks to analyse and identify environmental risks when considering the request for licensing of banks.⁹⁸

It is worth noting here that details of the operation of any bank's risk management framework is regarded as part of their intellectual property and not easily availed to other banks or stakeholders. There is no evidence of an existence of an ERM in any commercial bank in Kenya.

Environmental Risk Management is defined by European Bank for reconstruction and Development (EBRD) manual as involving: -

- (i) Collection, evaluation and reporting of appropriate environmental information about a proposed transaction, then leading to: -
- (ii) A fully informed decision on whether the environmental risk related to the transaction is acceptable.
- (iii) Control of environmental risks related to the transaction; and realization of any potential environmental benefit related to the transaction (EBRD, 2001)

The EBRD definition lead us to know that environment risk management is actually the process whereby financial institutions can identify, appraise, control, transfer and monitor environmental risks. In addition to increasing a bank's financial performance and environmental risks management enhancement, the ERM tool can also enhance the bank's earnings by converting risks to opportunities but before that stage is attained it is necessary in the first instance to know why ERM is necessary. There are three stages in which ERM is necessary to analyse risk to companies or banks.

- “ 1. Stage 1 in the chain: environmental negative impacts caused by a company's activities such as:
- (a) Historical pollutions from past activities.
 - (b) Ongoing pollution from current operation.
 - (c) Severe, sudden pollution incident.

⁹⁸ European Bank for Reconstruction and Development (EBRD) 1995; Environmental Risk Management for Financial Institutions: A Handbook, London Page 1

- (d) Handling transport and disposal of hazardous materials.
 - (e) Excessive use of natural resources.
 - (f) Use of, or trade in, environmentally sensitive products.
2. Stage 2 in the chain: environmental negative impacts can create risks to the company, which include:
- (a) Financial risks e.g. increased capital or operating costs of complying with environmental standards; clean up costs, fines or compensations payments; increased waste disposal, handling, transportation costs; reduced value of assets such as land or shares.
 - (b) Legal risks e.g. difficulties or delays in obtaining, planning and environmental permits; arising from regulatory requirements or public opposition; forced shutdown or restrictions of operation; claim for damages from third parties.
 - (c) Reputation risks: e.g. reduced sales where products are perceived as environmentally damaging; public or regulatory objections to expansion.
3. Stage 3 in the chain: financial institutions may suffer the following risks derived from these risks from companies including:
- (a) Credit or loan risks: e.g. loan defaults such as inability to meet credit repayment schedule due to increased operating or capital expenditure from loaned companies.
 - (b) Security\collateral impairment risks: e.g. loss of value of security/collateral due to contamination or outdated technology.
 - (c) Investments risks: e.g. devaluations of asset value of investment in a company due to increased operational costs or capital expenditure.
 - (d) Liability risks: e.g. liability for cleaning costs or damages for negligent advice.
 - (e) Reputation risks: e.g. loss of reputation through association with a company that becomes the target of environmental criticism.”

Many of the above risks may not be apparent through the standard financial analysis and processes as a result of which financial institutions have suffered severe losses due to unexpected environmental, health and safety problems affecting their customers or

investments. For this reason, specific environmental risk management is necessary and urgently needed for financial institutions to control this aspect of risk in their operations⁹⁹.

The following tools are necessary for compliance with ERM:

- (1) Identifying environmental risks with environmental due diligence tools such as environmental screening;
- (2) Appraising environmental risks i.e. environmental risk assessment with environment due diligence tools, such as EIA in case of project financing;
- (3) Controlling environmental risks with environmental risks management strategies like revised credit terms or revised credit documentation.
- (4) Monitoring environmental risks with early warning strategy during the term of the loan¹⁰⁰

From the analysis provided banks in Kenya are mainly in the defensive stage on the pathway to sustainable banking. Others, (majority) could be just grasping the preventive stage by participation in environmental activities like tree planting which is not a step towards sustainable banking in the strict sense of the word. Full adoption of ERM by banks will set them on the initial and significant starting point towards sustainable banking in an efficient way¹⁰¹ Use by the Kenyan banks of the ERM to implement the preventive strategy during the phase of preventive banking will commence a significant step towards sustainable banking in the country. The banks therefore will need to:

- Make ERM a part of every significant commercial credit and have it incorporated as a condition precedent to lending.
- Ensure all credit documentation factors in environmental conditions.

The government has to take steps to ensure through the legislative process that the Banking Act and Central Bank of Kenya Act are amended to facilitate certification of regulation and guidelines for the banking regulator (Central Bank of Kenya), to regulate

⁹⁹ Ibid, Page 14

¹⁰⁰ Ibid, Pages 14-15

¹⁰¹ Ibid, Page 15

compliance by commercial banks with all ERM requirements and; regularly report on their compliance.

