

An analysis of law enforcement and the control of illicit trade of tobacco product at a selected border post in South Africa

Ms Debora Mina Molatjana

University of Limpopo, Turfloop Graduate School of Leadership, Private Bag X 756, South Africa

Assoc. Prof. Siphon Kenneth Mokoena

University of Limpopo, Turfloop Graduate School of Leadership, Private Bag X 756, South Africa

Abstract

The article explored the challenges faced by the law enforcement agencies on illicit tobacco smuggling at a selected border post in South Africa. Literature states that globally law enforcement agencies are faced with a huge challenge at borders in controlling the trade of tobacco product and South Africa has no exemption on this matter. The South African Government tobacco control policy has been in place since the early 1990's with legislative instruments requiring mandatory health warning labels on tobacco products, banning public and underage smoking. Porous borders and corruption of officials working at the borders are the exacerbating illicit tobacco. An explanatory qualitative method design was used in this study which helped to gather data to explain the phenomenon in more depth. A purposive sample was used in the study to select participants in the following law enforcement agencies, namely; South African Police Service (SAPS), South African Revenue Service (SARS) and South African National Defence Force (SANDF). The article found that though there are coordinated efforts to prevent, combat and detect illicit cigarettes there is a need for adequate resources like storage facilities, sniffer dogs and scanners at the border. It was concluded that there is an existence of some form of coordination of activities relating to operations at the border within the law enforcement agencies responsible for curb illicit trade.

Keywords: Law enforcement, Illicit trade, port of entry, policy.

Introduction

Globally law enforcement agencies are faced with a huge challenge at the borders in controlling the illicit trade of tobacco product (Marin, 2017). European countries often have a problem of illicit trade at their borders from Africa through the Durban harbour and Dubai. Illicit trade of tobacco product is a commercial crime that is prevalent worldwide. Lack of proper border control and porous borders affect the worldwide economy. The Tobacco Control Act, 1993 (Act 83 of 1993) prohibits the smuggling of illegal cigarettes into South Africa, however it appears that tobacco regulations and related legislation such as Custom and Excise Act, 1964 (91 of 1964) as amended are not implemented at most of the South African ports of entries especially at the port of entry under study. This study aims to explore the challenges faced by law enforcement agencies such as, Home Affairs, South African Revenue Services, South African Defence Force and South African Police Service at the selected port of entry

in South Africa. In addition, the research questions for the article were formulated as follows: (i) to determine the nature of operational coordination strategies used by law enforcement agencies at the port of entry under study; (ii) to assess the capacity and workload of law enforcement agents at the port of entry under study in handling tobacco trade across the border; and (iii) to evaluate the nature of adequate facilities needed at the a port of entry under study to effectively combat illicit tobacco smuggling across the border. The study is significant in empowering all stakeholders at the identified port of entry on matters of policy-making and implementation. The study will be a stepping-stone for the empowerment of personnel in exercising control over crime related activities. This will be useful to the law enforcement agencies operating in the chosen study area since their responsibility is to control the illicit trade of tobacco products and other illicit products such as narcotics, rhino horns as well as precious metals. This will also improve the revenue collection at the said port of entry. Furthermore, other port of entries may benefit from the study because the findings may guide them on how to monitor ports of entry effectively with less illicit tobacco trade. Law enforcement agencies at the borders can be highly empowered by the findings of this study. The article initiates discussion by presenting the related literature, thereafter follows a discussion on the research methodology used in this article. Secondly, the discussion of the results is presented. Finally, concluding remarks and recommendations are provided.

Literature review

As been alluded to above, the problem of illicit trade of tobacco products is not only a South African challenge at port of entries, but it cut across the globe. However, the authors have focused this article to the African continent. Thus, brief perspectives are presented in the continent view, Southern African view and the country's view.

The African perspective

According to Okomu (2016), African countries are increasingly facing tasks of managing their borders in ways that secure their territorial sovereignty/integrity, ensure that they are bridges rather than barriers for cross-border cooperation and regional integration. They further have to prevent illegal entries and exiting of people and goods while allowing easy movement of goods and people, allow relatives to visit their next of kin while keeping away criminals, and facilitates tourists to easily cross while keeping out terrorists. Furthermore, the challenges facing African states to manage their borders are compounded by globalisation that is tearing down traditional borders through advancement in technology and transformation of international relations. It is argued that in view of the fact that borders insecurity is to some extent a factor of lack of strategies and of weak state institutions, it follows that the first steps to enhance border security is through adoption of national border management strategies and building state capacities to manage their borders. African boundaries are difficult for traded goods to cross and easy for cross-border crimes while there are a number of concrete measures that can transform borders into secure areas where people earn decent living, states are not denied revenues, and

nations coexist peacefully. African borders are managed in ways that allow arms and criminals to freely cross, therefore poor or lack of management if these borders have been a major cause of national insecurity. In order to enhance African border security, a number of far-reaching measures must be undertaken. These then will include adopting appropriate legal and organisation frameworks, improving infrastructure and adequately equipping personnel and border posts, effectively exchanging information and data, improving conditions of local communities and integrating them into border management initiatives, and clearly demarcating international borders (Okomu.2016).

