

Leveraging International Trade for Climate Action in Africa: Opportunities and Challenges for Lesotho.

Legal Frameworks for Trade and Climate Change in Lesotho

Ms. Thuto Matobo
Department of Public Law
National University of Lesotho

The Evolution of Trade

- Decades ago, trade was characterised by several key **development trends** that primarily focused on economic development.
- All that countries prioritized was maximizing production and trade.
- There was little or no concern about environmental repercussions.
- For example development of policies spoke to how to liberalize trade, reduce tariffs, encourage exports etc.
- There would be emissions and no waste management at factories.
- There was no care about the damage caused by products that were used in manufacturing or agriculture - e.g. plastics in manufacturing and pesticides, or coal for production energy etc.

It was “produce and trade at any cost.”

The aim was economic development and not sustainable development.



Effects of climate change on economic trade

- As a result of economic development we began to see negative effects of this myopic view about production and trade to the exclusion of sustainability.
- For example **global warming**, **drought**, **floods**, **climate change** etc. These negative consequences ended up affecting production and trade.
- So, people began to see the value of protecting the environment and adding environmental concerns into national laws and regional and international agreements.
- There is now a looming collision between trade and climate change that can no longer be ignored.



Transitioning to sustainable trade- International Climate Action for sustainable trade

- ▶ Realisation of the detrimental impacts of climate change on the economy led the global community to embark on discussions which aim at stabilising greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system through the **United Nations Framework Convention on Climate Change (UNFCCC)**.
- ▶ The Convention states that such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, **to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner** (UNFCCC, 1992).
- ▶ The Convention calls on all Parties to reduce their greenhouse gas emissions and to cope with the impacts of changes in climate.
- ▶ The Climate Change Convention is implemented in conjunction of other global environmental frameworks such as the **2015 Sustainable Development Goals**.



SUSTAINABLE DEVELOPMENT GOALS

- ▶ **Agenda 21** calls for a supportive international climate for achieving environment and development goals by:
 - ▶ promoting sustainable development through **trade liberalisation**;
 - ▶ **making trade and environment mutually supportive**;
 - ▶ For example Goal 17 promotes the relationship between trade and the environment.




International Legal Instruments Promoting The Nexus Between Trade And Environment

In 1995, the floor was open by the WTO to begin discussion on the linkages between environment and trade and to ensure that trade and environment policies work hand in glove, Lesotho was part of the discussion, and ratified the agreement.

The Makaresh Agreement became the pinnacle agreement recognizing that trade “should be conducted with a view to raise standards of living and ensure full employment...while allowing for the optimal use of the world’s resources in accordance with the objectives of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.”

There came a realization to create policies that provide the most benefit for the climate with the least risk to trade.

The commitment to sustainable development and the environment can also be seen in **WTO rules**. In general terms the rules, with their fundamental principles help set the framework for members like Lesotho to design and implement measures to address environmental concerns.

- 
- ▶ the importance of trade's contribution to efforts on **sustainable development** and the **environment** has really been recognized in different international forums that Lesotho has been party to:
 - ▶ **1992 Rio Summit**
 - ▶ **2002 Johannesburg Summit**
 - ▶ **2005 UN World Summit**
 - ▶ **UN 2030 Agenda for Sustainable Development.**

Regional Instruments Promoting The Nexus Between Trade And Environment

► African Charter:

- Article 24- All people shall have the right to a general satisfactory environment favourable to their development.

► Agenda 2063:

- Aspiration 1- A prosperous Africa, based on inclusive growth and **sustainable development**. **Goal 7** talks to Africa that is environmentally sustainable and climate resilient economies and communities.
- Priority areas- sustainable natural resource management and biodiversity conservation.
- Sustainable consumption and production patterns.