3.2 International Best practice

Banks wishing to adopt a sustainable banking practice should borrow relevant applications from international best practice incorporated in the Equator Principles and IFC Performance Standards which sets minimum standards upon which banks can build stronger and more comprehensive environmental and social frameworks that reflects best practice and international standards.¹⁰² Adoption of this standard by Kenyan banks will assist in their achieving international ratings attained by their correspondent banks in the developed world and lead to a vibrant and competitive banking industry in Kenya. If Kenyan banks were to adopt particularly the Equator principles, it will accelerate their process towards being in full compliance with the principle of integrating environmental and social issues with their core credit activities and move towards compliance with conditions for sustainable banking.

¹⁰² Appendix II From Renewable 2007 – Global Status Report REN21 (Renewable Energy for the 21st Century, (Accessible at www.ren21.net) , Page 23

CHAPTER FOUR: SUSTAINABLE FINANCE & BANKING PRODUCTS

This chapter is dedicated to sustainable finance and sustainable banking and some of the products associated with them which Kenyan banks can sell if they attained the status of sustainable banks. The products contribute to the three pillars of sustainable development i.e. economic development, environmental conservation and social development. As an introduction, there is need for an understanding or the difference between sustainable finance and sustainable banking.

4.0 Difference Sustainable Finance and Sustainable Banking

Sustainable finance is defined as the provision of financial capital and risk management products to projects and businesses that promote, or do not harm, economic prosperity, environmental protection and social justice. Sustainable banking is a decision by a bank to provide products and services only to customers who take into consideration the environmental and social impact of their activities. A further definition should extend to sustainability which is about ensuring long term business success while contributing toward economics and social development, a healthy environment and stable society. As applied to financial institutions, sustainability encompasses four dimensions of good business performance.

- The financial sustainability of the financial institution and its client companies, so that they can continue to make long-term contribution to development.
- The economic sustainability of the projects or companies the financial institution finances , through their contribution to host economies
- Environmental sustainability through preservation of natural resources.
- Social sustainability through improved living standards, poverty reduction, concern for the welfare of communities, and respect for key human rights.¹⁰⁵

These considerations, taken together, aim to capture a fuller range of factors that influence the decisions activities, products and services of financial institutions including

¹⁰⁵ Banking on Sustainability: Financing Environmental and Social Opportunities in Emerging Markets; IFC,2007 Washington Page 9

the social and environmental impacts of their work.¹⁰⁶ To sum up IFC's observation in this subject of sustainable banking and finance, banks in the large part of the world, are moving from defensive banking where management of social and environmental impacts is seen as an additional cost – to sustainable banking – where sustainable development is seen as an advantage and opportunity for growth.¹⁰⁷ Social and environmental considerations are becoming vital in ensuring competitiveness and differentiating banks in increasingly competitive markets. Banks who innovate to sustainability can bring substantial benefits to the bank's overall business performance especially

- Greater and higher term returns by financing more sustainable projects and businesses
- Reduced risk
- New business development through new products.
- Increased market share in sustainability driven sectors
- Enhances reputation and better brand value
- Better access to capital from international financial institutions /organizations
- Increased value to shareholders.

4.1 Sustainable energy

Sustainable banks offer investments in sustainable energy. Energy efficiency directly impacts the bottom line of business in emerging markets like Kenya as energy costs are increasing faster than other overhead expenditure. Examples of investments suitable for Kenya are:

- (a) Sustainable building and renovation with energy saving features
- (b) Cogeneration or Combined Heat and Power (CHP)
- (c) Efficient lighting (such as municipal street lighting)
- (d) Fuel switing (changing to lesser polluting and more efficient fuel sources)
- (e) Heating and cooling.
- (f) Development of renewable energy sources like wind power, solar energy (solar photovoltaic cells solar thermal energy) micro-hydro-power plants , biogas and bio- fuels

¹⁰⁶ Ibid, Page 9

¹⁰⁷ Ibid Page 9

This section will discuss sustainable building and renewable energy.

4.1.1 Sustainable Buildings

Due to the high cost of energy in Kenya and the negative effect it has on the environment, Kenya has to look for alternative building construction methods in a manner that conserves energy.

