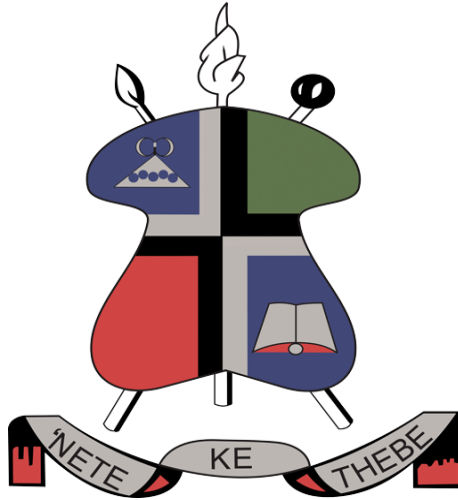


**Interrogating Lesotho's Policy, Legal and Institutional Frameworks  
Concerning Food Safety Standards**



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**A Dissertation Submitted to the Faculty of Law, the National University of  
Lesotho in partial Fulfillment for the degree of Master of Laws**

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**July 2022**

## **AKNOWLEDGEMENTS**

First and foremost, praises and thanks to the God, the Almighty, for His showers of blessings throughout my research work to complete the research successfully. I would like to express my deep and sincere gratitude to my research supervisor, Dr. S.P. Macheli, a Lecturer in the Faculty of law at the National University of Lesotho, for supervising this research and providing invaluable guidance throughout this research. His dynamism, vision, sincerity, and motivation have deeply inspired me. He has guided me on the methodology to carry out the research and to present the research works clearly as possible. It was a great privilege and honour to work and study under his guidance. I am extremely grateful for what he has offered me. I would like to thank him for his friendship and empathy.

I am extending my heartfelt thanks to my husband Mr. Katara Ntafo, family for their acceptance and patience during the dissertation.

I am extremely grateful to my parents for their love, prayers, care, and sacrifices for educating and preparing me for my future. I am very much thankful to my brothers and sisters for their love, prayers, and continuing support to complete this research work. My special thank goes to my friend, Maserobanyane Serobanyane, for her keen support expressed during this research.

## **DECLARATION**

I, Seeng Matsosa, do hereby declare that this dissertation is a presentation of my original research work. Wherever contributions of others are involved, every effort is made to indicate and acknowledge such unambiguously, with due reference to the literature, and acknowledgement of collaborative research and discussions. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of degree of Master of Laws at National University of Lesotho.

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## Chapter 1

### Introduction

#### 1.1 The overview of Policy, Legal and the Institutional Frameworks in Lesotho

The present study seeks to critically discuss the policy, legal and the institutional frameworks concerning food safety standards in Lesotho. A standard is a document which provides, inter alia, requirements, rules, and guide-lines, for process, product or service.<sup>1</sup> These requirements are sometimes complemented by a description of the process, product or services. The process of formulating, issuing and implementing standards is called standardization.<sup>2</sup> Standards are a result of a consensus and are approved by a recognized body. According to the ISO guide 2:2004 defines a standard as a “document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context”.<sup>3</sup> Furthermore, the definition in the ISO 8402 standard is the set of all those planned system actions applied within the framework of a Quality System, to provide adequate confidence that a product or service will satisfy given requirements for quality( ISO,1994).

Additionally, there are a number of international organizations including ISO, those standards are adapted nationally by different countries around the world. The study addresses the policy, legal and institutional frameworks concerning food safety standards in Lesotho and whether they exist or not, if so, are they adequate so as to protect the life of Basotho, animals or plant life or health? Furthermore, this study will propose the codification of additional food standards laws to the already existing pieces of legislations to assure the protection of the environment against dumping of sub-standard products and the importation of the unsafe food stuffs to the detriment of Basotho nation resulting from lack of adequate technical

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<sup>1</sup> ISO reference definitions-guide 2, pg. 10

<sup>2</sup> ISO, (2019), “Publication on Good Standardization Practises”, pg.13

<sup>3</sup> ISO, (2019) *ibid.*

regulations in a form of domestic laws setting the standards on the imported products.

The scope of the research is to interrogate the Lesotho's policy, legal and institutional frameworks concerning food safety standards, the focus will be on the imported food stuffs of low quality into the Lesotho market consequently leading to dumping of those unsafe food products in Lesotho.<sup>4</sup> The study will also identify the gaps and overlaps that are minimized in the development and implementation of food standards in Lesotho. The critique will be against this backdrop. The study will also discuss Lesotho's national priorities and strategies articulated in policies, the regulatory legal frameworks in a form of technical regulations and laws. The study will further interrogate the adequacy of institutional frameworks dealing with food standards issues and their roles for the successful implementation of standards policies and laws. Lesotho's international and regional obligations in relation to food standards cannot be left out, for which Lesotho is a member. Lastly, a comparative study will be conducted of some regional member states. This will be done to provide a clear perspective on the situation in Lesotho as compared to other countries in the region.

## **1.2 Problem statement**

The purpose of this research study is to assess and critically discuss the food standards laws in Lesotho. For the past years, Lesotho has been experiencing problematic trade as well as health issues caused by dumping of unsafe food stuffs as well the outbreak of some diseases like cancer and many more amongst the Basotho nation.<sup>5</sup> The non-existence of the Standards Institution Body is yet another problem. These problems are a result of lack of adequate food standards laws and regulations in Lesotho.

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<sup>4</sup> Lesotho Government (2015) Ministry of Health, Inspectors Report.

<sup>5</sup> Ministry of Health, Inspectors Report, *ibid*.

### **1.3 Hypothesis**

It is hypothesized that the existing food standards laws in Lesotho are inadequate and not sufficient to protect Basotho, animals or plant life, consequently resulting in dumping of unsafe food stuffs and products of low quality in Lesotho.<sup>6</sup> Additionally, the existing food standards laws will be reviewed and strengthened in line with the Lesotho's international and regional obligations whilst sufficiently resourced institutional arrangements need to be put in place for effective implementation of those standards.

### **1.4 Aims and objectives of the study**

The aim of the research is to explore and critically study the Lesotho food standard laws, their functionality, as well as whether there are stumbling blocks resulting in having adequate food standards laws like in other countries and the consequences experienced by Lesotho for not having the functional, adequate food laws, standards systems and the Standards Body as well. It is object that, full stakeholder analysis proposing appropriate policy interventions in a form of amending, repealing as well as codifying for legislations on food safety standards to safeguard issues of quality and safety of consumers.

### **1.5 This research will seek to address the following questions;**

- 1.5.1 why does Lesotho have inadequate food standard laws?
- 1.5.2 what are the consequences experienced by Lesotho in not having adequate food laws and an effective institutional arrangement in place?

### **1.6 Literature review**

#### **1.6.1 Introduction**

This part provides a review of the literature of primary and secondary sources that already exists in relation to food standards, regulations and institutional frameworks. Accordingly, this part will discuss the overview of the of these

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<sup>6</sup> Ministry of Health, Inspectors Report, ibid



components at international as well as regional level, reference to the Codex and ISO standards. Further, the interrogation and analysis of food standards in other jurisdictions, selectively in the Republic of Botswana, the Republic of South Africa and Lesotho. Further, a critical analysis of the Lesotho's current position on the food standard issues cannot be left out, the challenges and gaps will be identified and then the conclusion and recommendations will follow. There will be some further recommendations on how the already existing food standards policies could be sufficiently implemented, as well as to the filling of gaps on the existing laws and regulations on food standards in line with the Lesotho's international and regional obligations.

### **1.6.2 Evolution of standards**

There is robust literature available concerning the definition as well as the regulation of standards internationally. Many facets of our daily lives depend on standards. Standards influence the products we use, the foods we eat, how we communicate, our means of travel and many other activities. The roots of standardization trace back after the First World War, where standardization was regarded as the useful tool for reducing cost.<sup>7</sup> However, some decades later after the Second World War seller market conditions put consumer interest in jeopardy. To safeguard this interest and to meet the rising demand for standards for finished products, standardization activities increased in various countries, with the additional support and involvement of government and industry.<sup>8</sup> Consequently, with increased trade among industrialized countries, internationally accepted norms or standards were needed to support that development. That led to the establishment of international bodies for standardization, such as the International Electrotechnical Commission (IEC) in 1906 and the International Organization for Standardization (ISO) in 1947.<sup>9</sup> According to the definition in the ISO 8402 standard is the set of all those planned system actions applied within the framework

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<sup>7</sup> Wang Ping: A Brief History of Standards and Standardization Organizations: A Chinese Perspective, 2011, pg 5.

<sup>8</sup> ISO & UNIDO, "National Standards in Developing Countries: Fast Forward 2<sup>nd</sup> ed, 2013.

<sup>9</sup> [www.iso.org](http://www.iso.org)-accessed 3 March 2022.

of a Quality System, to provide adequate confidence that a product or service will satisfy given requirements for quality.<sup>10</sup>

### **1.6.3 Public welfare**

Standards are an important means of promoting societal goals, such as protection of health, safety and the environment.<sup>11</sup> Government agencies at the national, regional, state, and local levels administer thousands of regulatory standards or technical regulations. The existing literature will deal with the of importance standards.<sup>12</sup> For the purposes of this study sanitary regulations on food and safety which is seen as the preserve of the government regulation as a means to achieve a social-desirable level of protection to human health, enforced through official inspection of production facilities or end products. Although the recent debate on standards and development casts doubt on the beneficial effects of trade liberalization. The critique is that the proliferation and tightening of quality and safety standards in high income markets is causing new markets to suffer.<sup>13</sup> This point is further maintained by authors such as Jensen who also argue that some countries especially least developed countries are excessively burdened by the implementation costs of the SPS Agreement.<sup>14</sup>

However, this study argues that the protection of human or plant life is to be given preference whilst other related factors like markets access and other factors will follow. While scholars such as Peter Chase are of the view that also support the same proposition that standards exist in an economy to assure generally recognized level of safety making it easier for buyers of goods and services to feel confident they are getting a certain level of quality. I also agree with this proposition, that standards ensure that products are fit for consumption (quality and safety).<sup>15</sup>

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<sup>10</sup> ISO,1994

<sup>11</sup> Laurian J. Unnevehr;” Food safety as a global public good”, 2007.

<sup>12</sup> Peter Chase (2019), Karuna Ramafrishnan (2016), Antle (1995), Henson Caswell (1999), Johnson (1991).

<sup>13</sup> Robert Klassen; The Effect of Tightening Standards, 2021.

<sup>14</sup> Jensen, M.F, Reviewing the SPS Agreement: A Developing country Perspective, Centre for Development Research, 2002.

<sup>15</sup> S. Gadrner; Consumers and Food Safety: A food Industry Perspective 2013.

#### 1.6.4 Challenges for implementation of standards infrastructure

Moreover, developing countries like Lesotho which is the focus and crux of the matter in the present study are often hampered by a lack of access to independent and credible inspection, testing, certification and accreditation services, what can be termed the “standards infrastructure”.<sup>16</sup> Kees Van Meer in his work “Developing National SPS Systems” articulates that developing countries face challenges on how to participate successfully in international agricultural and food markets. He makes a point that developing countries struggle with technical and policy questions about what capacity they need for their national SPS system, how they can develop it, whether they can afford the costs and reap the benefits.<sup>17</sup> This paper agrees with the Kees Van Der Meer work and other researchers like International Trade Centre 2011 report only to the extent that even though it is admitted that developing countries struggle with many serious weaknesses in their national SPS system for contributing to national development objectives; some have systems that still lack basic functionality. The protection of trade and health protection are vague and there are serious discrepancies between SPS ambitions and available resources, they should nonetheless push mechanisms and measures in place to adhere to the international set standards (SPS) Agreement which recommends WTO Members to use in the international standards for harmonization of SPS measures in their countries to protect peoples well-being and plants.<sup>18</sup> The reason why this study agrees with that is, food legislation and food control infrastructures are not sufficiently developed in many countries to enable adequate protection of their food imports and prevents the dumping of sub-standard and unsafe food as provided for and recognized in the preamble of the Codex Alimentarius Commission’s code of ethics for international trade in food.<sup>19</sup>

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<sup>16</sup> Kees Van Der Meer, “Developing National SPS Systems”, 2007, Swinnen Martin & Colen 2015.