The Southern African perspective

The key to understanding the nature of illicit cigarette marketing in South Africa is the dynamics of its neighbouring countries in the Southern Africa region. According to the Tobacco Institute of Southern Africa (TISA) 2015, Zimbabwe manufactured cigarettes (60% in 2011) and Botswana manufactured cigarettes (1% in 2011) were the main sources of all the illegally traded cigarettes in South Africa. Other Southern African countries (Mozambique, Malawi, Lesotho, Zambia, etc.) contributing 4% as at 2011. Contraband has been smuggled through the country through the porous borders of Limpopo, Mpumalanga, North West, KwaZulu-Natal (KZN) borders and even rerouting of contraband to Namibia and Democratic Republic of Congo (DRC). Cross border trading between South Africa and its neighbouring countries has been existent even before cigarette illicit trade. Ama *et al* (2013) explains the rising of smuggling as a response to cumbersome time consuming export regulations and regional price distortions. Nations like Zimbabwe, is one of the leading global producers of tobacco. Economic hardships in recent years and the changes in ownership of tobacco manufacturing industries in Zimbabwe versus the strict tax controls of the South African government provide breeding ground for a parallel market of legally traded goods. Muzvidzwa (2005) mentions the high unemployment levels Zimbabwe faces pushes people into cross border trading as a form of employment and source of income. Illicit trade in cigarettes is done due to other enabling factors like demand in the South African market, higher prices and exercise of legal products. People in neighbouring countries face unemployment thus seek income in cross border trading. There is a claim that the net monthly income for cross border traders in Mozambique was estimated to be equivalent to four times that of formal employment. These factors push people to buy and sell goods across borders. There are more people willing to act as transporters or intermediary of illicit items since the returns are higher especially in South Africa.

South African perspective

The South African Government tobacco control policy has been in place since the early 1990s with legislative instruments requiring mandatory health warning labels on tobacco products, banning public and underage smoking (Republic of South Africa, 1999). Tobacco control has extended to significant increases in exercise tax and retail price of cigarettes every fiscal year. The aim of the South African Government is to reduce tobacco consumption, thus reducing the threats to public health

smoking brings. Variations between different nations' tax and high price structures on cigarettes provide large and irresistible economic incentives for transnational smuggling (Basu, 2014). This view is shared by the South African tobacco industry (Wherry *et al*, 2014) who argue that using tax to control tobacco usage actually fuels illicit transnational trade especially with the neighbouring countries like Zimbabwe being one of the largest global producers of tobacco. The prevalence figures of illicit tobacco trading widely vary with overstated figures in Tobacco Company funded research and arguably understated figures with the rest of research. Blecher (2010) put the estimate that the illicit cigarette market occupied about 11.5% of the total tobacco market in South Africa by 2010. According to Lemboe and Black (2012), a tobacco company research in South Africa has an estimated illicit cigarette prevalence rate of 40 - 50%.

The Tobacco Institute of South Africa (TISA) (2012) estimated the incidence of illicit cigarettes to be about 25% of the total cigarette market. Furthermore, TISA (2015) put the prevalence of illicit cigarettes at 23% by 2014. This is evident, no matter how varied, that the South African Tobacco market has a huge appetite for illicit cigarettes, which in turn fuels the trade. Irish-Qhobosheane (2006) acknowledges that combating smuggling of commodities like cigarettes across the Zimbabwe-South African border is extremely difficult due to a number of factors. These factors range from the highly organised criminal smuggling syndicates, corrupt immigration officials, lack of personnel, adequate training and equipment for patrolling the border fence. The level of porosity at many African borders has made them easily penetrable by smugglers of contraband (Okumu, 2016). Concerted effort has been put by the South African government towards reduction of tobacco smuggling into the country. Regional cooperation through the Southern African Regional Police Chiefs Cooperation (SARPPCO) has reduced the incidence of cigarette smuggling across borders.