It has been observed that although organization of offices is dynamic, an office building is not. Owing to their rigidity, building tends to have a short economic lifetime of around ten years which is both economically and ecologically wasteful.¹⁰⁸ Although the building architecture and design referred to is on a western type building I find the energy efficiency part applicable to Kenya. We need buildings in equatorial Africa where there is abundance of sunlight which optimizes daylight and introduce low energy lighting and solar panels. An international financial institution ABB, has designed a minimal energy consumption ABB i-bus lighting systems which are presence-controlled light sensors that automatically switch off the lighting in rooms and common areas after a certain period of inactivity, and ultra light sensitive sensors that brighten or dim the lighting according to the amount of natural light entering the building.¹⁰⁹ The ABB solutions are designed to be self operating with minimal intervention from the user. Maintenance staff can monitor, control and trouble shoot the entire system including each and every light fitting from a single location. Sensors and software predict when the buildings thousands of light bulbs need replacing. Kenyan banking should seriously consider lending to entrepreneurs wishing to introduce this product in the Kenyan market.

4.1.2 Renewable energy

Current energy consumption of energy cannot be sustained if technology were to remain constant and overall quantities were to increase substantially because:

- (i) Commercial fuels including electricity are not universally accessible.
- (ii) The current energy system is not sufficiently reliable or affordable to support widespread economic growth

¹⁰⁸ Marcel Jeuken , Ibid page 155

¹⁰⁹ www.ABB.Co.com (accessed 16.09.2008)

- (iii) Negative local, regional and global environmental impacts of energy production threaten the well being of current and future generations¹¹⁰.

The current unsustainable practices in energy use and production has led to the most pressing environmental problems such as:

- Climate change for which energy is over 60% responsible;
- Increasing desertification, caused by unsustainable but inevitable uses of firewood for heating and cooking in developing countries
- Soil pollution caused by oil and geothermal exploration and production
- Urban air pollution, caused by fossil fuel burning.¹¹¹

The country has capacity and market for renewable energy but there is no renewable energy promotion policy to give incentives to potential investors. As can be seen in Table II on global status of renewables the only Africa countries with policies are Tunisia, South Africa and Uganda.

4.2 Low Income and Energy and Resource Efficient Housing

Throughout the world, emerging market banks that tap into the huge market for low-income and energy and resource efficient housing can capture both the bottom of the pyramid market and benefit from investing in environmental opportunities.¹¹⁴ Globally half of the world population (3 billion people) live in urban areas. It is predicted that over the next 25 years more than 2 billion people will be added to the urban world population. This will greatly add to the demand for housing, water supply, sanitation and other urban infrastructure services. This translates to a demand of 96,150 housing units per day to meet the demands for housing¹¹⁵.

In emerging markets like Kenya, a large number of the population live in poverty or has low income. This presents an opportune market for the banks to provide housing and renovation finance. Finance must also be provided for energy conservation products within the houses. Opportunities therefore include: -

¹¹⁰ UNEP, Training Manual on International Environmental Law, Page 353

¹¹¹ Ibid, Page 353

¹¹⁴ Banking on Sustainability, IFC, Ibid Page 51

- Mortgage Finance (energy efficient retrofitting, construction loan products, credit lines to developers)
- Construction and land finance (sustainable building materials, resource maximization and alternatives, such as water and solar energy; supply chain linkages, sustainable construction techniques and community development)

By participation in this aspect of sustainable development Kenyan banks will be contributing to the social development of Kenya's urban poor and thus enhancing their respective banks' brand images and securing lending outlets.

4.3 Banking Services to Low Income and Underserved Groups

The provision of access to finance to the underserved segments in emerging markets is increasingly seen as part of the Corporate Social Responsibility of banks by major stakeholders. But for banks operating in emerging markets, it can mean more than that. Large portions of the population belong to groups traditionally excluded from mainstream banking services but the same poor people have immense entrepreneurial capabilities.¹¹⁶ Some of the world's most exciting, fastest-growing markets can be found at the bottom of the pyramid.¹¹⁷ Take the example of the Grameen Bank set up by Mohammed Yunus in Bangladesh, which has demonstrated that banking does not necessarily have to rely on collateral to assure repayment, and that poor people have both the incentive and the honesty to pay back loans, and the skills to use borrowed funds; it is only the opportunity that is denied them.¹¹⁸ Grameen Bank was set up purposefully to lend to the poor of the poorest in Bangladesh, a Country where poverty is endemic and its loans were made by specially trained bank staff traveling on foot or bicycles to rural villages for small businesses like food preparation, cloth or basket weaving and domestic animal raising. The bank also provided information on accounting, literacy, sanitation, family health and nutrition, and small business management. Today Grameen Bank lends to 2 Million people in 32,000 villages in Bangladesh and the repayment rate is around 97%. Graneem Bank operates on the principle that conventional aid, given to people as handouts, does not provide a long-term solution to poverty, in part because it does not

