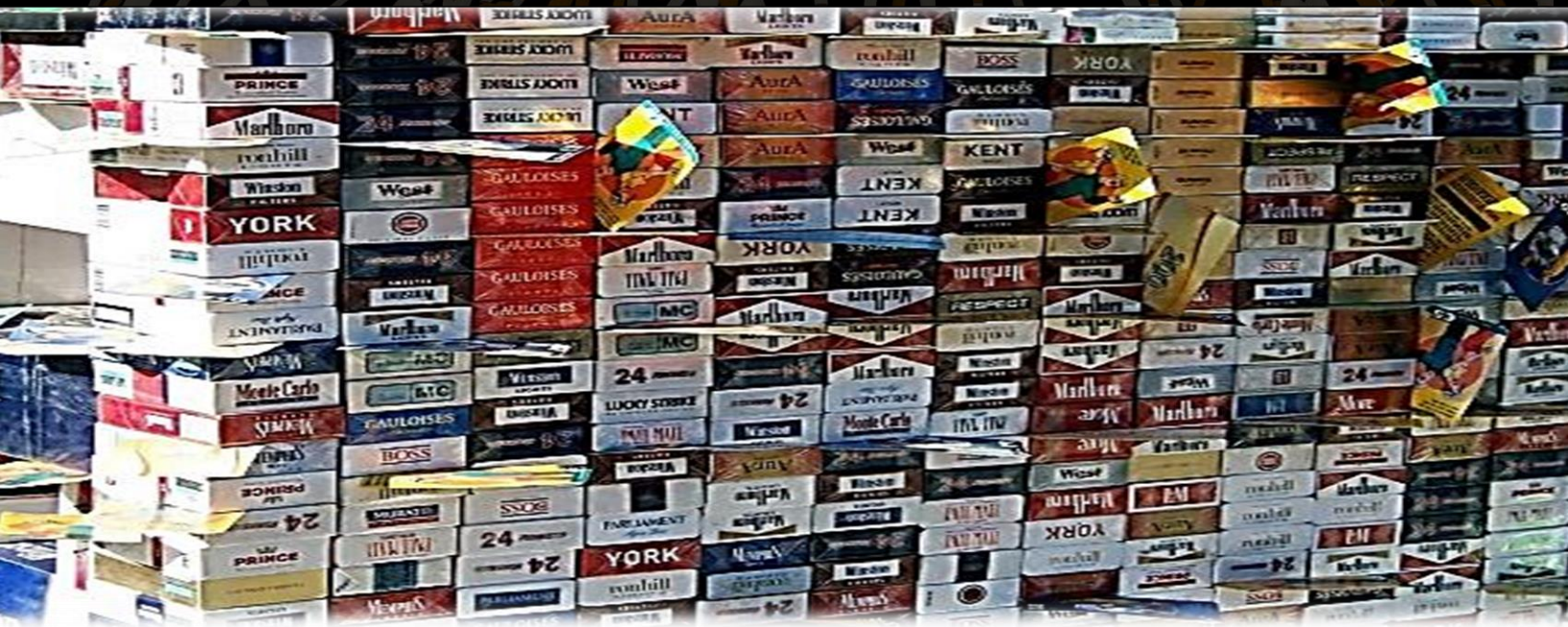




# SMUGGLING OF CIGARETTES AND ASSOCIATED MONEY LAUNDERING IN THE ESAAMLG REGION





ESAAMLG Report on “Smuggling of Cigarettes and  
Associated Money Laundering in the ESAAMLG  
Region”

**September 2018**



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## EXECUTIVE SUMMARY

The money laundering and terrorist financing risk of any nation is strongly linked with proceeds generated from predicate offences prevalent in that jurisdiction. The predicate offences may include all or part of the twenty-one (21) predicate offences listed by FATF.

The predicate offence of smuggling is among the highest transnational organized crimes at a regional, continental and global level. Cigarettes smuggling has become attractive to professional criminals, small and large groups of organized criminal groups and networks operating as smugglers in almost all ESAAMLG countries.

Smuggling has become a serious regional concern. In the absence of a regional risk assessment in the field, it is important to examine the magnitude and effects of cigarettes smuggling. The typology will help countries to identify methods and techniques used to launder illicit proceeds generated from cigarette smuggling.

Information collected through questionnaires from member countries and the private sector, was used to compile this report. This report could be used by the member countries and other affected parties to develop measures and policies against the laundering of proceeds generated from cigarette smuggling and terrorist financing.

The purpose of this report is to identify and highlight the vulnerabilities that cigarette smuggling and associated predicate offences pose to the manifestation of money laundering and financing of terrorism. The report further explores the preventative measures in place, the legal frameworks and role played by Law Enforcement Agencies

and FIUs in the fight against the laundering of proceeds generated from cigarettes smuggling.