- ▶ **Agreement Establishing The African Continental Free Trade Area (AFCFTA):**
 - ▶ SADC Protocol on Trade in services -preamble- “RECOGNISING the right of Member States [Lesotho] as a member state to introduce new policy objectives and regulate national policy objectives on the supply of services, within member states. These policies should pay respect to the degree of the development of services regulations in different countries and **should not compromise environmental protection and overall sustainable development**;
- ▶ **Southern African Customs Union (SACU) Agreement 2002:**
 - ▶ **Article 18-** Provides Lesotho with the right to impose restrictions on imports or exports in accordance with national laws and regulations **for the protection of the environment.**
- ▶ **SADC Economy Strategy and Action Plan for Sustainable Development -**
 - ▶ The Green economy aims to catalyse the socio-economic transformation of the SADC Region towards a resource efficient, environmentally sustainable, climate-change resilient, low-carbon development path and equitable society.
 - ▶ It will achieve this through the transition towards sustainable production, distribution and consumption of goods and services activities and practices

Protocol on Environmental Management for Sustainable Development 2014

- ▶ **Preamble:** Conscious that environmental management and protection has important linkages to other SADC sectors and Protocols (including trade)
- ▶ Convinced also of the need to achieve coherence in the Region's intra-regional, inter-regional and multilateral commitments and negotiations on environment as well as intra-regional trade, investment and commercial development as essential to the economic integration of the Region;
- ▶ **Article 4** - The main objectives of this Protocol are to: **(d) ensure that sustainable development objectives are mainstreamed into trade and socio-economic policies, programmes and plans in the region;**
- ▶ **promoting trade in environmental goods and services for the development of the economies of the State Parties;**
- ▶ **Article 18** - Trade and investment- State Parties shall promote sustainable trade and Investment practices with due consideration of their potential significant environmental impacts.
- ▶ **“sustainable trade and investment”** refers to trade and investment that places sustainable development at the centre of its decision-making processes;
- ▶ State Parties shall develop guidelines for mainstreaming environment considerations into **regional trade and investment.**

- ▶ State Parties shall give special consideration in the establishment of joint ventures in the environmental sector to:
 - ▶ promoting environmentally sustainable trade in SADC;
- ▶ **Article 18:** State Parties shall promote Public Private Partnerships (PPPs) in addressing issues of investment in environmental programmes through inter-alia:
 - ▶ facilitating policy, legislative and institutional reforms to create an enabling environment for PPPs.
 - ▶ providing training and technical assistance to build capacity for PPPs; and providing relevant information and best practice guidelines for PPPs.
 - ▶ State Parties may establish joint positions with regard to sustainable trade, eco-labelling of products, environmental goods, products and services and other trade issues of relevance to State Parties
- ▶ **Article 12 - Climate change:**
 - ▶ State Parties shall take measures to address issues of climate change including transboundary considerations, through; addressing the negative impacts of climate change on economic activities, particularly agriculture, tourism, energy and industrial development.
- ▶ **Article 26: Technical/specialist Committee:**
 - ▶ The Technical Committee on Environment shall approve the terms of reference of Specialist Committees and ad-hoc working groups.

- Specialist Committees and technical working groups

- ▶ The Specialist Committee on Environmental Standards is established to recommend harmonised measures, consistent with the requirements of the markets, consumer protection, and human health which may be adopted by State Parties to improve quality and market access in the Region. The Committee shall address, inter alia:
 - ▶ (b) issues related to the World Trade Organisation Agreement on the application of Sanitary and Phytosanitary Measures;
 - ▶ (e) issues generated by changing market conditions and requirements of importing States.
 - ▶ (f) procedures and practices regarding trade; and
 - ▶ issues related to the packaging and labelling of products.