<sup>17</sup> Johan Swinne, Miet Maertens, Liesbet Colen; The Role of Standards of Food Standards in Trade Development, 2015.

<sup>18</sup> Spencer Henson; “The Role of Public and Private Standards in Regulating International Food Markets, 2006.

<sup>19</sup> Codex Alimentarius Commission. 1987; Code of ethics for international trade in food CAR/RCP 20-1979. REV 1 (1985) Rome. FAO/WHO.

### **1.6.5 How effective are the existing standards policies in Lesotho?**

Previous studies suggest that, Lesotho's National policies on standards dates back to the year 2021, the Lesotho Food Safety Policy 2021 , Lesotho National Quality Policy 2015, Consumer Protection Policy 2013.<sup>20</sup> All these drafted policies realize the importance of having and /or taking standards issues on board as well as having working standards systems in place, but one gets baffled when looking at the pace and in jokey way these issues are dealt with in Lesotho. The existing available literature is in support of this view that the implementation of policies in Lesotho are weak.<sup>21</sup> Those policies are the reliable roots of the future standards regulations and law. To date Lesotho through its parliament, has not yet enacted such legislations since their launch in those many past years.<sup>22</sup> The reasons for this setback is attributable to some factors such as lack of political will by the authorities as well as the instability caused by coalition governments which usually change from time to time.<sup>23</sup>

### **1.6.6 Legal and institutional frameworks in Lesotho**

The standards and quality assurance section of the Ministry of Trade and Industry is the focal point for standards issues in Lesotho.<sup>24</sup> No national standards have been developed yet. Though Lesotho is a subscriber of the International Organization of Standardization, the legal framework for standards certification has yet to be

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<sup>20</sup> The Lesotho Food Safety Policy 2021, Lesotho National Quality Policy 2015, Consumer Protection Policy 2013.

<sup>21</sup> United Nations Conference on Trade and Development: Lesotho Policy Review, 2013.

<sup>22</sup> UNCTAD (2013), Services Policy Review in Lesotho 2013.

<sup>23</sup> Government of Lesotho, 2019, The Kingdom of Lesotho Voluntary National Review on the Implementation of the Agenda 2030 Report, pg 58.

<sup>24</sup> [http:// www.trade.gov](http://www.trade.gov)- accessed 17April 2022.

Lesotho Iodization Regulations No.13 of 1999

Food Fortification Regulations No. 8 of 2020

Milk Hygiene Regulations of 1999

Trading Enterprise Order 1993

Trading Enterprise Regulations No. 78 of 1999

International trade Centre (2010); Quality & Standards; International Trade Forum Magazine, Issue 3.

formed.<sup>25</sup> This study proposes that the Lesotho government should capacitate by funding of the responsible Ministry, the Ministry of Trade and Industry for the meaningful development of quality system and standards as well. As I have indicated above, the responsible ministries in Lesotho for the standards policies, regulations are the Ministry of Trade and Industry as well as the Ministry of Health. Notably, this paper is of the view that because of the fragmentation of standard laws from these two ministries, standards laws are not able to be addressed meaningfully, as the enforcement is difficult under such circumstances for the reason that each ministry work separately from each other. However, Lesotho government has the following standard legislations particularly on health and safety; the Public Health Order 1970<sup>26</sup>, a statute which granted the authority for the adoption of the existing standard regulations which often have penalties for violations. Further, the Order beefs up the protection of public health and also concerns in some section's food hygiene, water protection as well as nuisances. It defines the functions of the Ministry of Health. It also defines what constitutes a nuisance and provides for corrective action by health officers.

Admittedly, there are very serious challenges when it comes to the enforcement, as it has already been articulated. The implementation and of giving force and effect of the Order in section 22 provides for penalties which are miserably too low to act as a deterrent against the commission of an offence. For example, the section provides that any person guilty of an offence against or in contravention of, or default in complying with, any provision of this Order shall, if no penalty is expressly provided for such offence, contravention or default, be liable on conviction to a fine not exceeding two hundred rands or to imprisonment not exceeding six months and if the offence, contravention or default is of a continuing nature, to a further fine not exceeding five rands for each day during which he shall make default provided that where the offence is in respect of any building or premises for which a license is required under any law for the time being in force the court before which any such conviction is obtained may in addition to or in

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<sup>25</sup> Common Wealth Network 2020.

<sup>26</sup> Public Health Order No.12 of 1970

substitution for any of the aforesaid penalties revoke or suspend such license. Additionally, some challenges include lack of training for relevant stakeholders such as the Police, Health inspectors and Courts of law. Knowledge and capacity with respect to standard laws-related issues is weak within the relevant stakeholders in Lesotho and there is no quality infrastructure, no facilities and equipment for testing which is quite substantial. Implementation of policies and legislation in Lesotho has always been poor.<sup>27</sup> Moreover, this is often associated with lack of necessary financial, human resources, poor coordination and lack of appropriate planning.<sup>28</sup>

The Order was followed by a number of regulations in order to reinforce its implementation. They are, amongst others; Lesotho Iodization Regulations 1999<sup>29</sup>, Food Fortification Regulations 2020<sup>30</sup>, Milk Hygiene Regulations 1999<sup>31</sup>, Trading Enterprise Order 1993<sup>32</sup>, Trading Enterprises Regulations 1999<sup>33</sup>. All the above-mentioned pieces of legislations were designed to set the standard on the imported products and local products, in an endeavor by the Lesotho Government to protect the welfare of Basotho nation to ensure positive quality control. Astonishingly, the old culture of non-implementation and non-enforcement of policies and laws still persists even today in Lesotho.

## **1.7 Methodology**

This study is based on literature review of primary and secondary sources such as textbooks, law journal articles, statutes and internet websites. In addition, interviews will also be conducted with the relevant stakeholders on standard issues. The sources will be subjected to a critical analysis with the aim of determining whether the current standards policies, laws and regulations are adequate to protect

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<sup>27</sup> Worldbank.2015, "Lesotho: Systematic Country Diagnosis."

<sup>28</sup> Lesotho Government; Ministry of Trade and Industry, Cooperatives and Marketing: The State of Small Enterprises in Lesotho, Final Report, 2013.

<sup>29</sup> Lesotho Iodization Regulations No.13 of 1999.

<sup>30</sup> Food Fortification Regulations No. 8 of 2020.

<sup>31</sup> Milk Hygiene Regulations of 1999.

<sup>32</sup> Trading Enterprise Order 1993.

<sup>33</sup> Trading Enterprise Regulations No. 78 of 1999

Basotho and animals against the importation of sub-standard food stuffs. In this regard, interviews of four sectors will be undertaken; first and foremost, the Ministry of Trade will be interviewed as it is responsible for the development of standards and food testing laboratories enquiring as to the challenges they face when the existing laws and regulates are enforced. Also, the standards and quality assurance section of this Ministry as the focal point for standards issues will be interviewed as to why Lesotho is the only country within SACU region which lacks behind with standards issues and does not have a standard body as well.<sup>34</sup> The officials from the Ministry of Health will also be interviewed about the statistical records in their possession of the quantities of food stuffs upon their inspection to have entered in Lesotho without meeting the legal requirements and standards specified by the law. For instance, uniodated salt or unfortified foods such as maize and wheat flour contrary to the law. The study will further reveal through the Ministry of Health the statistical records of patients treated from diseases caused by unfortified food stuffs such as goiter, malnutrition and many more. The Minister of Health, which has ample regulation-making powers under the Public Health Order<sup>35</sup> to protect public health will also be interviewed on how many laws have been enacted, their shortcomings as well as the future additional laws and how are they going to be beneficial to the public. Moreover, the issue of standards in regard to refrigeration and other cooling systems concerning the keeping of different food stuffs is also worth looking at and cannot be left out in the discussion. Last but not least, reference to the International Agreements on Standards (TBT and SPS WTO Annexes) SADC Protocols, UNIDO and ITC journal and articles on standards. The existing legislations, laws and regulations in Lesotho will be conducted as well.

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<sup>34</sup> SACU Annual Report 2020.

<sup>35</sup> Public Health Order 1970.

## **1.8 SUMMARY OF THE CHAPTER BREAKDOWN**

### **CHAPTER ONE: Introduction**

This chapter basically introduces the topic and generally shows how the whole paper will look like. It shall expound the roadmap which will be in the following manner, overview of the study, statement problem, hypothesis, objectives, and relevance of the study, methodology and lastly chapter breakdown.

### **CHAPTER TWO: Policy, Legal and institutional Frameworks Internationally and Regionally.**

To interrogate the Policy, legal and institutional frameworks concerning food safety and standards Internationally and Regionally. In this regard, a look is cast at standards from international and regional organizations' perspective.

### **CHAPTER THREE:**

To interrogate and analyze how different jurisdictions are dealing with standards related issues, regulations as well as the institutions that are in place for the implementation of standards matters.

### **CHAPTER FOUR:**

To focuses on the interrogation of Lesotho's scenario or position on standard-related issues, how far is Lesotho in formulating as well as implementing policies relating to standards in the region and also adhering to its internal obligations as well. If not, what interventions needed for Lesotho's improvement with standard issues, as they are necessary for a country competitiveness in international trade and for the protection of Basotho, plant and animal life as well.

### **CHAPTER FIVE:**

Having researched on all the above- mentioned food safety and standard issues, this chapter will make the conclusions and recommendations on the identified gaps for future solution of putting in place sound standard policies, regulations as well as putting in place of effective institutions.



## Chapter 2

### Standards and SPS measures internationally and regionally

#### 2.1 Introduction

This second chapter deals with interrogation of the policy, legal and institutional frameworks concerning food safety and standards internationally and regionally. First, issues of standards will be looked at the international level, with reference to the WTO standards and to the international standards by Codex Alimentarius guidelines on standards issues. Secondly, the discussion will be conducted to demonstrate how standards issues are handled regionally within SADC and SACU regional blocks respectively.

Standards and quality have been part of human society since ancient times.<sup>36</sup> There were various reasons why standards exist, one major reason why standards exist is that, they define quality and minimum requirements and provide recognized solutions for the protection of consumers, health, safety and environment.<sup>37</sup> They are coordinated internationally by the World Trade Organization through International Organization for Standardization (ISO), the International body which undertake standardization of work at international level (They develop and publish International Standards). There are international standards developed by ISO and those standards are directly adopted nationally by different countries around the world, South Africa has adopted those nationally by the establishment of South African Bureau of Standards.<sup>38</sup> Similarly, India and Malaysia established their national standards bodies. The Bureau of Indian Standards<sup>39</sup> and the Department of Standards Malaysia respectively.<sup>40</sup>

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<sup>36</sup>International trade organization, (2011); Export Quality Management: A Guide for Small and Medium-sized Exporters, 2<sup>nd</sup> Ed.

<sup>37</sup>Juan Jose Tari, Jose Francisco Molina, Inaki Heras, Journal of Industrial Engineering and Management (2013);  
Benefits of the ISO 9001 and ISO 1400 standards: A literature review.

<sup>38</sup> South African Bureau of standards Act ,1993

<sup>39</sup> The Bureau of Indian standards Act,2016

<sup>40</sup> Standards of Malaysia Act,1996.

## **2.2 How standards are regulated internationally**

A Fundamental question that may be asked is “How do you ensure that your country consumers are being supplied with food that is safe to eat?” - “safe” by the standard you consider appropriate? And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers”?

The solution to the above questions lies in the work of the body called Codex Alimentarius Commission which provides a collection of food standards, guidelines and codes of practice recognized by the World Trade Organization as the benchmark standards for national food safety regulations. CODEX is responsible for the development of food standards and sanitary practices.<sup>41</sup> According to the Codex Alimentarius Commission’s code of ethics, general principles and objectives for international trade in food in Article 5 read with Article 7.1 thereof.

Article 5.1 articulates that;

Appropriate and adequate national food standards should be established and enforced taking into account that uniform consumer protection and the orderly marketing of food can be better achieved through the acceptance of food standards elaborated by the Codex Alimentarius Commission or the adoption of national standards to such international organisations whilst 7.1 (a) voices to the implementation of this Codex Code by providing that;

Governments of all countries, who should provide adequate food legislation and food control infrastructures, including certification and inspection systems and other legal or administrative procedures that also apply to re-exports of food as appropriate as necessary. These two Codex provisions places an obligation to Codex member states to adhere to the implementation of the Codex Code by putting in place the food legislation, regulations, standards and other administrative procedures.<sup>42</sup> According to Joao Magalhaes article on Regional Sanitary and Phytosanitary Frameworks and Strategies in Africa, these Codex standards usually

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<sup>41</sup> UNIDO; Role of Standards; A Guide for small and medium-sized enterprises, 2006.