¹¹⁶ Ibid Page 67

¹¹⁷ Ibid Page 67

¹¹⁸ David Hunter (eds) Ibid Page 1588

increase the self-confidence or the skills of the poor. Instead, it tends to foster dependence on the donor. The trust that the micro lender places in the borrowers creates self-confidence which helps them to pull themselves out of poverty¹¹⁹. Grameen Bank was so successful that its founder won a Nobel Peace Prize in 2006. The lesson from Grameen Bank is that smaller lending is efficient at alleviating poverty without the environmental and social disruption of larger infrastructure projects like the Three Georges Hydro Project in China.

Some of the banking opportunities to low-income, underserved groups include: -

- SME Products
- Microfinance funds and intermediaries
- Housing finance (access to housing and community redevelopment)
- Access to finance for women entrepreneurs.
- Indigenous people enterprise finance
- Other forms of economic empowerment, such as trusts, pension funds, resource revenue, management models, and global banking alliances for women.
- Islamic finance
- Channeling of remittances into savings, credit and investment products and services.

Do the above services contribute to banking business goals? Yes, in more than many ways in that it guarantees the bank:

- (a) Access to large markets in that 4 billion people around the world has income or less than US\$ 1,500 per year. Combined, low income markets present a huge opportunity for financial services.
- (b) Revenue generation because the poorest of the poor often operate in the informal economy which by some estimates accounts for 40% to 60% of all economic activity in developing countries and thus represents a vast market for credit in developing countries and thus represents a vast market for credit.

¹¹⁹ Ibid, page 1589

- (c) Lower competitive pressure because maturing consumer and financial markets in developed countries are pushing capital flows into the developing world, where the concentration of low-income populations is the greatest.
- (d) Lower credit risk – a number of studies have demonstrated that low-income customers micro-finance and SME investments, particularly women run businesses, have lower credit risk than better-off borrowers. The bank of Indonesia has indicated that only 0.01% of loans to SMEs are non-performing.

The other benefit to a bank's business case is market differentiation in that low-income customers can be reached with a variety of banking products and services through innovative financial solutions and delivery mechanisms, such as partnerships with financial institutions and international finance institutions. World Bank estimates that there are now more than 7,000 micro-finance institutions, serving more than 16 million poor people in developing countries. Finally lifting people out of poverty can boost the reputational advantage of a financial institution by winning community support. It may also result in greater government support and financing from international development banks and aid agencies, as their main goals are poverty alleviation and providing access to credit to underserved populations¹²⁰.

4.4 **Innovative Financing**

Banks in Kenya can be encouraged to be innovative in this competitive lending environment by creating special funds to lend to companies whose activities go a long way to conserve the environment. At the initial stages it can start with existing or potential customers by lending to them to curb the polluting aspects of their operations. Banks have opportunities to finance projects and companies that conserve biodiversity and/or use resources reasonably to improve their production processes and attain necessary certificates to export their products. The financing of a sustainable supply chain contributes to the Bank's business success goals because the market for sustainable and organic goods is growing.¹²¹ Opportunities to finance suppliers exist in multiple sections including timber,

¹²⁰ Banking on Sustainability, IFC, 2007 Washington Ibid Page 68

¹²¹ Ibid Page 69

cotton, sugar, coffee, fruit, vegetables and flowers.¹²² Helping suppliers to implement best environmental, social, and governance practices is most likely to be reflected in sound risk management, operational efficiencies, and increased profitability, thereby reducing exposure to credit risk.¹²³

4.5 Carbon Financing

Emerging market banks that get involved in the carbon market at an early stage will gain a competitive advantage by establishing themselves as key players within the international framework and developing internal capacity in carbon trading¹²⁴ One of the major benefits of a bank's participation in carbon finance transaction is lower country (or sovereign and political) risks for lending to projects that are eligible to carbon credits. In such a case, emission reduction payments to the projects are channeled directly from the buyer to the bank that provided up-front financing for a project eligible for carbon credits. This eliminates major risks associated with emerging markets volatility. This will, in turn, reduce pricing of the loans and enable banks to provide larger and longer-term loans on favourable terms, making banks' credit more attractive for the borrowers. Additional benefits for the banking sector may include: -

- (i) Developing a relationship with international financial institutions
- (ii) Business development from financing new type of projects
- (iii) Selling additional financing products such as financing for emission reduction evaluations
- (iv) Earning fees by working as in-country intermediaries for carbon deals
- (v) Benefits to the bank because of the improved (reliable) cash stream to the project
- (vi) Improved risk profile, allowing the primary lender to benefit from the project ability to access additional resources, such as mezzanine debt