Recommendations have been made based on the findings drawn from the inputs received from member countries and the private sector to enhance measures to counter money laundering and TF through smuggling of cigarettes.

## ACRONYMS

<b>AG</b>	Attorney General
<b>AML</b>	Anti-Money Laundering
<b>CFT</b>	Counter Terrorist Financing
<b>CEN</b>	Customs Enforcement Network
<b>DPP</b>	Director of Public Prosecution
<b>ESAAMLG</b>	Eastern Southern Africa Anti-Money Laundering Group
<b>FATF</b>	Financial Action Task Force
<b>FIU</b>	Financial Intelligence Unit
<b>FOB</b>	Free on Board
<b>KRA</b>	Kenya Revenue Authority
<b>INTERPOL</b>	International Police
<b>LEA</b>	Law Enforcement Agent
<b>ML</b>	Money Laundering
<b>MOUs</b>	Memoranda of Understanding
<b>MLATs</b>	Mutual Legal Assistance Treaties
<b>MRA</b>	Malawi Revenue Authority
<b>SADC</b>	Southern African Development Committee
<b>SAPS</b>	South African Police Service
<b>SAR</b>	Suspicious Activity Report
<b>SOPS</b>	Standard Operating Procedures
<b>STR</b>	Suspicious Transaction Report
<b>TF</b>	Terrorist Financing
<b>WCO</b>	World Customs Organization

# 1. MONEY LAUNDERING (ML)/TERRORIST FINANCING (TF) THROUGH PROCEEDS GENERATED FROM CIGARETTES SMUGGLING

## 1.1 Objectives of the typologies study

The overall objective of this study is to examine the magnitude of smuggling activities involving cigarettes in the ESAAMLG Region, identify linkages with ML/TF and also determine how proceeds generated from cigarette smuggling are utilised. The study will focus on the following objectives:

1. To identify which types of cigarettes are being smuggled in the ESAAMLG Region.
2. To identify who the cigarette smugglers are within the Region.
3. To identify methods/trends of ML/TF of proceeds from cigarette smuggling in the ESAAMLG Region.
4. To determine the motive behind cigarette smuggling.
5. To evaluate the sufficiency of the mechanisms currently employed by member states at their borders to deter, detect and manage cigarette smuggling activities and come up with mitigating measures.
6. To assess the impact and fiscal disparities emerging from cigarette smuggling and related ML/TF trends in the ESAAMLG Region
7. To quantify loss of revenue owing to cigarette smuggling and possibly the amount of illicit proceeds being generated from smuggling activities in the Region.
8. To identify any other consequences that are a by-product of smuggling directly or indirectly.

In order to better understand the dynamics and fully address the root causes of the predicate offence of cigarette smuggling and the resulting laundering and terrorist



financing, if any, it is crucial to conduct a study of how the criminal offences occur by analysing trends and methods in the laundering of the proceeds.

## **1.2 Scope**

The study focuses on the identification, understanding and analysis of the risks, trends and methods of cigarettes smuggling. It also recommends possible mitigating mechanisms against cigarettes smuggling, other criminal activities consequential to cigarette smuggling and the resultant ML/TF, by targeting relevant public and private sector institutions within the ESAAMLG Region through:

1. Establishing the types and origin of cigarettes that are being smuggled in the Region.
2. Identifying factors leading to cigarette smuggling.
3. Considering methods/trends being used in committing the predicate offence of cigarette smuggling.
4. Considering measures in place to deter, detect and penalize for smuggling activities in the ESAAMLG Region.
5. Considering any regulatory gaps/weaknesses being taken advantage of by the smugglers.
6. Establishing how the proceeds generated from cigarette smuggling are being laundered.
7. Considering monitoring and detection mechanisms along the region's countries' borders.
8. Considering ways to mitigate smuggling and laundering of the proceeds thereof in the ESAAMLG Region.
9. Considering the legal framework in dealing with cigarette smuggling activities.
10. Considering the international cooperation frameworks in place to exchange information on smuggling and related ML cases as these are transnational crimes.

### 1.3 Methodology

The project team working jointly with the ESAAMLG Secretariat developed a comprehensive questionnaire that was distributed to all ESAAMLG member countries. Preliminary analysis of the responses prompted the project team to develop another questionnaire that was sent to the private sector, particularly to cigarette manufacturers and distributors as it emerged they had an important role to play in the combating of cigarette smuggling.

The questionnaires are attached to this report as annexes.

The project team also used information gathered from open sources, interviews and published articles to come up with findings of this report.