SADC Climate Change Strategy and Action Plan- 2015

- ▶ Vision: A climate resilient and low carbon regional economy.
- ▶ Goal: To provide a regional framework for collective action and enhanced cooperation in addressing climate change issues in order to achieve sustainable economic growth.
- ▶ **Sector Adaptation Strategies and Actions:**
- ▶ **Agriculture-** Promote the use of adaptive agricultural technologies and techniques and provide incentives for the development of green agri-business.
- ▶ **Mining:** Investors are starting to compel mining companies to accelerate public disclosure and management of risks associated with climate change impacts on production, processes, health and safety, operations, maintenance, waters and energy. This shift in focus on climate change adaptation in mining operations shows that adaptation in mining sector is not only a social issue but an economically strategic move. An increase in the mainstreaming of climate change issues in mining operations can only help the growth of the mining and extractive industry in the Region.
- ▶ **Water** is recognised as an important driver of socio-economic development within Lesotho through the Lesotho Highlands water Project.
- ▶ Recognizing that all Member States need to grow their economies, it is important to take note that their energy demand and consumption will also grow. There is however, the possibility for achieving greater emission reduction through investments in renewable energy, energy conservation and energy efficiency. This makes the energy sector an important target for mitigation response measures.



To what extent do National policies
promote the nexus between
Environment/Climate Change and Trade?



National Environment Policy

- ▶ The goal of the national policy on environment is to protect and conserve the environment with a view to achieving sustainable development for Lesotho.
 - ▶ Toxic and Hazardous Substances: Control and Regulate the introduction, manufacture, importation, sale, transportation, use, distribution and disposal of toxic, hazardous and radioactive substances in Lesotho.
 - ▶ Establish a mechanism which will stringently control importation or generation of banned toxic hazardous or radioactive wastes to human life and the environment.

National Strategic Development Plan II

2023/24 -2027/28

- ▶ It highlights the need to consider cross cutting issues such as environment and climate change.
- ▶ The goal of this KPA is to achieve inclusive, sustainable economy driven by Private Sector employment for Basotho. The aim is to transform the country from a consumer-based economy to a producer and sustainable export-driven economy.
- ▶ The constraints in this area is the country's vulnerability to **low investment in key areas** and **low productive capacity**. The economy is still highly dependent on government for economic activities and fiscal revenues.

National Climate Change Policy 2017

- ▶ The vision of the **National Climate Change Policy** is to build climate change resilience and **low-carbon pathways** including a **prosperous sustainable economy and environment in Lesotho**.
- ▶ The Mission is to **Increase climate change resilience and improve the well-being** of Basotho through mainstreaming and implementing concrete measures for adaptation and climate risk reduction, mitigation and low-carbon development, aiming at sustainable development, with active participation of all stakeholders in the social, environmental and economic sectors.
- ▶ Climate Finance And Investment Framework:
- ▶ Achieving the Policy's vision of building a climate change resilient, low-carbon pathway and sustainable prosperous economy and environment requires substantial and additional financial resources to implement the proposed actions.
- ▶ Recognizing that existing funding mechanisms from the UNFCCC and other sources have inherent multiple challenges, **the National Climate Change Policy recommends**
 - ▶ financing through climate funding from bilateral and multilateral sources;
 - ▶ the national budget;
 - ▶ private sector finance (Public Private Partnerships) and Foreign Direct Investments (FDI) and
 - ▶ funding from Carbon Markets.
- ▶ PPPs in climate finance are intimately tied to environmental, social and economic sustainability.

- ▶ To achieve the National Climate Change Policy's Vision, there are **twenty-two** policy statements based on key thematic areas that were identified. I will mention a few:
- ▶ **Policy Statement 5: Promote Climate Resilience In Mining**
 - ▶ The main mineral resources of Lesotho are diamonds, dolerite, sandstone and clay. Sand and quarry are also mined from river banks and basalt respectively.
 - ▶ There is a need for national strategies to source foreign direct investment, output growth, export earnings since the sector contributes significantly to the economy.
 - ▶ Due to its dependence on climate sensitive sectors such as water, energy and transport, mining is particularly vulnerable to climate change. Changing climatic conditions have both direct (operational and performance based) and indirect (securing of supplies and rising energy costs) impacts on the mining sector.
- ▶ **Therefore is an opportunity to put in place legal frameworks that encourage environmentally friendly and socio economic sustainability in the mining sector;**
- ▶ **Promote mining sector investments in clean energy generation and initiatives;**

► Policy Statement 6: Promote Climate Resilience And Reduce Greenhouse Gas Emissions In Manufacturing:

Promote investments in green and efficient technologies;

► Policy Statement 7: Climate Proof And Increase Efficiency Of The Tourism Sector

- Develop and promote climate adapting business strategies that will protect the industry from adverse impacts on climate change and climate variability;
- integrate climate change in tourism sector through review and update of legal and strategic frameworks and ensure enforcement of existing laws and regulations.