Based on the above review of related literature, porous borders and corruption of officials working at the borders are also exacerbating illicit tobacco. South Africa has made several policies relating to tobacco control and tax being put on tobacco products. Furthermore, the price of tobacco products is even made higher because South Africa is trying to reduce the smoking in the country for health purposes. This creates a gap in the market of cigarettes as compared to neighbouring countries in particular Zimbabwe which is one of the largest global producers of tobacco.

Research methodology

An explanatory qualitative method design was used in this study. This is a design, which helped to gather data to explain the phenomenon in more depth (Creswell, 2015). In attempting to study the above-mentioned dynamics, one port of entry in South Africa was identified as the study area. All law enforcement agencies, in the selected port of entry, only the South African side took part in the study. The population include officials from the SANDF, SARS, Department of Home Affairs (DHA), SAPS, travellers across the border and tobacco dealers. A total of thirty four (34) participants participated in the study. Purposive sampling was used to select

participants. Purposive sampling is known as a selective or subjective sampling, which is a type of non-probability sampling technique (Mack, Woodsong, Macqueen, Guest and Namey, 2005). The breakdown of the sample number is as follows: ten officials at the port of entry, eight officers at the provincial departments of law enforcement agencies, five travellers from Zimbabwe to South Africa, five travellers from South Africa to Zimbabwe, and six tobacco dealers and smugglers (mules). Data collected through the in-depth interviews were analysed by using a thematic content analysis. The following steps were followed when carrying out the thematic analysis in this study:

- Each transcript was carefully read and notes taken of any interesting or significant theme.
- Constant comparative analysis was done through coding and selective coding to analyse data.
- Codes that are related to theoretical concepts were identified and kept together. After similar ideas were grouped together, a topic that best represents grouped ideas were clustered and coded (Guest, MacQueen and Namey, 2012).
- Sorting and theoretical outline: Conceptual sorting of memos were done. The completed sorting process constituted the first draft of the write-up.

Analysis of results

The interview guide was divided into two (2) sections, namely; Section A: Biographic Information and Section B: Objectives 1 – 3 of the study. The analysis of the demographic information is presented in the form of charts and research objective in words.

Analysis of demographic information

Figure 1 below reflects the gender of the participants. It is a well-known fact that organisations such as SAPS and SANDF are male dominant.

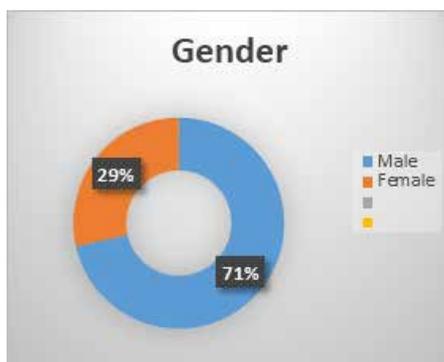


Figure 1: Gender of the respondents

As such it is acceptable that the majority of participants will be males, though it was not the objective of the study to examine male versus female. However, to illustrate the staff compliment at the border. The males are in majority at 71%, while their

counter parts are in minority at 29%.

Figure 2 below depicts the race of participants. In view that blacks dominate that South Africa population, it is evident in this Figure with a 83% of participants being blacks and 27% whites.

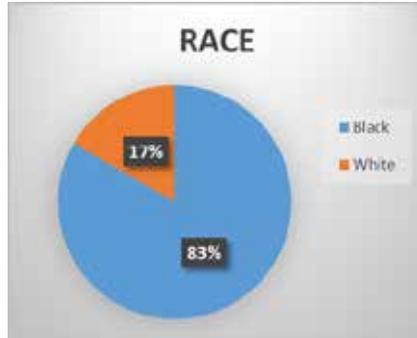


Figure 2: Race of the respondents

Figure 3 below illustrates the number of years the participants have been working at this port of entry. Years working at the border was used as a measuring tool to assess the experience, knowledge and skills level of the participants. There is a clear indication that participants have vast knowledge on curbing the illicit cigarettes at the border as 57% are having more than 20 years working at the border, while 29% have 11 to 20 years of experience at the border, while 14% represents those with 6-10yrs experience and no one was found with 0-5 years working at the border.