¹²² Ibid Page 69

¹²³ Ibid Page 69

¹²⁴ Banking in Sustainability IFC, Ibid Pages 50-51

4.6 **Regulatory Regime**

This Chapter has indicated the various products available upon a bank's attainment of the status of a sustainable bank. The Kenyan banking industry is still highly regulated to the extent that the rollout of a new must obtain prior regulatory approval. Environmental products are (or will be, depending on whether commercial banks will adopt them) new entrants into the range of bank products in Kenya. There will inevitably be challenges of acceptability into the industry because of:

- (a) Unfamiliar regulations
- (b) Pricing
- (c) Well trained staff to market
- (d) Lending terms and conditions will have to be more or less from scratch

These challenges will require deliberate policy interventions backed by a legal regulatory facilitation from the Government. A few examples of government regulatory intervention in support of environmental products will suffice.

“At the beginning of 1990, Germany had virtually no renewable energy industry, and most Germans viewed their country as unlikely to be in the forefront of alternative energy sources yet by the end of 1990s Germany had transformed itself into a renewable energy leader.¹²⁵ In the space of a decade Germany had more than one third of total global capacity in renewable energy and is a world leader in solar photovoltaics.¹²⁶ How Germany achieved this rate of development provides helpful a lesson to all countries that have not determined how to unleash the potential of their own indigenous renewable energy sources. How was this achieved by Germany? It adopted a legal regulatory framework to facilitate the introductory and implementation process:

¹²⁵ Training Manual on International Environmental Law, Ibid Page 362

¹²⁶ Ibid

- In 1998 Germany promulgated the Renewable Energy Act which regulated the introduction of renewable energy with attractive subsidies in terms of tax rebates and favourable marketing conditions including assumed entry into the national transmission grid and favourable pricing. This resulted in Germany saving 56 million tones of carbon dioxide in a year (2002) and has turned regenerative energy production into big business generating annual revenues of upto Euro 9 billion and employing thousands of persons Annually.¹²⁷
- In the second phase, the Renewal Energy Sources Act was introduced and it obliges electricity grid operators to give priority to the purchase of electricity from solar energy, wind power and biomass. (The Act also included hydro power and geothermal as a new product because like most European countries, Germany's main source of electricity is atomic energy). This Act also obliged electricity grid operators to pay a specific price for the renewable energy bought. The provisions of this Act, which took effect in 2004 further provided that the level of compensation to renewable energy producers will depend on the cost of production and producers could sell their electricity at a fixed rate for 20 years. This certainty of sales and pricing will then allow banks to avail the necessary credit".¹²⁸

The German legal intervention is ideal for adoption by Kenya where the distribution grid of electric power is dominated by Kenya Power & Lighting Company while electricity generation is the domain of Kenya Electricity Generating Company. A legal regime similar to the German one is required to facilitate entry of renewable energy producers into the national grid and assure viable pricing.

It should be noted that entry into the national grid and assumed pricing is not the only guarantee of inducing investors on renewable energy in Kenya. They also require funding at concessionary rates. The Republic of Korea, a country that has sustained rapid economic growth with a transformation from an

¹²⁷ Ibid Page 363

¹²⁸ Ibid Page 363

agrarian society to an industrialized middle-income nation over the last 30 years, has a Government Policy on Financial and Taxation Assistance to Energy Efficient Investments through the creation of a Fund for Rational Use of Energy.¹²⁹ Under this Fund, money is allotted to eligible loan applicants for use in research and development and installation of energy conservation facilities. The Korean Government also offers tax credit for energy efficiency and those who achieve more than 10% energy saving qualify for a 50% income tax deduction for both domestic and foreign products. This clearly fortifies the case for Kenya to adopt a similar approach in creating incentives aimed at attracting investors to and within the country on renewable energy. Going forward, Kenya should adopt international policies on promotion of renewal energy to attain competences on the subject.¹³⁰