<sup>42</sup> Standards and Trade Development Facility: Regional and SPS strategies in Africa, 2010 pg 3

relate to product characteristics and may deal with all government-regulated characteristics appropriate to the commodity.<sup>43</sup>

Furthermore, there is also the WTO international instrument which addresses the application of food safety, animal and plant regulations.<sup>44</sup> It is called the Agreement on the Application of Sanitary and Phytosanitary Measures which sets out the basic rules for food safety, animal and plant health standard.

According to the WTO Understanding on Sanitary and Phytosanitary Agreement<sup>45</sup>, the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) sets out the basic rules for food safety, animal and plant health standards.<sup>46</sup> It allows countries to set their own standards (my emphasis). But it says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.<sup>47</sup>

Notably, that the Application on SPS Agreement, the Agreement explicitly recognizes the right of governments to take measures to protect human, animal and plant health, as long as these are based on science, are necessary for the protection of health, and do not unjustifiably discriminate among foreign sources of supply. Likewise, governments will continue to determine the food safety levels, animal and plant health protection in their countries.

It is against the above-mentioned background that the SPS Agreement allow governments to take measures to restrict trade in pursuing health policy objectives, the emphasis in WTO rules is, on how policies are pursued without questioning the underlying objective. Under this Agreement health is considered a legitimate objective for restricting trade.<sup>48</sup>

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<sup>43</sup> Standards and Trade Development Facility: Regional and SPS strategies in Africa, 2010 pg 4

<sup>44</sup> WTO Understanding on the Agreement of Sanitary and Phytosanitary Measures, 1998.

<sup>45</sup> WTO Understanding on the Agreement of Sanitary and Phytosanitary Measures, 1998.

<sup>46</sup> Dr. Clemens Sanetra, Roc'io M. Marba'n (2001); The Answer to the Global Quality Challenge: A National Quality Infrastructure.

<sup>47</sup> WTO, ISO, IEC and World Trade. ISI/IEC Information Centre, 2006-03-03, [www.iso.org](http://www.iso.org)

<sup>48</sup> International Trade Centre," The SPS Agreement: WTO Agreement on the Application of Sanitary and Phytosanitary Measures, 2010.

However, it encourages governments to “harmonize” or base their national measures on the international standards, guidelines and recommendations developed by WTO member governments in other international organizations. Essentially, there are international bodies responsible for food safety and quality which works closely with the United Nations agencies, World Health Organization (WHO) and Food and Agricultural Organization (FAO) Food Safety and Quality Unit. FAO works closely with UN agencies, national, international organizations, research centers and professional associations on food safety, quality and nutrition to develop international standards and also to implement international Sanitary and phytosanitary standards.<sup>49</sup> The Codex Alimentarius Commission was established in 1961 with the responsibility of implementing the joint FAO/WHO food standards Food Standards Programme.<sup>50</sup> Codex provides guidance on the compositional requirements of food so that they are nutritionally safe. Codex guidance ensures that consumers understand what they are buying and that it is what it says it is”.<sup>51</sup> It is important at this juncture to note that Lesotho is a Codex member as well. More importantly, from the above quoted piece of literature, recent studies by the International Agencies like United Nations Industrial Development Organization (UNIDO) <sup>52</sup> and International Trade Centre (ITC) <sup>53</sup> reveal that countries like Lesotho even though it is a member state to the SPS Agreement, faces challenges in formulating and implementing policies relating to standards and guidelines on food safety as developed by CODEX, as a result, they have not been able to enjoy the fruits from this particular international instruments the SPS Agreement and also in applying these Codex foods standards nationally through enactment of food regulations in Lesotho. This contention is also supported by the WTO report of

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<sup>49</sup> Food and Agricultural Organization of the United Nations (2022); standards and Trade development Facility. It is a global partnership that supports developing countries in building capacity to implement International SPS standards and requirements.

<sup>50</sup> Codex Alimentarius Commission together with FAO and WHO in their supportive roles, has provided a focal point for food related scientific research and the Commission itself is important medium of exchange of scientific information about food.

<sup>51</sup> Report on strengthening Codex capacity, 2002-2007.

<sup>52</sup> UNIDO (2006) Role of standards: A guide for small and medium-sized enterprises.

<sup>53</sup> International Trade Centre, UNTACT, WTO (2005); Innovations in Export Strategy: A strategic approach to the quality assurance challenge.

Lesotho referenced WT/TPR/S/32. According to this report, Lesotho does not have a national legal and institutional framework for the development of standards, technical regulations and conformity assessment procedures since its membership to the WTO in 1995. Thus, since the last review in 2009, some progress has been made mainly at policy and institutional level, for instance, the draft policy of Consumer Protection Policy (CCP) <sup>54</sup> and Consumer Protection Bill 2021<sup>55</sup> has been tabled in Parliament for enactment. Additionally, there are 2021 a draft of Lesotho Food Safety Policy <sup>56</sup> as well as the Quality Policy and regulatory Framework of 2015 <sup>57</sup>. All of these policies are the government's initiatives in an endeavor to protect the consumers through the standards mechanisms in Lesotho. Accordingly, there is a need for the Government to employ these policies, through the Ministry of Trade and Industry is important for trade policy formulation and implementation. The legal framework for standards certification has yet to be formed, but the standards and quality Assurance Department of the Ministry of Trade and Industry, Cooperatives and Marketing was established as the national standards body in January 2000. Regrettably, to date, these policies have not seen the light of the day. One other reason reported by the World bank which the present study has the same view is that Lesotho has, in recent years, experienced unstable governments, characterized by weak coalitions and frequent change of government or cabinet reshuffles which delays developmental process and national goals.<sup>58</sup> It is worth noting at this juncture that, without proper compliances with its international obligations-the SPS Agreement, without putting policies frameworks and the implementation such, Lesotho's ability to protect its citizens is at stake, while on the other hand, dumping of poorer quality foodstuffs into the Lesotho's market is a very serious issue to the detriment of human, animal or plant life or health.<sup>59</sup> This laterally goes against the very spirit of this international instrument which seeks to protect human, animal or plant life or health. Actually, the SPS

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<sup>54</sup> Lesotho Government, Consumer Protection Policy, 2013.

<sup>55</sup> Lesotho Government, Consumer Protection Bill,2021.

<sup>56</sup> Lesotho Government, Food Safety Policy, 2021.

<sup>57</sup> Lesotho Government, Quality Policy and Regulatory Framework, 2015.

<sup>58</sup> [www.worldbank.org](http://www.worldbank.org)- accessed 12 March 2022.

<sup>59</sup> The Ministry of Health inspectorate Report of 2001.

Agreement calls for assistance to countries to enable them to strengthen their food safety systems.

### **2.3 Southern African Development Community (SADC)**

The Southern African Development Community (SADC) is a Regional Economic Community comprising sixteen Member States; Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.<sup>60</sup> SADC was established in 1992. The South Africa Development Community's approach to standards and SPS management is based on the provisions of the World Trade Organization (WTO) Agreement on the application of SPS measures which are mirrored in the SPS Annex to the SADC Protocol on Trade.<sup>61</sup> The objectives in Article 2 of the SPS Annex to the Protocol on Trade are; to facilitate the protection of human, animal or plant life or health in the territory of Member States, to enhance the Members State's implementation of the WTO agreement on the Application of Sanitary and Phytosanitary measures, to enhance technical capacity to implement and monitor SPS measures including promoting greater use of international standards and other matters concerning SPS, to provide a regional forum for addressing sanitary and phytosanitary matters and to provide a regional forum for resolving trade related sanitary or phytosanitary issues. Article 16 of the SADC Protocol on trade commits member states to base their SPS measures on international standards, guidelines and recommendations and that they work towards mutual recognition of equivalence for specific SPS measures in accordance with WTO sanitary and phytosanitary Agreement.

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<sup>60</sup> South African Development Community Treaty (SADC) ,1992.

<sup>61</sup> Sanitary and Phytosanitary (SPS) Annex VIII to the SADC Protocol on trade, 2014.

The report on SADC overview <sup>62</sup> indicates that, although the SPS Annex was adopted by SADC Ministers of Trade and Industry in 2008, the Annex lays down the framework for regional integration and harmonization of SPS issues and SADC Member States have to abide with its spirit to the SADC Protocol on Trade, its full implementation is only now being realized through the establishment and capacitation of the relevant regional committees. The REIS programme was established by these Ministers to specifically deal with the regional SPS issues by enabling the regional SPS structures to consolidate and formulate work programmes aimed at solving SPS challenges in the region. It is expected that by the end of this REIS programme compliance with SPS measures and use of standards will have improved significantly in the region leading to increased trade in safe agro-products regionally and internally.

Joao Magalhaes in his report Standards and Trade Development Facility highlighted the SADC approach on standards implementation strategies for since SADC is an observer of Codex, rather than developing regional standards, SADC's efforts to reinforce harmonization which include the development of regional guidelines to help Member States to implement international standards in a practical manner.

These regional mechanisms in the SADC Region on standards such as the Regional guidelines for the regulation of food safety in SADC Member States <sup>63</sup> aimed at providing a framework to assist the region and member states in the development and operation of regional and national food safety management systems and food laws. In addition, there are also Regional guidelines for the management of SPS matters in SADC Member States <sup>64</sup> which outlines a model that takes into account the diversity, the different levels of development and the wide range of SPS issues to be dealt with in the SADC Region. The guidelines have been prepared taking

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<sup>62</sup> A SADC overview providing the origins of SADC, the Mission, Vision and Common Agenda of the Institution and its Strategic Plans, 2001.

<sup>63</sup> SADC Regional guidelines for the regulation of food safety in SADC Member States, 2011.

<sup>64</sup> SADC Regional guidelines for the management of SPS matters in SADC Member States, 2011.

into consideration provisions of the SPS annex to the SADC Protocol on Trade and SADC policies, as well as new worldwide trends in managing SPS.

#### **2.4 South African Customs Union (SACU)**

SACU is the oldest customs union in the world; having been established in 1910, it consists of five members States: Botswana, Lesotho, Namibia, South Africa and Eswatini.<sup>65</sup> SACU is an important institution that was set up following the entry into force of the 1969 revised in 2002 SACU Agreements. It is to be noted that these SACU countries are all original WTO members.

At the heart of this study is the interrogation of the policy, legal and institutional frameworks concerning standards in Lesotho. Prominently, this issue will be discussed particularly with reference to the SACU regional block which Lesotho is a member. Basically, the researcher is also interested to research on how these issues are handled within SACU. SACU countries currently lack a common policy on certain key trade areas such as customs procedures, standards and technical regulations.<sup>66</sup> Developing common trade policies and strategies in these areas, as provided for by the 2002 SACU agreement. This point is further reinforced by the World Trade Organization report WT/TPR 114<sup>67</sup> that SACU countries do not have a common policy on standards and technical regulations. South African standards, however, are generally used in Lesotho and Namibia, whereas Botswana established its own Bureau of Standards in 1995, and Eswatini enacted its standards and Quality Act in 2001. Noteworthy, according to the World Bank Doing Business Indicators, Lesotho is the worst performer in SACU.<sup>68</sup> Lesotho is the only country within SACU without a national standards body and no legislation dealing specifically with SPS matters and its framework is not clearly defined.<sup>69</sup>

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<sup>65</sup> SACU Agreement 2002

<sup>66</sup> International Trade Centre and Commonwealth Secretariat (2003), *Influencing and meeting International Standards: Challenge for developing Countries* vol.1.

<sup>67</sup> WTO report at page 37.

<sup>68</sup> World Bank, (2012), "Doing Business Indicators".

<sup>69</sup> WTO G/TBT/CS/2/Rev.21, 2015.