## 2. INTRODUCTION

According to Bhagat (1974) *“Anything that creates a price divergence between a foreign market and a domestic market for a good provides an incentive for smuggling provided that such discrepancy is not a result of costs of trade”*. To this effect Bhagat lists the following as causes of smuggling: (i) Foreign Trade Policies, (ii) Import Tariffs and Subsidies; Export Taxes and Subsidies, (iii) Import and Export Quotas as well as (iv) Exchange Control Regulations.

Bhagwati and Hensen (1973) go on to postulate that smuggling is a major economic problem that accounts for 20-25% of some developing countries’ international trade activity. This assertion is supported by a report by the Institute of Southern Africa<sup>1</sup> which estimated that South Africa is rated among the top five countries globally with

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<sup>1</sup> <http://www.news24.com/SouthAfrica/News/PMB-a-hub-for-cig-smuggling-20150704>

the highest incidence of illegal cigarettes trade. Accordingly, in 2013, an estimated thirty-one percent (or eight billion sticks) of all cigarettes consumed in South Africa were illicit. In 2014, this number was around 23% (or more than five billion sticks) while in 2015, this number was around 23% (or more than two billion sticks). In terms of impact on the fiscus, more than USD1,69 billion in tax revenues has been lost to the illicit cigarette trade since 2010, which is roughly USD384,6million per year. Given the exorbitant amount of monies involved, it cannot be doubted that smugglers need to launder their criminal proceeds to evade the long arm of the law.

A 2012 SADC research study<sup>2</sup> into the illicit trade in excisable products with particular reference to alcohol and tobacco products, concluded that rampant smuggling operations in the SADC region are being undertaken through coordinating large numbers of individuals who carry illicit goods across borders and put them in storage and/or transport them to markets that can only be organised at criminal syndicate level. The smuggling of cigarettes is dominated by local and foreign individuals and business people who operate well-orchestrated syndicates. Cigarette manufacturers are also being accused of distributing cigarettes into the black market and/or partaking in the smuggling process themselves using their official and or bonded warehouses located near exit borders. Individuals illegally purchase cigarettes which are destined for export from manufacturers and then smuggle them concealed in container trucks, buses or through the use of well-known foot smugglers known as “runners” who carry the contraband in specially-built rucksacks across the border to pre-arranged rendezvous where smuggling syndicates will be waiting<sup>3</sup>. There are smugglers who run legitimate businesses such as haulers who become opportunistic smugglers of cigarettes.

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<sup>2</sup> SADC Review - Study into the illicit trade in excisable products, November 2012, Anthony Lester and Elizabeth Allen, [http://www.sadc.int/files/3913/5895/1270/SADC\\_study\\_into\\_the\\_illicit\\_trade\\_in\\_excise\\_products.pdf](http://www.sadc.int/files/3913/5895/1270/SADC_study_into_the_illicit_trade_in_excise_products.pdf)

<sup>3</sup> News Day, 11 May 2012 <https://www.newsday.co.zw/2012/05/11/2012-05-11-zim-cigarette-smugglers-cause-havoc/>

Corrupt officials, service providers and other individuals are also involved in the process, since they choose to facilitate the smuggling for financial gains. These officials also include border security, who facilitate couriers that move cigarettes across borders.

The prevalence of cash economies within the region exacerbates the problem of cigarette smuggling, as smuggling occurs without leaving paper trails. In addition, the abundance of export quality cigarettes manufactured in the region exposes the industry to exploitation by smugglers.

Despite the aforementioned, cigarette smuggling has failed to receive the attention it deserves in the region and there is a need to determine ways to minimize cigarette smuggling which undoubtedly leads to laundering of proceeds generated in the process.

### **3. CIGARETTE SMUGGLING CONTEXT: VULNERABILITIES, FORMS, METHODS, ROLE-PLAYERS, TYPES AND FACTORS WHICH INDICATE PREVALENCE.**

#### **3.1 Vulnerabilities that fuel cigarette smuggling**

From the responses received, the following vulnerabilities were identified as fuelling cigarette smuggling:

- extensive land and sea borders in some countries which require huge resources to control
- porous borders
- weak control and enforcement measures

- relaxed transit procedures
- insufficient resources
- lack of infrastructure
- inadequate investigations
- lack of (or insufficient) cooperation between critical role-players
- weak criminal penalties
- low arrest rates of syndicate leaders for organised crime
- Added to the above vulnerabilities are also the ones listed below noted by the project team:
  - Lack of skilled officers
  - Difficulty of analyzing scanner images and lack of controls
  - Poor community engagement and sensitization on cigarette smuggling
  - Corruption and bribery of public officials.