¹²⁹ Ibid Page 361

¹³⁰ Appendix II

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

This Project has sought a walk-through of the Kenyan banking sector's operations and whether it has adopted the principles of sustainable banking. The walkthrough involved an analysis of the Kenyan regulatory framework vis a vis those of the international banks particularly those in the developed world. The findings in so far as the regulation of sustainable banking are not encouraging. Whereas the international banks particularly those in the West have adopted the environment into their lending policies, there is no indication that their Kenyan counterparts are even thinking about moving towards sustainable banking. The Kenyan banks are still considering themselves as operators in a safer and relatively friendly industry in terms of pollution and emissions. They have not considered that despite the relative safety of their operations, their clients are generally not operating in an environment friendly manner and there exists a potential of banker liability for the pollution of their clients although this is not backed by precedent or a legal provision in Kenya. This project has clarified that Kenyan banks and their regulator, the Central Bank of Kenya has a long way to go in the path to sustainable finance and banking. The regulator in particular has not taken its leadership role in the industry by instructing Commercial Banks licensed by it to adopt sustainability. The study has clarified a very fundamental tool in the banks movement towards sustainability: the EIA This is a tool that the banks should adopt and use it to analyze facility applications on their environmental compliance and, if non compliant, reject them. The banks can also use the tools to link normal customer operations with sustainability as was elaborated by the Voiseys Bay Case. Finally, banks can use the tool to demand compliance by its customers with the principle of sustainable development. To sum it up, if banks integrate EIA into its core lending policies and make it a lending condition incorporated in the customer securitization contracts, it will contribute to Kenyan banks achieving the business leadership in environmental conservation in Kenya.

Another outcome of this study is the need for every bank to adopt an environmental Risk Management System (ERM) that includes: -

- Initial review to determine key environmental and social exposures, impacts and risks;
- Overall environmental and social policy that sets the bank's approach;
- Committed organizational structure and personnel (staffing, oversight, compensation and training) ;
- Environmental and social procedures and standards for transactions that include deal-level transparency, consultation and compliance procedures;
- Documentation, including that required to facilitate compensation audits;
- Internal information and training
- External reporting, verification and consultation;
- EMS monitoring and corrective action, and management review and improvement, feeding back into the circle and informing annual action plans

Additionally banks should provide for the use of external transparency, compliance and accountability mechanisms for especially sensitive transactions. If Kenyan banks agreed to a collective set of standards and procedures (like the Equator Principles), such a system could be applied collectively to include common information disclosure and reporting requirements, and a shared system for receiving third party complaints from external actors. This will help remove the practice of excessive secrecy existing in the Kenyan banking industry to the extent that routine operational information is difficult to obtain. Sharing information will improve the quality of banks operations for facilities and customer service; as it is now, this study has clarified that Kenyan banks are not ready for sustainable banking due to their not having taken deliberate steps to incorporate the environment into their operations. The environment as a business has not been largely integrated into Kenya's economic sectors despite Kenya's ratification of various international protocols and conventions calling for such integration.

Further in the case of Kenya where there are monopolies of production and distribution of electric power by Kenya Electricity Generating Company Limited and Kenya Power and Lighting Company Limited respectively, there is need for a legal regulatory regime to assure new entrants i.e. renewable energy producers a viable entry into the national

electricity production and distribution grid. The Government has a role to play in this by using its legal and regulatory instruments to internalize environmental effects into market prices so that companies and consumers may make more sustainable production and consumption decisions, respectively.¹³¹

A study by the International Finance Corporation indicate that within the banking sector, addressing environmental and social issues is now critical to the proper management of transaction, portfolio and reputational risks.¹³² The question is no longer whether commercial banks should address the sustainable development aspects of the activities they support, but how they should do it – what substantive standards should they apply? How should they implement them? And how should they assure compliance?¹³³ The growing consensus is that sustainable finance must seek improved performance and results on the ground in affected communities and environments through adoption of strong policy frameworks, transparently and effectively implemented across all portfolios and departments of commercial banks.¹³⁴ The other component of sustainability is identifying opportunities for innovative product development in new areas related to sustainability.¹³⁵ This entails creating financial products and services that support commercial development of products or activities with social and environmental benefits. The Equator Principles, launched in June, 2003 by 10 international banks, represent the most major recent development on the subject of environmental risk management code and guidelines. In Europe, the Collevchio Declaration of January, 2003 remains the benchmark by which civil society will measure banks' commitment to sustainable development. Sustainable finance must seek improved performance and results on the ground in affected communities and environments by adoption of strong policy frameworks,

¹³¹ wwf in association with Bank Track in "Shaping The Future of Sustainable Finance – Moving from Paper Promises to Performance" 2006, Page 2. Accessed at wwf.org.uk on 2.9.2008

¹³² Ibid, Page 2

¹³³ Ibid, Page 14

¹³⁴ Vikas Srivastava "Banking On Sustainability" accessed at vikass@nibmindia.org on 2.8.2008

¹³⁵ wwf & Bank Track in "shaping the Future of Sustainable Finance – Moving From Paper Promises to Performance," Page 4 accessed at wwf.org.uk on 1.8.2008