It worth noting at this juncture that, Article 28 of the 2002 SACU Agreement provides that members shall harmonize product standards and technical regulations within the common customs area and apply product standards and technical regulations in accordance with the WTO Agreement on Technical Barriers to Trade. Additionally, another provision on standards is Article 30 of the SACU Agreement which indicates that members reserve the right to apply sanitary and phytosanitary (SPS) measures in accordance with national SPS laws and international standards. Subject to the provisions of Article 18 of the Agreement, SACU countries recognizes the importance of measures prescribing zero-sanitary and phytosanitary requirements aimed at preventing the spread of animal and plant diseases, parasites, and insects and agree to consult from time to time to achieve such an aim in the common area, with due regard to the need to facilitate the flow of trade in products affected by such measures.

## **2.5 Conclusion**

In conclusion the following points were looked at; the value of standards at international as well as regional context, that is, in SADC and SACU level. The next Chapter will interrogate how standard issues are dealt with at regional level and in some member countries in the SADC and SACU regional blocks; South Africa, Botswana and in Lesotho.

## CHAPTER THREE

### A Comparative Perspective of Standards Regulation in South Africa, Botswana and Lesotho

#### 3.1 Introduction

This chapter represents a gap analysis and identifies weaknesses in the Lesotho's scenario or position on standard-related issues compared to other regional members states. The chapter takes a comparative perspective of how standards-issues are handled in other jurisdictions particularly; in the Republic South Africa, the Republic of Botswana and in Lesotho. This study hopes to provide additional insight into the adequacy of the exiting standards policies, laws and the institutions responsible with such mandate.

#### 3.2 Standards regulation regime in South Africa: Legal and institutional frameworks

The reasons for the selection of the Republic of South Africa within SADC region as a case study is that firstly, South Africa's hegemonic status within the region has made it one of the key players in the implementation of SADC's regional food standards and in spite of Africa's low participation in the WTO's SPS Committee and the Codex Alimentarius Commission, from the SADC region, South Africa has made the most contribution to these committees. Secondly, South Africa, like many countries within a region, is a developing country but possess developed country characteristics.<sup>70</sup> Food safety and quality legislation in South Africa are mainly the responsibility of the Department of agriculture, forestry and fisheries (DAFF), the National Department of Health and the Department of trade and industry.<sup>71</sup> Firstly, DAFF regulates safety and quality of agriculture and animal products in terms of several acts of parliament. According to the United States Department of Agriculture country report on Food and Agricultural Import Regulations and

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<sup>70</sup> Mukumba Chenai, "An Analysis of South Africa's Food Safety Standards within the Boarder Framework Set by the WTO's SPS Measures: A South African Case Study" (Masters dissertation, University of Witwatersrand 2011) pg 11.

<sup>71</sup> [https:// www.gov.za/document-](https://www.gov.za/document-) accessed 16 May 2022

Standards in South Africa, in some instances, these ministries also appoint independent agencies to undertake specific regulatory functions.<sup>72</sup> Secondly, the national department of health requires that foodstuffs should be safe for human consumption in terms of the Foodstuffs, Cosmetics and Disinfectant Act, 1972.<sup>73</sup> This Act addresses the manufacture, labelling, sale and importation of foodstuffs, matters regarding hygiene of foodstuffs are addressed by the National Health Act 2003.<sup>74</sup> Lastly, the Consumer Protection Act 2008<sup>75</sup>, the Agricultural Products Standards Act 1990<sup>76</sup> and the Standards Act 2008<sup>77</sup> add to the old law of 1972 as stated. The Plant Health department in Ministry of agriculture regulates the import and export of plants and plant products as well as the phytosanitary measures though the enforcement of plant health laws such as the Agricultural Products Act of 1983<sup>78</sup> and its associated regulations in South Africa.

These are but few food and safety and quality legislations on standards in South Africa whose implementation and enforcement depends entirely on the above-mentioned three national departments in South Africa. For the purposes of this study, the Food Safety and Quality Assurance Department regulates the quality, standards and food safety of agricultural products and food producers. Since South Africa is a member of an international organization the Codex Alimentarius Commission which develop food standards and the Codex contact point is with the Department of Health, whose objective is to give effect to Codex standards in South African legislation as it is the case.<sup>79</sup> For instance, all agricultural and food products entering South Africa must be accompanied by a phytosanitary or health certificate issued by the regulatory body in the exporting country. This is required to be

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<sup>72</sup> USDA: Food and Agricultural Import Regulations and Standards Country Report, 2013.

<sup>73</sup> The Foodstuffs, Cosmetics and Disinfection Act 1972.

<sup>74</sup> The National Health Act 2003.

<sup>75</sup> The Consumer Protection Act 2008.

<sup>76</sup> The Agricultural Products Standards Act 1990.

<sup>77</sup> The Standards Act 2008

<sup>78</sup> The Agricultural Products Act of 1983

<sup>79</sup> FACS BY WRI (2019): Regulation of Food Safety and Quality in South Africa.

submitted for inspection along with the import permit to facilitate physical inspection of the products and customs clearance at the port of entry.<sup>80</sup>

Even the old law of Foodstuffs, Cosmetics and Disinfectant Act of 1972 was accordingly amended in 1981 and 2007 respectively. This Act is deemed as the principal legislation making provision among other things for selected matters in the field of safety and hygiene. It sets the standards and places restriction on the manufacture, importation and placing on the market of articles that are adulterated, are harmful or injurious to human health or that contain a prohibited substance. This law is enforced by inspectors as appointed in terms of Section 10 of the Act. Currently the enforcement of all the Regulations is done by Environmental Health Practitioners, which are appointed as Inspectors at Municipalities and Port Health (National Competence at Ports of Entries) to monitor and ensure compliance.<sup>81</sup>

Mukamba pinpoint in his literature, An Analysis of South Africa's Food Safety Standards within the Boarder Framework set by the WTO'S SPS Measures: A South African Case Study. He argues that, many nations do not have fully functioning food systems and require significant technical and financial assistance from the developed countries.<sup>82</sup> This study agrees with this proposition though the focus is with the Lesotho's position. Indeed, even with the South Africa's scenario, though South Africa is reported to be the most developed county in the SADC region in terms of standards laws development, regulation and the implementation as well, there are however still challenges experienced in the implementation stage like in any other South African Development Community (SADC) members states as alluded earlier, the South African food and agricultural import regulations and standards are administered and enforced by the above -mentioned three ministries and their associated agencies. A number of mechanisms have been established, for instance, there are several Inter-Ministerial Committees comprising of all key government officials responsible for implementing these regulations. South Africa

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<sup>80</sup> Department of Agricultural, Land Reform and Rural Development

<sup>81</sup> WHO, Mechanisms -Monitoring of Regulations published under the Foodstuffs, Cosmetic and Disinfectants Act, 2012.

<sup>82</sup> Mukuba C, An Analysis of South Africa 's Food Safety Standards within the Boarder Framework Set by WTO' s SPS measures: A South African Case study,2011.

is faced with challenges caused by this fragmentation of control, lack of coordination when implementing regulations and capacity constraints to ensure compliance. Like in other SADC countries these challenges often result in the inconsistent application and implementation of regulations, affecting both domestic and imported food products. Although South Africa faces challenges in the enforcement of domestic regulations, imported agricultural products must strictly adhere to these regulations as there are inspections at the ports of entry.<sup>83</sup>

It is worth noting at this juncture that, even though the researcher contends that South Africa is ahead with standards related-issues than other SADC member states in the SADC region, in his article, Kushitor and other commentators opine and supports the view that South Africa still faces challenges in certain areas of implementation and enforcement mechanisms like other countries across the globe. Looking at the South Africa's complex challenge of governing food systems and food policies, experience reveals that food policy development often occurs in silos even in South Africa in that, while policies acknowledged the need for other sectors to be involved in policy implementation, there was no effort for cross-sectional participation during policy implementation.<sup>84</sup> Further, the United States Department of Agriculture country report in South Africa, supports that, some of the challenges include, the Food Control Division under the DOH is responsible for drafting regulations and assessing the enforcement of compliance with all foodstuff regulations to local municipalities and food health inspectors at the port of entry. The challenge with this approach is that some municipalities do not have adequate budgets and capacity to ensure the effective enforcement of all the food regulations as a result, many small and medium domestic businesses operate under the radar, while the larger businesses self-regulate. According to Post contacts and media reports, the Department of Agriculture, Land Reform and Rural Development (DALRRD) also faces staffing challenges to enforce some of its regulations.<sup>85</sup> It

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<sup>83</sup> USDA: Food and Agricultural Import Regulations and Standards Country Report,

<sup>84</sup> Kushitor S.B, "The Complex Challenge of governing food systems: the case of South African food Policy, 2022.

<sup>85</sup> [www.sabc.co.za](http://www.sabc.co.za)-accessed 10 July 2022. South African Government Media Report,

must also be added that in ensuring maximum protection of her citizens, procedures in South Africa are such that, when imported commodities arrive at the port of entry, the South African Revenue Services (SARS) will inspect a random sample of the products to ensure that the declarations, HS Codes and customs duties applicable to that shipment have been correctly determined. The DOH inspectors and DDLRD inspectors will inspect the consignment for compliance with the relevant regulations including labelling and SPS and ensure that the correct permits are presented.

Moreover, following inspection of the imported commodities, if the consignment meets the import standards and requirements, the DALRRA and or the DOH inspectors will release the products. Once the consignment is released has been released by the inspectors, the importer/ agent must take the import documents to SARS for final release. Conversely, if the consignment does not meet the import requirements, risk management measures will be recommended. The consignment may be treated and cleared to enter South Africa or reject and refused entry. If the shipment has been rejected, the importer together with the exporter may decide whether the consignment should be destroyed, returned to the country of origin or re-routed to another country. It must also be noted that a consignment re-routed to another country must meet import standards and requirements for that country.

In summary, the overall structure of South Africa's institutional framework on standards and technical regulations is as thus; the national Regulator for Compulsory Specification (NRCS) and the South African Bureau (SABS) of the DTIC place food inspectors alongside the DOH and DALRRD inspectors to examine both locally manufactured and imported seafood products in terms of the Foodstuffs Cosmetic and Disinfectant Act. is a South Africa's national enquiry point under the TBT Agreement and the Department of Trade and Industry (DTI) is the national notification authority. The main institutions continue to operate under the DTI. There are over 298 technical committees administered by SABS to develop standards. They are in oversee drafting standards. However, in the World Trade Organization context, the reports revealed that since 2009 South Africa has notified some 100 technical regulations to the WTO which are aligned with

international standards to the extent possible. They cover products in areas such as environmental protection, human health, food standards, and product safety.<sup>86</sup>

### **3.3 Standards regulation regime in Botswana**

#### **3.3.1 Policies and implementation strategies in Botswana**

According to the research Article by Kempe Ronald Hope Sr, “Development policy and economic performance in Botswana”<sup>87</sup> pronounces that Botswana is exceptional, both within Africa and among less developed countries, as a whole, when comparison of macroeconomic performance, development, management and good governance.<sup>88</sup> The country has developed an international reputation as a national that stands out among developing countries and in Africa in particular, for its generally successful development policy and economic performance.<sup>89</sup> Studies evidence that, what differentiate Botswana as one of the better-developed countries in the South African Development Community (SADC) is because the adopted sound economic policies which the government puts their implementation as a national priority. Botswana not only formulate policies but also pursue their implementation to finality unlike some of the countries in the region whereby policies are implemented and eventually they are not coordinated and monitored and consequently die a natural death.

There are various reasons worth examination to evidence success of Botswana as compared to other SADC regional member states, as a less developed country as alluded above. Firstly, Botswana as a member of the WTO and a contracting party to different regional and bilateral agreements such as SADC and SACU. As per the WTO Agreement, the Botswana Bureau of Standards (BOBS) is the national Enquiry Point under the WTO TBT Agreement. TBT measures include technical regulations, standards and conformity assessment procedures.<sup>90</sup> The present study has selected to engage into Botswana’s position because, Botswana is one of the

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<sup>86</sup> WT/TPR/S/324. Botswana, Pg. 302, para 3.24.

<sup>87</sup> Kempe Ronald Hope Sr: Development Policy and Economic performance in Botswana, 1998

<sup>88</sup> African Development Bank (2009), Botswana Country Strategy Paper, 2009-2013.

<sup>89</sup> African Economic outlook (2015), Botswana.