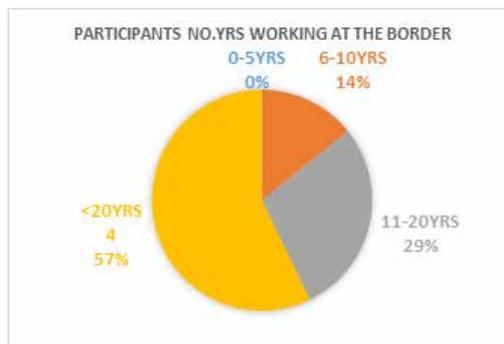


Figure 3: Number of years

Analysis of the responses

Question one of the interview guide was aimed at measuring the relationship between the law enforcement agencies at the border and nature of strategies they implement to curb the illicit cigarettes and how their efforts are coordinated. The participants confirmed that the South African Police Service, South African Revenue Services and South African Defence Force are collectively involved in preventing and combating

the smuggling of illicit cigarettes at the border. This is done through coordinated operations that aimed at detecting the smuggling of the illicit cigarettes at the border. Though the role of SANDF in land border safety, there is coordination between these law enforcement agencies, however SAPS is responsible for the prevention, detect and investigate the smuggling of illicit cigarettes. Whenever there is a detection of smuggling of illicit cigarettes at border, SARS is responsible for weighing the goods intercepted suspects are detained, a criminal case will be registered and investigated at the nearest police station until its conviction. Furthermore, the respondents were able to outline the responsibilities of the SAPS at the border as oppose to those of other sister departments. They are well acquainted with the responsibilities of their fellow colleagues in other departments. The respondents were comfortable with the working relationship built amongst all the officials at the port of entry. When measuring the level of the relationships amongst various departments operating at the port entry, during an interview with the respondents, the authors may conclude that, there is an integrated and coordinated approach in the fight of smuggling the illicit cigarettes at the border entry.

Diagram 1 below reflects the illicit cigarettes intercepted at border post destined to South Africa for selling in black markets. Despite the fact that the cigarettes are health risk and do not comply with the South African Bureau of Standards, they do have serious impact on the economy of the country.



Diagram 1: Illicit cigarettes confiscated

(Source: Researchers, 2019)

Question two measured the capacity and workload of law enforcement agencies in handling tobacco across the border. The questions was used to evaluate the capacity and the workload at the border, taking into consideration other crimes happening at the border to determine how effective the law enforcement agencies are in preventing, combat and detect the smuggling of illicit cigarettes. The respondents reflected how different crimes at the border are being managed.

Diagram 2 below displays the commercial explosives intercepted at the port of entry in one of the police sting operations. The explosives were from Zimbabwe, smuggled through the border to South Africa. These types of phenomena pose a serious threat to the security of the country. There is evident that at most the explosives are used for bombing of ATMs and money safes and illegal mining in the country. The country is experiencing high number of the incidents of crime where explosives were used. Such incidents do not only rise crime statistics but also loss of lives and serious injuries to members of the public.



Diagram 2: Commercial explosives confiscated

(Source: Researchers, 2019)

Diagram 3 below shows the illicit cigarettes intercepted at the port of entry destined to South Africa for selling in black markets. Despite the fact that the cigarettes are health risk and not comply with the South African Bureau of Standards, it also has a serious impact on the economy of the country.



Diagram 3: Illicit cigarette confiscated

(Source: Researchers, 2019)

This consignment of drugs hails from Middle East and was confiscated at the border post while on the way to Gauteng where they should be distributed to the streets of South Africa, targeting the youth and affluent people of in the country.



Diagram 4: Drugs confiscated

(Source: Researchers, 2019)

Question three measured the facilities needed to effectively combat illicit tobacco smuggling across the border. Taking into consideration the different types of crimes intercepted at the border entry, it is essential for the border to have adequate resources and facilities. Majority of the respondents acknowledged the available of vehicle scanner and storage of facilities at the border; however, they are citing that they are inadequate, considering the methods used to smuggle the illicit cigarettes.

Diagrams 5 and 6 below show how smugglers hide the illicit cigarettes within the truck, in order to avoid detection at the border post. The respondents are of a view that the available scanners and lack of sniffer dogs at the border they are not effectively detecting the smuggling of illicit cigarettes.



Diagram 5: Hidding places of cigarattes in trucks

(Source: Researchers, 2019)



Diagram 6: Hiding places of cigarrattes in trucks

(Source: Researchers, 2019)

Diagrams 7 and 8 below reflect the quantity of the illicit cigarettes intercepted at the border post, which must be stored and be disposed of. Respondents are of a view that adequate storage facilities will required, rather than relying on one storage facility managed by SARS.