¹³⁵ Jeucken, Ibid Page 52

¹³⁵ Ibid,

transparently and effectively implemented across all portfolios and bank departments.¹³⁶ By developing sector specific policies that apply to transactions, banks and financial institutions are implementing sustainable finance by voluntary action out of pure business prudence. A bank creates opportunities for sustainable business through its financing policy and is influential through its fee activities.¹³⁷ Furthermore banks have a comparative advantage with respect to the knowledge and information they have about various market sectors, legislation and market developments.¹³⁸ On the other hand, banks can use the various government legislative apparatus geared towards sustainability to rollout sustainable financial products.

The other disclosure of this study is that Kenyan banks have not used Environmental Impact Assessment EIA to exert their role in sustainable banking. The only use by the banks of EIA is receipt of the same from Project Sponsors as required by the Environmental Management and Co-Ordination Act, upon which receipt banks disburse funds to the applicants without addressing any merits or demerits of EIA process. Further, the study did not disclose any extent to which Kenyan banks have designed and implemented the environmental risk management framework (ERM) as a positive step towards sustainable banking.

RECOMMENDATIONS

This study recommends that: -

- a) The Central Bank of Kenya take immediate steps to instruct all commercial banks licensed by it to prepare sustainability policies to facilitate participation in environmental lending for the approval by their respective Boards of Directors and, Central Bank formulates the necessary regulatory framework. Central Bank of Kenya should also

¹³⁶ wwf & Bank Track in “shaping the Future of Sustainable Finance – Moving From Paper Promises to Performance, “Page 4 accessed at wwf.org.uk on 1.8.2008

¹³⁷ Jencken, Ibid Page 52

¹³⁸ Ibid

encourage commercial banks to be members of voluntary organizations like the Equator Principles in order to obtain competencies in sustainable banking

- b) The Government of Kenya steps in to integrate the environment and sustainable development into all sectoral policies and ensure operationalization.
- c) The Government of Kenya take steps to promulgate legal and regulatory instruments to introduce and internalize environmental effects into the markets so that companies and consumers may make more production and consumption decisions, including viable pricing of environmental good and services
- d) The Environmental Management and Co-Ordination Act be amended to facilitate inclusion of sector-specific environmental impact assessment tools

Appendix I

THE EQUATOR PRINCIPLES AND IFC PERFORMANCE STANDARDS

In 2003, 10 of the largest commercial banks in the world agreed to the so-called Equator Principles – a common set of policies for financial institutions to determine, assess and manage environmental and social risks in project finance. By the end of 2005, 37 of the world's largest private financial institutions had signed on to the Principles.

The Principles set out an overall framework for banks to review and evaluate environmental and social impacts and risks, to reduce and mitigate those risks, and to ensure that the borrower is meeting the terms of the agreement. The Equator Principles' overall framework is based on the environmental and social Safeguard Policies, 199 pollution standards 200 and environmental and social risk categorization system of the International Finance Corporation (IFC) – the private sector arm of the World Bank Group. Signatories to the Principles are also expected to adopt their own internal policies, procedures and management systems for implementing the framework.

The centerpiece of the Equator Principles approach is its environmental assessment requirements. Projects are classified as Category A, B or C (high, medium or low environmental or social risk). For all Category A and Category B projects, a borrower must carry out an environmental impact assessment (EIA), which addresses the environmental and social issues identified in the categorization process.

The EIA must demonstrate that the project complies with host country laws, regulations applicable to the project, and World Bank Group Pollution Guidelines for the relevant industry sector. For projects in low and middle income countries (listed in a World Bank database), the EIA must also address the relevant Safeguard Policy, including issues such as natural habitats, indigenous people, involuntary resettlement, forestry and cultural property.

For all Category A and some Category B projects, the borrower or a third party expert must prepare an Environmental Management Plan (EMP) which addresses mitigation and

monitoring of environmental and social impacts. For these projects, the bank must be satisfied that the borrower has carried out a public consultation process among groups affected by the project. The terms of the EMP will be covenanted, and the bank will work with the borrower to ensure compliance.

The content of the Equator Principles is expected to be substantially revised to account for revisions in the IFC's policy framework. In 2004, the IFC began overhauling its environmental and social policies and procedures. This revision process was shaped in part by a review by the IFC's Compliance Adviser/Ombudsman (CAO), which criticised the IFC for falling behind best practice in some areas, particularly in addressing social impacts.