<sup>90</sup> WTO, Agreement on Technical Barriers to Trade, Annex 1.

successful countries within the SADC region, this is because the government plays its vital part by strengthening its role in the implementing and monitoring of policies effectively which is hardly the opposite of what is happening with the Lesotho government. The same issue is the subject matter of this research. That is to reveal and put into light the success of other SADC and SACU member states contrary of what is taking place in Lesotho, as evidence by several scholars suggests that Lesotho is very far-behind within the region with the issues relating to standards.

The above-mentioned position is further reinforced by formulation and implementation of these policies which saw the light of the day in Botswana; the Botswana National Quality Policy 2015, Botswana Development Policy 2014, the Botswana Vision 2016 as well as the Botswana's National Trade Policy 2009 which significantly postulate that;

“technical Standards and Regulations are developed in accordance with the domestic regulatory framework and policies as well as internationally accepted standards and quality. The standards and regulations are applied in a manner which ensures the protection of human, animal and plant life and health using appropriate sanitary and Phyto-sanitary measures”.<sup>91</sup>

### **3.3.2 Institutional framework**

The Ministry of Trade and Industry is the national notification authority, Botswana Bureau of Standards is the pinnacle body developing and publishing Botswana standards. Botswana's technical regulations, standards and conformity assessment procedures are developed according to the Botswana Standards Act of 1995 <sup>92</sup>, which includes specific labelling on food products. There is also another regulatory piece of legislation called the food control Act of 1993 whose main function is to protect the Batswana against hazard and fraud in the sale and use of foods and to ensure that the foods and water consumed in Botswana conform to the Food Control

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<sup>91</sup> Botswana's National Trade Policy, 2009.

<sup>92</sup> Botswana Standards Act 1995.



Act 1993 and Botswana national standards, done through the National Control laboratory.<sup>93</sup>

The Botswana Bureau of Standards (BOBS) is the national enquiry point under the WTO TBT Agreement. Its obligations include amongst others; overseeing the implementation of the Standards Import Inspection Regulations (SIIR) of 2008<sup>94</sup>, amended in 2013<sup>95</sup>. Additionally, its other purpose is to control the quality of the prescribed imports, as listed in the SIIR, referred to as regulated products listed in the SIIR, must comply with the required specifications and required certificates of compliance from the country of origin.

According to the National Quality Policy for Botswana 2015, the Botswana Bureau of standards main function is to provide numerous inspections, testing and product certification services. In the development and implementation of compulsory standards developed approximately 1400 national standards that have been approved. This was a report of study conducted by the UNCTAD in relation to the Botswana state of affairs on standard issues which has proven that Botswana has developed an international reputation as a national that stands out among developing countries and in Africa in particular, for its generally successful development policy and economic performance.<sup>96</sup> The researcher tends to agree with this proposition that indeed Botswana is far away from other developing and within SADC region. Some scholars like Michael in his article; Botswana's Success: Good Governance, Good Policies and Good Luck states that the success of Botswana success is due to its adoption of good policies which they formulate, monitor and implement successfully. Conversely, despite this success for Botswana as already explained, Botswana faces serious challenges on the other hand. The reason according to Michael is that government has maintained a transparent, law-abiding government; it also has good policies, nonetheless there are still gaps on the Botswana food system like in other SADC member states. The existing gaps

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<sup>93</sup> Food Control Act 1993.

<sup>94</sup> Standards Import Inspection Regulations 2008

<sup>95</sup> Standards Import Inspection Amendment 2013

<sup>96</sup> UNCTAD, Botswana Trade Policy Framework, 2016.

amongst others include; uncoordinated approaches to food control, poor enforcement of legislation, regulatory limits as well as fragmented systems which do not cover the farm to table continuum. Also, overlapping jurisdiction in specific areas which result in overextension and duplication of services, unclear enforcement mandates which goes hand in hand with inefficient control structures.<sup>97</sup> Importantly, currently the Botswana government is working on reviewing and drafting of the food control Act of 1993 to come up with a food safety Act that will assist in resolving the mentioned gaps and challenges.<sup>98</sup>

### **3.4 Standards regulation regime in Lesotho**

#### **3.4.1 Legal and institutional framework**

Barulangye in his article; Internalization of food safety laws and regulations: Implications to Botswana as a developing country points out that Food safety laws and regulations are the basis of the building blocks of any food safety regulatory measure these laws and regulations should be adequate, relevant and enforceable.<sup>99</sup> This study tend to support the same view, hence why the present study seeks to critically look into the Lesotho position of food safety standards laws ,relevance and adequacy.<sup>100</sup> Firstly, the Ministry of agriculture regulates safety and quality of agriculture and animal products in terms of several acts of parliament. Additionally, Ministry of health requires that foodstuffs should be safe for human consumption in terms of the Public Health Order ,1970 and its regulations thereof. This Order addresses the manufacture, labelling, sale and importation of foodstuffs. Importantly, the standards Act was passed in 2014 while the Consumer Protection Bill as well as the Food Safety Bill are already tabled in parliament for enactment since 2013 and 2014 respectively. To date, they have not yet been enacted into law by the Lesotho's parliament because of certain bottlenecks such as lack of political will by the authorities and many more.

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<sup>97</sup> Food safety standards and legislation in Botswana, 2020

<sup>98</sup> Food safety standards and legislation in Botswana, 2020.

<sup>99</sup>Barulanganye S; Internalization of Food Safety Laws and Regulation: Implications to Botswana as a developing Country, 2018.

<sup>100</sup> [https:// www.gov.za/document-accessed](https://www.gov.za/document-accessed) 29 May 2022.

However, there are several complementary policies, laws and regulations that address specific standard issues worth discussing. These include: Food Safety Policy (2021), Consumer Protection Policy (2015), National Quality Policy and Regulatory Framework (2015) as well as the Consumer Protection Policy.<sup>101</sup> All these policies <sup>102</sup> have already been presented in Parliament for enactment though it has taken quite a long time for the process of enactment. The other already existing legislations on standards including but not limited to the food fortification regulations of 2020, iodization of salt regulation of 1999 and many others.

According to a WTO report WT/TPR/S/324 OF Lesotho, Lesotho does not have a national legal and institutional framework for the development of standards, technical regulations and conformity assessment procedures. However, since the last review in 2009, some progress has been made mainly at the institutional level. As stated above, Lesotho parliament enacted the Food Fortification Regulations in 2020 <sup>103</sup> in order to solve the problem of the micronutrient deficiencies, a legislation aimed at setting the national standard on the fortification of food stuffs for the consumption of the Basotho as well as the animal health. All the above-mentioned pieces of legislations are designed to set the standard on the imported and local products, in an endeavor by the Lesotho Government to protect the welfare of Basotho nation to ensure positive quality control. However, the WTO report stated among others that, Lesotho is the only country within SACU without a national standards body <sup>104</sup>, but in 2014 the Lesotho Standards Institution Act <sup>105</sup>, which provided for the establishment of a Standards Bureau, was finally enacted. The new institution will oversee the development and adoption of the national standards in consultation with all relevant stakeholders. According to authorities, the new institution was expected to start operating in August 2015. It is almost ten years now since the statement by the authorities in 2014. Pending the creation of Standards

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<sup>101</sup> Consumer Protection Policy 2013.

<sup>102</sup> Lesotho Government; Consumer Protection Bill 2021.

<sup>103</sup> Food Fortification Regulations 2020.

<sup>104</sup> Lesotho has not yet accepted the WTO Code of Good Practice for the Preparation, Adoption and Application of Standards (WTO document G/TBT/C/2/Rev 21,23 February 2015).

<sup>105</sup> Lesotho Institutions Act 2014

Bureau, in 2011 Lesotho established three technical committees supervised by the Department of Standards and Quality Assurance of the Ministry of Trade. Currently, transporting goods to and from Lesotho represents a challenge for traders since Lesotho has no direct sea access and has a very small international airport. However, quality facilities are available in Durban, South Africa, and can be accessed by road and railway.<sup>106</sup> Traders exporting to Lesotho should engage the services of a reputable freight or customs clearance agent well versed in Lesotho law. The firm will also have to engage the freight or customs clearance agents in South Africa because Lesotho relies in South African ports for imports. The following are required for shipments in Lesotho: Commercial invoice, packing list, bill of lading, bill of entry (SAD Form) and certificate of origin. It is worth noting at this juncture that in August 2020, the Ministry of Trade and Industry launched the Lesotho Standards Institution (LSI) to develop and publish the national standards, test and certify local product, and to provide training relating to standards affairs. Still, Lesotho does not have specific legislation for product labelling and marking. However, the Weights and Measures Act of 1970 provides information on marking weight, measures, and numbers on packages and containers. Only country of origin is required. The Department of Standards within the Ministry of Trade and Industry provide more information on labelling and marking requirements.<sup>107</sup>

From the institutional perspective, it is imperative to state that Lesotho has as a supportive, a dedicated Ministry of Trade and Industry, which is also mandated to coordinate standard-related issues through the Standards Department. The Department of Standards and quality Assurance is charged with coordinating the formation, adoption and harmonization of food standards-guided by the Codex Alimentarius Commission and in collaboration with environmental Health Inspectorate Unit of the Ministry of Health, and other stakeholders- to ensure that

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<sup>106</sup> [www.trade.gov](http://www.trade.gov)> lesotho standards for trade-accessed 29 June 2022. Import Requirements and Documentation.

<sup>107</sup> [www.trade.gov](http://www.trade.gov) > Lesotho standards for trade-accessed 30 June 2022. Labelling and Marking Requirements.

food safety and hygiene adhere to the Lesotho Standards Institute (LSI), enacted by Parliament in July 2014. At present there is no supportive legal framework on food standards and no modern legislation to facilitate effective implementation of food control systems. The DSQA is also responsible for food quality infrastructure to establish mechanisms for verification, quality and safe fortified food products. The Consumer Section is mandated to promote and protect consumer rights and is responsible for advocacy in favour of the consumption of safe, quality and fortified foods by the public.

The objective of the Government of Lesotho's legal framework should be to endorse and transform into law policies, strategies plans and guidelines governing the operations of the institutions mandated to address standards-related issues. Similarly, in order to have a functional consumer protection system, the government, business and consumers need to work together. The government needs to put in place adequate policies, laws and regulations to ensure that consumers are protected from harmful business practice. There also has to be an effective interplay and coordination between the relevant institutions that are responsible for implementing consumer protection. The findings of the study reveal that, Lesotho is still a very long way away from having a functional standards body (having all the relevant services in place).

For the purposes of the present study, the issue of food safety is also a critical element consisting of food production, storage, preparation and service. Safe and adequate food is not only essential for proper nutrition but also for trade. An effective food safety system throughout the food chain is necessary for improved nutritional wellbeing. About 80-90 percent of imported food consumed in Lesotho and 20 percent of food produced locally does not meet health and safety standards. The lack of operational food standards exposes the population to hazardous food-safety environment, hence the need for a clear policy and enforcement tools.<sup>108</sup>

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<sup>108</sup> Lesotho Government, (2010), Ministry of Trade Report.

Ministry of Trade and Industry has the committees in the areas; one on quality management systems, one on environmental management systems and another on food products. These committees were in charge of developing voluntary standards based on ISO standards. Once the Standards Bureau has been implemented, it will absorb the activities of these committees.

The authorities also indicated that in 2015 they had begun the development quality policy and technical regulation framework to, inter alia identify and establish the necessary legal and institutional framework in the area of quality infrastructure, and to clarify the responsibilities of each institution. The draft policy was completed in 2014 and it was expected to be approved by the Cabinet by September 2015. As it has already stated, it is still awaiting parliament enactment since 2015.

Regarding the preparation of technical regulations, the authorities indicated that under the current practice each ministry develops its own technical regulations and that there is no harmonized procedure. For instance, there are various standards legislation developed by different Ministries in Lesotho such, The health order, Milk regulations, iodization regulations and food fortification regulations by the Ministry of health, the trading enterprises order and regulations and many more by the Ministry of trade. However, the envisaged quality policy and technical regulation framework will provide ministries with framework upon which to work. The total number of technical regulations that have been approved by each ministry is unknown.<sup>109</sup> Further, In the area of metrology, the main legislation is the weights and Measures Act of 1970.<sup>110</sup> However, the authorities indicated that the Act has never been implemented as the associated regulations are still to be developed. This study suggests, that there may be a lesson from Botswana that after policy formulation, the Lesotho government through its relevant institutions should strive to implement such standards policies and eventually implement them. This study is of the view that even though there are standard policies formulated and launched, enactment and implementation is always problematic.