► Policy Statement 8: Enhance Best Practice For Forestry And Rangelands To Address Climate Change

Other Countries that have successfully linked Trade and climate action

► Rwanda

- **National Strategy for Climate Change and Low Carbon Development:** Rwanda's strategy promotes climate-resilient and low-carbon development, which influences trade by encouraging green investments and the export of environmentally friendly technologies.
- **Green Growth and Climate Resilience Strategy:** This strategy supports sustainable economic development and green growth, impacting trade by integrating environmental sustainability into economic and trade policies.

► Kenya

- **National Climate Change Action Plan:** Kenya's action plan focuses on reducing greenhouse gas emissions and adapting to climate change. It includes measures that can impact trade by promoting the export of green technologies and ensuring that trade practices align with climate goals.
- **Kenya Vision 2030:** This development blueprint incorporates environmental sustainability into economic planning, including trade policies that support sustainable practices and green industries.

► South Africa

- **National Environmental Management Act (NEMA):** NEMA provides a framework for environmental governance and integrates environmental considerations into all aspects of development, including trade. It emphasizes sustainable development and environmental protection, which can influence trade practices and standards.
- **Green Economy Strategy:** This strategy aims to promote sustainable economic growth by encouraging the development and export of green technologies and sustainable practices, linking environmental goals with trade opportunities.

► Nigeria

- **National Environmental Standards and Regulations Enforcement Agency (NESREA):** NESREA enforces environmental standards that affect trade by regulating the import and export of goods based on their environmental impact.
- **Nigeria Economic Sustainability Plan:** This plan includes provisions for promoting green technologies and sustainable development, impacting trade by fostering the growth of green industries.

Conclusion

- ▶ It is evident that there are visible efforts made through legal instruments to mainstream environmental concerns into trade at different levels (policy, national law, regionally and internationally). **These reinforce the urgency of protection of the environment.**
- ▶ However, there is still the impression that trade and environment are dichotomous issues and there is not enough convergence at national, regional and international level on these two issues.
- ▶ Further, it is a challenge for developing countries to meet some of the standards that are set by developed countries in the name of environmental protection.
- ▶ It requires levels of expertise and financial muscle from the government (policy - side) and the private sector, to be able to adhere to strict standards.
- ▶ For example, now the EU has introduced CBAM (Carbon Border Adjustment Mechanism)-mechanism to prevent products embedded with GHGs to enter the EU.
- ▶ This will affect products which are meant to be traded with the EU in the sense that they won't be allowed to enter that market if they don't meet the requirements. The USA is on the same track. Corporations in developing countries will struggle to meet the strict demands.
- ▶ It will be very expensive for their exports to comply. This is why some people argue that environmental requirements in trade, that emanate from the West, are disingenuous and only meant to keep out products from poor countries.

- ▶ On the other hand, the fascination with environmentally friendly products also opens up opportunities for African countries that produce critical minerals that are needed in all environmentally friendly technology, such as electric vehicles.
- ▶ The problem is that Africa still struggles with extracting such minerals. There is largely foreign ownership across the entirety of the supply chain.
- ▶ In order for African countries, such as Lesotho, to benefit from these resources, they need policies and laws and institutions and investors that can protect and preserve space for Africans.

What then should Lesotho do?

- ▶ convergence in trade and environment national instruments.
- ▶ participate in regional and international frameworks
- ▶ attract investment into environmentally friendly production
- ▶ seek opportunities for technical assistance with mitigation and adaptation strategies etc.