The CAO report also called for significant improvements in internal IFC procedures for compliance, oversight and supervision of projects, and challenged the IFC to review more effectively the capacity and commitment of its clients in meeting environmental and social standards.

The IFC's proposed policies introduce eight new "Performance Standards" applicable to the client, and an environmental and social policy applicable to IFC staff. The latest publicly available draft (December 2005) is controversial for failing to articulate clear minimum standards of client performance, introducing substantial degrees of discretion for IFC approval of projects, refusing to reflect international legal standards and, in some instances, weakening existing policies.

The IFC is expected to finalize its new policies in early 2006, at which time the signatories to the Equator Principles will have to decide how to incorporate the changes. For the reasons stated above, the revised policies are unlikely to reflect best practice in most substantive areas. They should thus be viewed as a minimum set of standards upon which the Equator Banks can build a stronger and more comprehensive environmental and social framework that reflects best practice and international standards.

Source: www.equator-principles.com

Appendix II

RENEWABLE ENERGY PROMOTION POLICIES

Country	Feed-in tariff	Renewable port- folio standard	Capital subsidies, grants, or rebates	Investment or other tax credits	Sales tax, energy tax, excise tax or VAT reduction	Tradable renewable energy certificates	Energy production payments or tax credits	Net metering	Public investment, loans, or financing	Public competitive bidding
Developed and transition countries										
Australia	✓	✓	✓			✓			✓	
Austria		✓	✓	✓	✓	✓				
Belgium		✓	✓		✓	✓				
Canada	(*)	(*)	✓	✓	✓			✓		(*)
Croatia	✓		✓	✓					✓	
Cyprus	✓		✓	✓	✓	✓				
Czech Republic	✓		✓	✓	✓	✓			✓	✓
Denmark	✓			✓	✓	✓				
Estonia	✓			✓	✓	✓				
Finland			✓	✓	✓	✓	✓			
France	✓		✓	✓	✓	✓			✓	✓
Germany	✓		✓	✓	✓	✓			✓	
Greece	✓		✓	✓	✓	✓			✓	
Hungary	✓		✓	✓	✓	✓			✓	
Ireland	✓		✓	✓		✓				✓
Italy	✓	✓	✓	✓		✓		✓		
Israel		✓	✓	✓		✓		✓		
Japan	(*)	✓	✓			✓		✓	✓	
Korea	✓		✓	✓	✓				✓	
Latvia	✓		✓	✓					✓	✓
Lithuania	✓		✓	✓					✓	
Luxembourg	✓		✓	✓						
Malta	✓				✓					
Netherlands	✓		✓	✓		✓	✓			
New Zealand			✓	✓					✓	
Norway			✓	✓		✓				✓
Poland		✓	✓		✓				✓	✓
Portugal	✓		✓	✓	✓					
Romania					✓					
Russia			✓			✓				
Slovak Republic	✓			✓					✓	
Slovenia	✓								✓	
Spain	✓		✓	✓					✓	
Sweden		✓	✓	✓	✓	✓	✓			
Switzerland	✓									
United Kingdom			✓		✓	✓				
United States	(*)	(*)	✓	✓	(*)	(*)	✓	(*)	(*)	(*)
Developing countries										
Algeria	✓			✓	✓	✓				
Argentina	✓		✓	(*)	✓		✓			
Brazil	✓								✓	✓
Cambodia			✓							
Chile			✓							
China	✓		✓	✓	✓				✓	✓
Costa Rica	✓									
Ecuador	✓			✓						
Guatemala				✓	✓					
Honduras				✓	✓					
India	(*)	(*)	✓	✓	✓				✓	✓
Indonesia	✓						✓		✓	
Mexico								✓		
Morocco				✓						
Nicaragua	✓			✓	✓					
Panama						✓				
Philippines			✓	✓	✓				✓	
South Africa			✓							
Sri Lanka	✓									
Thailand	✓		✓					✓	✓	
Tunisia			✓	✓						
Turkey	✓		✓							
Uganda	✓								✓	

Note: Entries with an asterisk (*) mean that some states/provinces within these countries have state/province-level policies but there is no national-level policy. Only enacted policies are included in table; however, for some policies shown, implementing regulations may not yet be developed or effective, leading to lack of implementation or impacts. Policies known to be discontinued have been omitted. Many feed-in policies are limited in scope or technology. Some policies shown may apply to other markets beside power generation, for example solar hot water and biofuels. Source: All available policy references, including the IEA online Global Renewable Energy Policies and Measures database and submissions from report contributors.

Source: Renewables 2007 – Global Status Report REN21 (Renewable Energy Policy Network for 21st Century; accessible at www.ren21.net Page 23

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