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<sup>109</sup> Ministry of Trade Report, *ibid*.

<sup>110</sup> The weights and Measures Act of 1970.

The first implementation status review of the TBT Annex was conducted in 2013. Of the 15 elements of the TBT Annex that were reviewed, Lesotho was considered to have fully implemented four, one had been partially implemented, one was considered poorly implemented and nine were not implemented at all. All of these elements deal with standards, technical regulation and their concomitant conformity assessment requirements. The review indicates that Lesotho basically does not meet its SADC Trade Protocol obligations and by implication neither does it meet the requirements of the WTO TBT Agreement.<sup>111</sup>

Furthermore, it is worth noting that the department of standards and quality Assurance of the Ministry of Trade and Industry is the WTO TBT Enquiry point.<sup>112</sup> This department is in charge of all issues related to quality, standardization and conformity assessment infrastructure, such as the establishment of Lesotho's Standards Bureau. The authorities indicated that new TBT enquiry point has been established in 2014 and launched in February 2015. As of June 2015, Lesotho had not submitted any notify regarding its TBT measures. In conclusion, because of the key findings from the study, Lesotho in many ways, Lesotho's food safety system a long way to go, and a short time to get there."

#### **4. Conclusion**

The conclusion derived from this chapter is that indeed Lesotho is far back with standard-related issues compared to other regional members states. Lesotho does not have the Standards Institutions Body yet. This leaves some Basotho Entrepreneurs and Foreign companies producing in Lesotho for export with no option but to rely on the South African Bureau of Standards which is sometimes costly. Comparatively, the researcher perceived that the republic of South Africa within SADC is one of the key players, seconded by Botswana in the implementation of SADC'S regional food standards and in spite of Africa's low participation in the WTO's SPS Committee and the Codex Alimentarius Commission, from the SADC region, South Africa has made the most contribution

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<sup>111</sup> South African Development Community, 2019 Annual report.

<sup>112</sup> WTO document G/TBT/ ENG/38/REV.1,8 July 2011

to these committees. The reason for the above proposition is because these two countries have sound standards policies, legal and institutional frameworks in place which they give force and effect through effective implementation, while on one hand countries like Lesotho need to strengthen and take seriously the already formulated policies, laws and capacitate her institutions fully to discharge their legal mandate adequately. A serious intervention by the Government must be done for standards issues to see the light of the day in Lesotho.



## CHAPER FOUR

### Why select Lesotho in the SADC and SACU region?

#### 4.1 Introduction

This chapter focuses on the interrogation of Lesotho's scenario or position on standard-related issues, how far is Lesotho in formulating as well as implementing policies relating to standards in the region and also adhering to its internal obligations as well. If not, what interventions needed for Lesotho's improvement with standard issues, as they are necessary for a country competitiveness in international trade and for the protection of Basotho, plant and animal life as well.

This dissertation selects Lesotho as a case study to analyze its national structure on the development of domestic institutions tasked with the responsibility of ensuring standards and food safety. There are two reasons for selecting Lesotho as a case study firstly, Lesotho is the only country in the SACU region which far lacks behind with standards issues, also without a national standards body<sup>113</sup>, consequently with no contribution to the SADC's regional food safety standards.<sup>114</sup> Secondly, Lesotho like many developing countries within a region seem to struggle most in the in the region. According to the 2015 WTO report of WT/TPR/324-Lesotho, as of June 2015, Lesotho had not submitted any notifications regarding its TBT measures. Even today the position is still the same.

#### 4.2 The current Lesotho's position on standards

Currently, according to the WTO report, Lesotho does not does not have a national legal and institutional framework for the development of standards, technical regulations and conformity assessment procedures. This report reveals that since the last review in 2009, the Lesotho Standards Institutions Act was promulgated, which provides for the establishment the national Body. The report further stated that pending the creation of the Standards Bureau, in 2011 Lesotho established three

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<sup>113</sup> Lesotho has not yet accepted the WTO Code of Good Practice for the Preparation, Adoption and Application of Standards: WTO document G/TBT/CS/2/Rev.21, 2015.

<sup>114</sup> [www.trade.gov/lesotho-standards-for-trade](http://www.trade.gov/lesotho-standards-for-trade)—accessed 30 June2022.

technical committees supervised by the Department of Standards and Quality Assurance of the MTI; one on quality management systems, one on environmental management systems and another on food products. These committees are in charge of developing voluntary standards based on ISO standards. Once the Standards Bureau been implemented, it will absorb the activities of these committees.<sup>115</sup> The research has revealed that the authorities are not certain as to whether the Ministry of Trade will be funded by the government since the last Financial year 2021/2022, it did not receive any funds to kick the project. Further, the authorities also indicated that in 2011 they had begun the development of a national quality policy and technical regulation framework to, inter alia, identify and establish the necessary legal and institutional framework in the area of quality infrastructure and to clarify the responsibilities of each institution. The draft policy was completed in 2014 and was expected to be approved by Cabinet by September 2015.

Despite these good efforts by the Lesotho Government to address the issue of having the technical regulation regime of uncoordinated, fragmented, weak and not fully compliant with international requirements, those standards policies which were designed to remedy that situation, seem to be left abandoned, for instance, this mother policy has not been implemented to date.<sup>116</sup> It has been seven years since its draft and lodgement, a lack of political will is spotted as an impediment to the implementation of this policy. If the Lesotho Government is to recognize the implementation of these policies fully by developing an adequate quality infrastructure even though its expensive by nature, this will also assist Lesotho Government to deal more effectively with the dumping of sub-standard products, which often happens with less than effective technical regulation regimes in place including to deal with the quality of imported products.<sup>117</sup>

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<sup>115</sup> WT/TPR/S/324-Lesotho

<sup>116</sup> [www.lestimes.com](http://www.lestimes.com)-accessed -30 June 2022.

<sup>117</sup> International Trade Centre; *Innovations in Export Strategy: A strategic approach to the Quality Assurance challenge*, Geneva 2005.

According to the report the authorities stated that regarding the preparation of technical regulations, under the current practice each ministry develops its own technical regulations and that there is no harmonized procedure. However, the envisaged quality policy and technical regulation framework will provide ministries with a framework upon which to work. The total number of technical regulations that have been approved by each ministry is unknown.<sup>118</sup> For the purposes of this study it is worth noting that although Lesotho has no legislation dealing with SPS matters and its institutional framework is not clearly defined. Notwithstanding, during the period 2008-15 as supported by the WTO report, Lesotho took some steps towards developing SPS legislation by various policy papers, which will be canvassed in the next chapter.

Specifically, it must also be mentioned that in 2014, the Ministry of Agriculture drafted a phytosanitary policy and a sanitary policy, and the MTI drafted a food safety policy and a quality policy. These policy papers sought in particular to identify the direction in which to move forward and clarify the functions of the different institutions involved in policy making regarding SPS measures.<sup>119</sup> In 2014, the Ministry of Health also completed the draft of a food safety Bill which is aimed at improving the food safety situation in the country and at establishing a food authority. The study argues that this bill if enacted will complement the Public Health Order of 1970. The report reveals that some work has also been undertaken to develop food standards with the establishment of the of the committee for Food Products. However, publication of any final outcomes by this committee will have to wait until the implementation of the Standards Bureau. The study is of the view that if taken seriously by the authorities, the LSI will be established soon.

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<sup>118</sup> The authorities indicated that a current study on technical regulations, will once completed, provide some statistics in this regard.

<sup>119</sup> WT/TPR/S/324-Lesotho ibd

### **4.3 Key Strategic Gaps and Challenges**

#### **4.3.1 No standards Institutions body in Lesotho**

Furthermore, current evidence by the WTO indicate that, Lesotho does not does not have a national legal and institutional framework for the development of standards, technical regulations and conformity assessment procedures. This report reveals that since the last review in 2009, some progress had been made mainly at the institutional level. Research support this view that even though there are still challenges faced by the Ministry of Trade and Industry in implementing standards, there was a creation of standards and quality assurance section of the Ministry of Trade and Industry which is the focal point for standards issues in Lesotho.<sup>120</sup> The report further states that no national standards have been developed to date. This study found that this Standard and Quality Assurance section tasked to be the focal point for standards is non-operational due to the fact that, as reiterated earlier, there is no standard institutions body in placed yet to develop and publish the national standards, testing and certification of various local products as well as to conduct trainings on standards related matters, despite the fact that the Lesotho Standards Institution Act was finally enacted by the Parliament in 2014. Thereby leaving the industries in Lesotho with no option but to traditionally relied on the South African Bureau of Standards for voluntary standards facilities and quality and assurance schemes.<sup>121</sup> According to the Ministry of Trade authorities, the factual situation on the ground is such that Lesotho exporters have developed their standards according to the technical quality requirements of importing countries and international standards whilst they should have done the same job in their own country before importing their products. This research conducted during this study reveals that some Basotho Entrepreneurs and Foreign companies producing in Lesotho for export cry foul about the lack of a standards body in Lesotho and the reliance on the South African Bureau of Standards which is sometimes costly.<sup>122</sup> It is an

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<sup>120</sup> [http://www.trade.gov\\_](http://www.trade.gov_) accessed 21 June 2022.

<sup>121</sup>Thabo Qhesi Interview, The Chief Executive Officer For the Private Sector Foundation of Lesotho (PSFL) 2021.

<sup>122</sup> Bereng Mpaki," No Budget For Standards Body" Lesotho Times (Maseru 23 March 2021)

undisputed fact that the lack of a functional standards body is the biggest technical barriers deterring local producers from entering into export markets as well as the local formal markets.<sup>123</sup>

It must be mentioned at this point that despite the shocking state of affairs in the Ministry of Trade of being just but a white elephant when it comes to the implementation of standard issues in Lesotho, the most senior government official, Principal Secretary Mr. Masoebe in the same Ministry announced in the certain local newspaper, the Lesotho Times of 23 March 2021 a shocking publication that the implementation of the Lesotho Standards Institution (LSI) is set to be further delayed as the Ministry of Trade and Industry has not been allocated any funds for its operationalization in the proposed 2021/22 financial year budgeted.<sup>124</sup> One remains tough-tight to see and hear how the government of Lesotho treats this sensitive issue which ultimate boils down to affect the population at large, as some of the risks brought about by non-testing of food products may be hazardous to the welfare of Basotho let alone the economic setback because products from Lesotho only rely on foreign standards. Is it because the government lacks information and was never sensitized on the importance of standards? I am of the view that the Government ought to prioritize the creation of the Lesotho Standards Institutions body in the 2021/2022 budget so that it would begin its work, taking into consideration that the said project was launched a year prior to the allocation of such budget. One remains wondering whether in the coming 2022/2023 financial year, will the government still prioritize other agendas and ignore this important exercise? Why can't the Government allocate the funds to the Ministry of Trade as an operating budget specifically to carry out the functions of the LSI since the institution must have utmost autonomy in line with international best practices?

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<sup>123</sup> Bereng Mpaki, *ibid*

<sup>124</sup> Bereng Mpaki, "No Budget For Standards Body" Lesotho Times (Maseru, 23 March 2021)

As if it was not enough, the Principal Secretary went further to articulate that currently the standard institution is being run by four staffer who were assigned by the Trade ministry. How can such a huge body such as the national institutions body literally speaking be staffed by four people least Lesotho is a joke? An institution like our neighbours the SABS which the whole Lesotho is to rely on standards. The institution itself is supposed to be comprised of other sections within it. One of the stakeholders Mr. Thabo Qhesi, the Chief Executive Officer for that Private Sector Foundation of Lesotho (PSFL) said it was worrying for the government to fail to recognize the role of the LSI in the country's economic development. This study supports same view. the study suggests that there is no way we can enhance our competitiveness as a nation without a functional standards body. Now our producers must rely on testing and certification by the South African Bureau of Standards, which comes at a high business cost.