Diagram 7: Illicit cigarette interscepted

(Source: Researchers, 2019)



Diagram 8:Saps official with cigarette confiscated

(Source: Researchers, 2019)

In summary, the respondents confirmed that though there are coordinated efforts to prevent, combat and detect the illicit cigarettes, there is a need of adequate scanners, sniffer dogs and storage facilities. It is the police's responsibility to ensure that there are collaboration efforts with all departments operating in the border post in order to combat cross-border crimes, including smuggling of cigarettes. It was confirmed by the respondents that the police are providing services at the border as required and that they are working hand in hand with officials from other departments. All the departments are operating at the border, executing different responsibilities and priorities, but they are complementing each other.

Conclusion

After considering all the data collected to answer the research questions, the article concludes that there is a reason to believe that inadequate control by the Law Enforcement Officers at the port of entry under study may be facing huge challenges in combating the illicit tobacco smuggling across the border. South Africa need to improve border control of illicit tobacco in order to reduce the loss of revenue to the South African Revenue Services. This improvement can be achieved if the factors responsible for the situation at the identified port of entry need to be understood and rectified. Finally, the study concludes that there should be stringent requirements on legitimate trade. As long as the illicit trade in tobacco products provides high profits at low risk and there is a ready market of consumers, criminals will find a way to continue their trade. Therefore, it is important for the government to prioritise the borders in fighting the illicit trade.

Recommendations

Based on the above findings, this article recommends that the border post management should consider to establish an effective security communication model. This can be achieved by scheduling of stakeholder meetings that must be effective in sharing of strategic and operational information. Those meetings must be convened regularly and be monitored and evaluated. Furthermore, the development of the border post turn around policing strategy. Training of law enforcement agency members responsible for control of illicit trade at the border could have a positive impact in the future. The training must be about legislation, Memorandum of understanding, policies and regulations. The strengthening of relationship between the law enforcement agencies. Mobilise the community being adjacent to the border through community policing projects. Building of capacity to combat illicit trade. Communicate the extent of the problem as well as success with the community through media. Moreover, the mobilisation for resources from mother departments is of paramount important. A budget to be increased for the management of the border under study. Increase the capacity of human resources in terms of forensic investigators, technical equipment's such as scanners and CCTV cameras. Improvement of infrastructure at the border. Lastly, the researchers recommend that future studies be conducted focusing on the impact of illicit goods on the economy of the country.

References

- Ama, N.O., Mangadi K.T., Okurut F.N., Ama, H. A. 2013. Profitability of the informal cross border trade: A case study of four selected borders of Botswana. *African Journal of Business Management*, 7 (40): 4221 – 4232.
- Basu, G. 2014. Combatting Illicit Trade and Transnational smuggling: key challenges for customs and border control agencies. *Journal of Customs University*, 8 (2): 15 – 26.
- Guest, G., Macqueen, K.M. and Namey, E. 2012. *Applied Thematic Analysis*. Sage Publishers.
- Irish-Qobosheane, J. 2006. *The Social Economy of Organised Crime in South Africa*. Johannesburg: South African Institute of International Affairs.
- Lemboe, C. and Black, P. 2012. *Cigarettes taxes and smuggling in South Africa: Causes and Consequences*. Stellenbosch Economic Working Papers. [Online]. Available at: <http://www.saflii.org/za/legis/num/> . Accessed 22 July 2017.
- Mack, N., Woodsong, E., MackQueen, K. M., Guest, G., & Niamey, E. (2005). *Qualitative research methods: a data collectors field guide, family health international, research triangle park*. North Carolina: Family Health International.
- Marin, L. 2017. Policing the EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? *An Analysis of Frontex Joint Operations at the Southern Maritime Border*: University of Twente.
- Muzvidziwa, V. (2005). *Women without border: Informal cross border trade among women in the Southern African Development Community Region (SADC)*. Organisation for Social Science Research in Eastern and Southern Africa (OSSREA).
- Okomu, W. 2016. *Border management and security in Africa*. [http://www.researchgate.net/file .post](http://www.researchgate.net/file/post) (accessed 17 June 2017).
- Wherry, A.E., McCray, C.A., Adedeji-Fajobi, T.I., Sibiyi, X., Ucko, P., Lebina, L., Golum, J.E., Cohen, J.E. and Martinson, N.A. 2014. A comparative assessment of price, brands and pack characteristics of illicitly traded cigarettes in five cutes and owns in South Africa. *BJM Open*. South Africa. 1964. *Custom and Excise Act (Act 91 of 1964)*. Pretoria: Government Publishers.
- South Africa. 1993. *Tobacco Control Act (Act 83 of 1993)*. Pretoria: Government Publishers.
- Tobacco Institute of Southern Africa. 2015. *Presentation to the Portfolio Committee on Trade and Industry*. Parliament: Cape Town.