#### **4.2.2 Coordination and implementation Challenge**

Significantly, one of the challenges Lesotho has at least four entities dealing with SPS issues. According to the authorities, their functions overlap in many instances thus resulting in the duplication of work. The main four institutions are; the Ministry of <sup>125</sup>Agriculture and Food Security (MAFS), which is responsible for controlling the imports and exports of plants, plant material and animals, as well as transboundary diseases. <sup>126</sup>

#### **4.2.3 Weak enforcement of policies**

While the country has a relatively developed enabling policy environment for food standards already been stated, the implementation of these policies, strategies and plans remains problematic. Most policies and laws are not-based to enhance life protection, food policies and Bills remain in draft form.<sup>127</sup> Take for example the Consumer Protection Bill and the Food Standards Bill. As such, the current policies

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<sup>125</sup> Within the Ministry of Agriculture, these functions are carried out by the Department of crops, Department of Agricultural Research and Department of Livestock Services.

<sup>126</sup> www. agric.gov.ls- accessed 23 June 2022.

<sup>127</sup> Lesotho, Ministry of Trade ang Industry Cooperatives and Marketing (2011): Considering in WTO and Regional Trade Negotiations: Lesotho's experience, Presentation at the National Stakeholder Workshop, 29-30 Maseru.

are deemed inadequate especially if they are given less attention as it is the situation in Lesotho. To implement these good policies that may bring change, effective public institutions and serious commitment by senior policy makers, and governments. Such efforts may require acknowledging food standards and laws as an essential element in protecting human, animal and plant life as rights incorporated explicitly in the constitution. The weak implementation of policies and is due to the absence of implementation framework and regulation and thus is the major underlying constraint. The major limiting factor has been the ad-hoc and uncoordinated manner in which policies and programmes have been implemented.

#### **4.4 Conclusion**

The conclusion drawn from this chapter is that Lesotho's scenario or position on standard -related issues is very weak and far behind. The implementation of standards policies, strategies and plans remains problematic even today in Lesotho. Some contributory factors to this state of affairs include but not limited to lack of political will by authorities as well as the issues of lack of stability caused by recent experience of coalition governments which change from time to time in Lesotho. As articulated earlier, there are obvious reasons for selecting Lesotho as a case study firstly, Lesotho is the only country in the SACU region which far lacks behind when it comes to standard issues, also without a national standards body, consequently with no contribution to the SADC's regional food safety standards. Secondly, Lesotho unlike many developing countries within a region seem to struggle most in the region.

## CHAPTER FIVE

### 5.1 Introduction

The aim of the research was to interrogate, explore and critically study the Lesotho food standard laws, their functionality, as well as whether there are stumbling blocks resulting in having adequate food standards laws like in other countries and the consequences experienced by Lesotho for not having the functional, adequate food laws, standards systems and the Standards Body as well. <sup>128</sup> To achieve the above objective, the study engaged in looking how standards are regulated internationally and regionally, and the comparative analysis of SADC member countries; South Africa, Botswana and Lesotho's position. Lastly the appropriate policy interventions in a form of amending, repealing as well as codifying for legislations on standards to safeguard issues of quality and safety of consumers.

In chapter one, the researcher laid down the overview and the problem statement. The objectives of the study were laid out, the scope as well as the significance the study will have. The evolution of standards in reference of international bodies like ISO. Challenges for implementation of standards infrastructure in Lesotho and How effective are the existing standards policies in Lesotho.

In chapter two, the study focused on interrogating, formulation and implementation of standards policies, laws and institutional frameworks internationally and regionally. This was achieved by referring to international standards bodies namely ISO and Codex. Regionally, the SADC and SACU and the few SADC member states were chosen for purposes of the study.

Chapter three has done a comparative analysis of implementation of policies, regulatory mechanism of standards as well as how adequate are the institutional framework in place in three jurisdictions of SADC member states, South Africa, Botswana and Lesotho.

Chapter four focusses on the interrogation of Lesotho's scenario or position on standard-related issues, how far is Lesotho in formulating as well as implementing policies relating to standards in the region and also adhering to its internal obligations. If not, what interventions needed for Lesotho's improvement with standard issues, as they are necessary for a country competitiveness in international trade and for the protection of Basotho, plant and animal life as well.

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<sup>128</sup> [www.trade.gov/lesotho-import-requirements-and-documentation](http://www.trade.gov/lesotho-import-requirements-and-documentation)-accessed 29 June 2022.



Chapter five was be a concluding chapter dealing with conclusions and recommendations on Lesotho's position concerning standards. This closing chapter will be divided in three main sections. The first section discussed the observation and analysis achieved by the extensive discussion of how standard issues are managed in Lesotho, the impact of not having a National Standards Body, lack of the quality infrastructure and how far is Lesotho as compared with other regional arrangements such as SADC as well as SACU. The second section proposed suitable measures that Lesotho need to exercise to successfully implement her quality management of food policies and the re-engineering of the legal framework (technical regulations) as well as the institutional framework. The last section covered the recommendation and closing comments.

Most importantly, Lesotho like other regional states has a draft of the National Quality Policy and Regulatory Framework in 2015 whose objective was Strengthening Institutional Capacity of Standards Development Organizations, under the support of USAID Southern Africa Trade Hub in cooperation with the Government of Lesotho.<sup>129</sup> The national quality policy does not exist on its own. It has to integrate seamlessly with a number of policies that provide for standards and product compliance, that is, technical regulations, in some form or another.<sup>130</sup> The key challenge in Lesotho is that these provisions are largely fragmented when considering these policies as a group.<sup>131</sup> To mention but a few policies to be discussed below; Quality Policy and Regulatory Framework of 2015, Standards Institutions Policy the Consumer Protection Policy of 2013, Lesotho Food Safety Policy of 2021. The above-mentioned policies and their effectiveness are discussed below;

### **5.1.1 National Quality Policy**

According to the Lesotho Quality Policy and Regulatory framework <sup>132</sup>, the primary objective of this policy is to provide for overall coordination that would result in an efficient service delivery by the National Quality Infrastructure and the effective coordination between the various Ministries and their Agencies to ensure that the gap and overlaps in their regulatory activities are minimised. The technical regulation regime of Lesotho will be reviewed and re-engineered, including its related legislation, to meet Lesotho's international obligations. A

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<sup>129</sup> Lesotho Government (2015): National Quality Policy and Regulatory Framework.

<sup>130</sup> National Quality Policy and Regulatory Framework, *ibid*.

<sup>131</sup> Lesotho Government, "National Strategic development Plan 2018/19-2022/23", pg 13.

<sup>132</sup> Lesotho Quality Policy and Regulatory framework, *ibid*.

national approach, that is, a Technical Regulation Framework, based on international good practices will be developed and implemented across all relevant Ministries and their agencies, including the establishment of effective cooperation amongst the Quality Infrastructure institutions and the national regulatory authorities, and with their international counterparts.<sup>133</sup>

Despite these good efforts by the Lesotho Government to address the issue of having the technical regulation regime of uncoordinated, fragmented, weak and not fully compliant with international requirements, those standards policies which were designed to remedy that situation, seem to be left abandoned, for instance, this mother policy has not been implemented to date.<sup>134</sup> It has been seven years since its draft and lodgement, a lack of political will is spotted as an impediment to the implementation of this policy. If the Lesotho Government is to recognize the implementation of these policies fully by developing an adequate quality infrastructure even though its expensive by nature, this will also allow Lesotho Government to deal more effectively with the dumping of sub-standard products, which often happens with less than effective technical regulation regimes in place including to deal with the quality of imported products.<sup>135</sup>

Comparatively, Botswana's National Quality Policy<sup>136</sup> was drafted the same year in 2015 as that of Lesotho's, but, undoubtedly Botswana is too far away as compared to Lesotho in transforming the policies into laws. Several public institutions constitute the National Quality Infrastructure of Botswana. The Main institutions are the Botswana Bureau of Standards (BOBS) and various governments laboratories attached to Ministries such National Veterinary (ministry of Agriculture), the National Food Control Laboratory (Ministry of Health) and others.<sup>137</sup> There are very few Botswana based private sector National Quality Infrastructure institutions, but a number of outside companies such as South African Bureau of Standards (SABS), Intertek and SGS provide conformity assessment services in the country.<sup>138</sup>

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<sup>133</sup> Lesotho Government (2015): National Quality Policy and Regulatory Framework.

<sup>134</sup> [www.lestimes.com](http://www.lestimes.com)-accessed -30 June 2022.

<sup>135</sup> International Trade Centre; Innovations in Export Strategy: A strategic approach to the Quality Assurance challenge, Geneva 2005.

<sup>136</sup> Botswana National Quality Policy, 2015.

<sup>137</sup> M. Lewin; Botswana's Success: Good Governance, Good Policies, and Good Luck, 2012.

<sup>138</sup> Ad by JetBrains (2011); Why has Botswana been such a success when neighbouring countries weren't?

### **5.1.2 Consumer Protection Policy**

It is worth mentioning at this juncture that the Lesotho Government launched the consumer Protection policy in 2013.<sup>139</sup> In formulating this policy the Government applied the flexibility as embodied in economic theory, Guideline- Consumers' Rights and the Model law for Consumer Protection and internationally accepted standards.<sup>140</sup>

According to Lesotho times new paper published on 24<sup>th</sup> November 2011<sup>141</sup>, the Lesotho Government though the Ministry of Trade and Industry has drafted a Consumer Protection Bill that was launched in 2013, the said bill went through the drafting stage until 2014 and since then it took about a seven years' time for it to have been tabled in parliament as it was presented in 2022 for enactment.

Consequently, the enactment of consumer protection Act in Lesotho will be a step forward because, it is going to be an umbrella piece of legislation aimed at consolidating all the existing fragmented standards legislations, also addressing the difficulty faced with the Ministry of trade of applying fragmented standards laws from different governmental ministries; the Maseru Council, Ministry of health, Ministry of Police and safety, sometimes the Central Bank where a dispute is about financially related matter and Courts of law to enforce compliance whenever there is a complaint about standard issues.<sup>142</sup>

### **5.1.3 Food Safety Policy**

The Food Safety Policy developed in 2014 is intended to guide the activities of government officials in protecting public health by providing assurance of safe food and envisages the involvement of a number of Ministries and authorities in establishing a modern food safety control system in Lesotho in line with international good practices. The Constitution of Lesotho provides the policy direction with respect to food safety under Section 27.<sup>143</sup> The Food Safety Policy envisages a Food and Nutrition Coordinating Office and a National Council that will be responsible for coordinating activities for national food control in an integrated food safety control structure. Implementation will be the responsibility of the following;

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<sup>139</sup> Kingdom of Lesotho (2013), Consumer Protection Policy, Ministry of Trade and Industry.

<sup>140</sup> Lesotho Government: (2013), Consumer Protection Policy, Ministry of Trade and Industry.

<sup>141</sup> <http://lestimes.com>- accessed 7 May 2022.

<sup>142</sup> Central Bank of Lesotho, "Economic Review", 2011.

<sup>143</sup> The Constitution of Lesotho 1993.

The Ministry of Agriculture and Food Security is responsible for inspection and enforcement upstream (supply of agricultural inputs) and at primary production (farm production and on farm primary processes), The Ministry of Health is also responsible for the secondary production and processing, distribution, retailing up to consumption, The Ministry of Trade and Industry, Cooperatives and Marketing (MTICM) is responsible for developing national standards and may operate voluntary certification schemes to support the mandatory regulatory work. Some of the voluntary standard may be adopted into legislation upon recommendation by the National Council on food safety.<sup>144</sup>

This framework provides the necessary separation between risk assessment and risk management functions. Support ministries such as Education and Tourism will assist with information dissemination and training based on the input and programs defined by the two key ministries of Agriculture and Health. Quality Infrastructure will play a key role in providing the necessary standards, metrology, accreditation and conformity assessment services required by its implementation.<sup>145</sup>

## **6. Situational analysis**

The Quality Infrastructure of Lesotho consists mainly of the Department of Standards and Quality Assurance (DSQA) in the MTI and laboratories in various Ministries. DSQA was formally established in 2004, but some activities took place even beforehand. The department's official mandate is to establish the Quality Infrastructure in Lesotho. The Department considers it responsible for national standards, weights and measures, and maintains the accreditation focal point.

Although work in technical committees has commenced, no national standards have been published because the required legislation does not yet exist. DSQA is involved in advocacy and training in both the public and private sector and acts where it can on complaints from the market place. The National TBT Enquiry Point has been established with personnel currently undergoing training and technical capacity being established.

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<sup>144</sup> UNTACT (2010), successful trade and development strategies for mitigating the impact of the global economic and financial crisis, Geneva.

<sup>145</sup> UNTACT (2010) *ibid*.

Furthermore, a small number of laboratories have been established in various Ministries. None of these have been accredited, and the major impediments seem to be skilled personnel, appropriate equipment, environmental controls and finances in other words, all the elements that are necessary to establish management systems compliant with ISO/IEC 17025. This may well be one of the major challenges for Lesotho to gain recognition in the market place at home and abroad. A matrix of laboratory capacity and state of readiness for accreditation does not exist.<sup>146</sup>

## **7. Gap identification**

The situational analysis<sup>147</sup> indicates that the Quality Infrastructure of Lesotho is at a very early development stage compared to international good practices and regional obligations.<sup>148</sup> Hence, the Quality Infrastructure responsibilities must be clearly articulated, and the Quality Infrastructure will require intensive capacity developed so that it can provide the industry and authorities with services that enjoy regional recognition. Furthermore, the SADC Trade Protocol TBT Annex review indicates that the technical regulation regime of Lesotho needs to be completely overhauled, that is, proper technical regulation management needs to be established in order to meet Lesotho's SADC obligations and to comply with international good practices.<sup>149</sup>

The importance of having a quality infrastructure and a standard body as we cannot be overemphasized for the obvious reason that the world has become a global village, whereby, sourcing, production and distribution of food are rapid both locally and international. This necessitate harmonization of food and food safety regulatory measures to counter act possible regulatory gaps within the local food control system wherefore it necessary for countries around the globe to have standardized food safety standards for then to envisage success in trade.<sup>150</sup>

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<sup>146</sup> United States Department of State (2009) Investment Climate statement- Lesotho.

<sup>147</sup> Lesotho Government, (2015); Revised National Quality Policy.

<sup>148</sup> [http:// www.trade.gov.ls/departments/standards.php-acccecces](http://www.trade.gov.ls/departments/standards.php-acccecces) 26 June 2022.

<sup>149</sup> [www.trade.gov.ls](http://www.trade.gov.ls)-accessed 27 June 2022.

<sup>150</sup> Jensen, M.F, Reviewing the SPS Agreement: A Developing Country Perspective, Centre for Development Research ,2002.

## **7.1 Suitable measures need to be adopted by Lesotho**

Research has demonstrated that, “The sound policy, legal and institutional frameworks is a prerequisite for effective and successful standards war”.<sup>151</sup> I would like to agree with this statement by the ISO and UNIDO 2013 publication on national standards bodies in developing countries strengthening the view with regard to particular challenges faced by developing countries when it comes to the development and use of standard , for instance, in the Lesotho scenario, there are inadequate human resources within the Ministry of Trade system, combined with poor utilization of standards services, has led to non-recognition of standards in Lesotho.<sup>152</sup> From the analysis, it is apparent that Lesotho technical regulation regime should be reviewed and re-engineered, including its related legislation, to meet Lesotho’s international obligations to ensure safe, standard of high-quality food is always available to the population at all times.<sup>153</sup>

## **8. Key findings**

The findings of the study indicate that, the laws in place to tackle standards in Lesotho have inherent flaws and gaps which render them inadequate as a result there must be formulation of appropriate policy, review and harmony of standards laws, and strengthening of the legal and institutional structures in place.<sup>154</sup> To achieve this massive task of breaching the flaws and gaps as indicated, reference shall be made to the Lesotho National Policy Environment, challenges faced in implementation and those faced by the Governmental institutions mandated with standards issues.<sup>155</sup>

For instance, the sanitary and phytosanitary WTO Agreement encourages governments to adopt and harmonize the sanitary and Phytosanitary measures to protect human, animal, and plant life or health.<sup>156</sup> To date, Lesotho has not yet adopted such, currently the position is that her phytosanitary policy which was to assist the agricultural sector by giving direction on SPS issues has not been launched by the Ministry of Agriculture had not yet been finalized to date

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<sup>151</sup> ISO & UNIDO; National Standards Bodies in Developing Countries; Fast Forward 2<sup>nd</sup> Ed.

<sup>152</sup> UNIDO Report (2013), “Sustaining Employment Growth: The Role of Manufacturing and Structural Change.

<sup>153</sup> WTO documents WT/MIN (11) /ST/85, 2011 and WT/MIN (09) /ST/115,2009.

<sup>154</sup> Wade Publications (2010), Lesotho Review.

<sup>155</sup> Lesotho Government (2013), Ministry of Agriculture and Food Security Report.

<sup>156</sup> Lesotho Government (2013) report, *ibid*.

wherefore the SPS issues are still at stake.<sup>157</sup> It is proposed that Lesotho needs a framework of comprehensive, evidence-based national guidelines on standards, accompanied by effective coordination mechanisms, including a system of regular monitoring and evaluation of standards activities.

It must be noted that, Lesotho's body of legislation pertaining to technical regulations, standards, metrology, accreditation and conformity assessment is in a state of transition with many areas covered by inadequate legislation.<sup>158</sup> Other areas like Quality Assurance and Consumer protection are at various points in the national legislative process as already pointed out earlier.

In summary, the situational analysis in Lesotho is that, even where specific policies, laws and regulations are relevant and or appropriate, their enforcement is often weak. In addition, the regulatory capacity is limited in terms of; coverage and outreach, number of personnel and facilitation to do market surveillance and inspection. Some of the existing laws do not provide for deterrent penalties which compounds the incidence of non-compliance among other issues.<sup>159</sup>

Despite the existence of numerous institutions with both legislative and executive powers to administer technical regulations, many of these have overlapping and sometimes conflicting mandates.<sup>160</sup> Besides, coordination and collaboration of these standards activities, the system is presently very weak and more often informal especially in the sharing of information.<sup>161</sup> All of the above- mentioned crises with standards in Lesotho needs urgent attention by the Lesotho government.

In addition, from the finding and analysis, it is apparent that the Government of Lesotho's legal framework should endorse and transform into law policies, strategies plans and guidelines governing the operations of the institutions mandated to address standards-related issues in Lesotho.

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<sup>157</sup> WT/TPR/S/324.Lesotho-138.

<sup>158</sup> WTO Statistics database (2011), Trade profiles: Lesotho.

<sup>159</sup> Public Health Order 1970.

<sup>160</sup> WT/ TPR/S/324. Lesotho

<sup>161</sup> www.trade.org-accessed 12 July 2022.

## **9. A way forward**

### **9.1 Standards**

The government must establish the Lesotho Standards Institution as a statutory body with a governance structure equally representative of both the public and private sector. The Lesotho Standards Institution will be the pinnacle national standards body and will represent Lesotho in relevant regional and international standardization organizations.<sup>162</sup> The Lesotho standards institution will carry the following functions;

(i) The Lesotho Standards Institution will see to it that the standards development process is a participative and transparent process based on building consensus amongst stakeholders. It will strongly encourage the adoption of international and regional standards based on the demonstrated needs of authorities, industry and society, and it will ensure that all national standards are reviewed at intervals not exceeding five years to ensure their continued relevance.

(ii) The Lesotho Standards Institution will be solely responsible for the publication of national standards, but it may register other standards development organizations, that is, relevant Ministries, regulatory agencies, private sector associations or academic institutions to develop the same, provided that such standards development organizations comply with the requirements of Annex 3 of the WTO TBT Agreement and follow a standards development process based on the ISO/IEC Directives.

(iii) The Lesotho Standards Institution may establish conformity assessment services where a need can be demonstrated. These services shall be provided on request and at market related fees, and they shall be technically competent and accredited.

### **9.2 Technical regulation**

In order to enhance the efficacy of the technical regulation regime of Lesotho, the government must establish four technical regulation authorities to implement and maintain technical regulations falling within the scope of the WTO TBT Agreement and the SADC Trade Protocol TBT Annex. All the regulatory authorities already established will be merged into these four. The coordination between food safety and manufactured products will be given special attention, as will the sectors have identified for development in the National Strategic Development Plan. The Ministry of Planning will spearhead this process.

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<sup>162</sup> Maile Masoebe report (2021), "No Budget For Standards Body".



- a) MTICM will take the lead in developing a common Technical Regulation Framework to be followed by all Ministries and regulatory agencies. This Framework will comply with both the WTO TBT Agreement and the SADC Trade Protocol TBT Annex. An Inter-Ministerial Committee, underwritten by a Cabinet decision, will be established to support MTICM in this task. The Framework will be given legal standing through an appropriate Act of Parliament.
- b) An Office of Technical Regulation Coordination must be established in the MTICM as the Ministry responsible for Lesotho's compliance with the WTO TBT Agreement and the SADC Trade Protocol. This Office will ensure that Ministries and regulatory authorities comply with the Technical Regulation Framework, it will coordinate technical regulation activities amongst the National Quality Infrastructure and the regulatory authorities to ensure that overlaps or gaps in technical regulation implementation are minimized, and it will oversee a modernization programme for all technical regulations already on the statute books.
- c) The Technical Regulation Framework will ensure in an appropriate manner that technical regulations are based on international, regional and national standards; that conformity assessment will be provided by technically competent service providers; that responsibilities of regulatory authorities are clearly articulated; and that sanctions are appropriately defined.

### **9.3 Finances**

It is of vital importance to make the public and private financial resources available for the implementation of the standards Policies. The government will be responsible for financing the development, upgrading and restructuring of the existing Quality Infrastructure institutions within the public sector. The financing of private sector institutions and organizations will remain the responsibility of the private sector, as is their involvement in technical committees and similar structures at the national, regional and international level. In particular, the Government must retain the full responsibility for the funding for:

### **9.4 Legal framework**

To facilitate the implementation of the standard Policies, the Government must review the existing legal framework related to the Quality Infrastructure and technical regulation regime as a priority measure, to benchmark it against international good practices, to amend or revise existing legislation or to develop new legislation where required and to ensure that all of it

complies with the international and regional obligations of Lesotho. Legislation that will be reviewed or developed shall include legislation for, but not limited to, the following; establishment of the Lesotho Standards Institution, containing amongst other requirements for the development and publication of Lesotho National Standards, elevating the weights and measures activity to a legal metrology activity Fundamental metrology and the allocation thereof to the Legal Metrology department, definition of the Technical Regulation Framework and the establishment of a technical regulation coordination office in the MTICM to effect coordination between the regulatory authorities and the Quality Infrastructure institutions.

## **10. Recommendations**

Based on the foregoing above, there are several recommendations suggested below-under; Firstly, the Lesotho Government must strive for adopting adequate human and financial measures by providing enough budgets for quality infrastructure as well as of putting a functional Standard Institution Body as promulgated by Parliament in 2014. The other recommendation is that Lesotho needs a framework of comprehensive, evidence-based national guidelines on standards, accompanied by effective coordination mechanisms, including a system of regular monitoring and evaluation of standards activities.

Secondly, there is also a need for government's budget of resources for standards implementation and the posting of well-qualified staff for implementation of standards. Lastly, the government must put in place adequate monitoring and enforcement measures to reinforce standards and regulations.

Thirdly, the other important processes that need to be reformed by the Lesotho government are; deregulation, regulatory quality improvement and regulatory management. Many countries start with a drive to deregulate, that is, getting rid of obsolete regulations. The next logical step is to improve the performance of the institutions that are involved in technical regulation. In addition, the decision-making mechanism as to when to implement technical regulations is improved by utilising regulatory impact assessments. Ultimately, real progress is achieved when the regulatory regime across all regulatory authorities is addressed holistically, i.e. when regulatory management is considered. These phases are interdependent, and all of them must be considered in enhancing meaningful standards laws and regulatory management.

## **11. Conclusion**

The conclusion derived from this study is that, for any meaningful fight against unsound standards policies, non-compliance with standards laws and non-operational standard institutions Body in Lesotho. There is a need to have and implement appropriate policy, legal and institutional frameworks. The study recommends formulation of appropriate policy, review and harmony of standards laws, and strengthening of the legal and institutional structures in place to fight the non-recognition of standards in Lesotho. From the analysis, it is apparent that the Government of Lesotho's legal framework should be to endorse and transform into law policies, strategies plans and guidelines governing the operations of the institutions mandated to address standards-related issues. The study recommends formulation of appropriate policy, review and harmony of standards laws, and strengthening of the legal and institutional structures in place to fight the non-recognition of standards in Lesotho. Further, there is a need for further research on the standards related issues and the regulatory mechanisms in Lesotho.

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