### **3.2 Parallel crimes committed with cigarette smuggling**

Country responses further revealed parallel crimes that occur with cigarette smuggling, which are;

- Corruption
- Unlawful residency and illegal border crossing (violation of immigration laws)
- Tax evasion
- ML and organized crime.

### **3.3 Factors which indicate the prevalence of cigarette smuggling**

An analysis of the responses established that the following identified red flags indicate the existence of cigarette smuggling:

- Confiscation of cigarettes smuggled along with other legitimate products.
- Frequent travellers who buy cigarettes on departure and buy more on arrival.



- False declarations.
- The breaking of seals on trucks and/or containers transporting cigarettes.
- The establishment of dubious warehouses near border areas and transporting the cigarettes through unofficial crossing points.
- Cigarettes sold at prices which are less than the duty payable per packet.
- A reduction in the amount of taxes collected on locally manufactured cigarettes annually.
- Complaints by local manufacturers regarding the decline in domestic sales and sharp increases in duty free sales.
- Cigarettes clearly marked as 'For Duty Free Sale Only' available in retail outlets.
- Mismatch between the volume of cigarettes imported and locally manufactured and what is available on the market.
- Extreme wealth displayed by people involved in the distribution of cigarettes observed in a short period of time.
- Increasing number of cases, seizures, prosecutions and confiscations.
- Travelers taking longer routes to get to their final destinations
- Smugglers travelling from/to unusual countries of origin/destination
- Cigarettes sold at extremely cheaper prices by local vendors

### **3.4 Forms and methods of cigarette smuggling**

All countries confirmed that they have experienced cigarette smuggling in one form or another, indicating that this is a common phenomenon in the region. Forms identified by countries include:

- avoidance of customs officials at official exit and entry points
- use of illegal crossing points
- under declaration of goods
- undervaluation of goods

- misclassification of goods
- falsification of documents
- false declaration of country of origin
- short-landing transit goods
- short-landing re-export goods

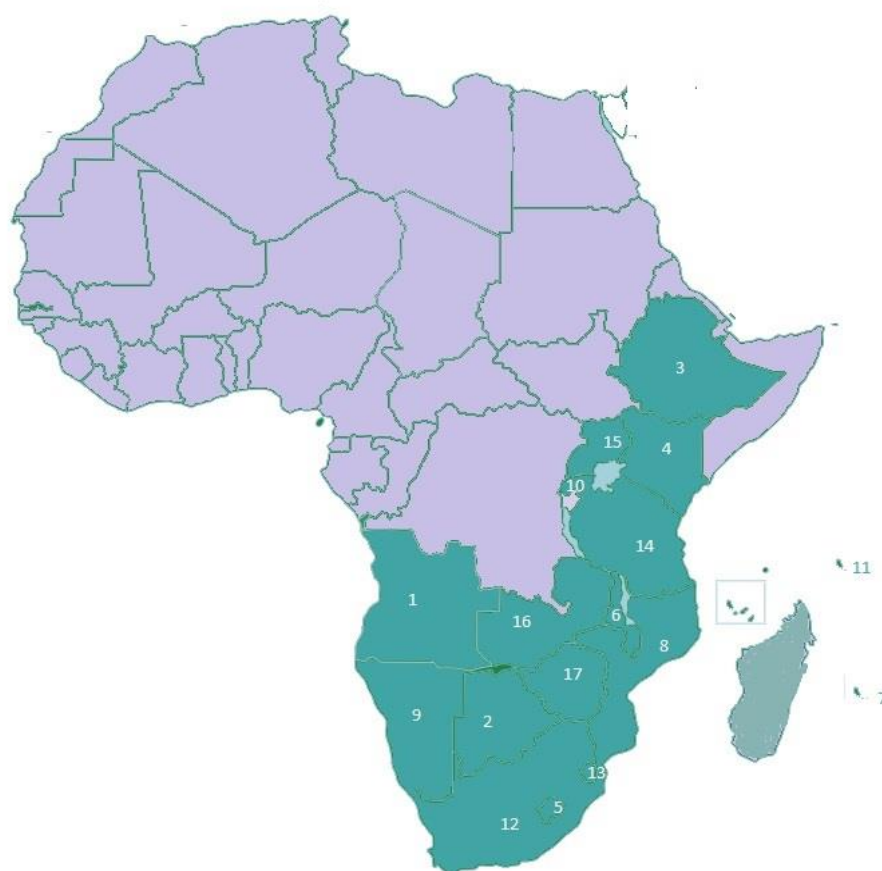
Of the above, it was noted that the most commonly used forms are outright avoidance of customs officials at official border crossing points and the use of illegal crossing points.

Many of the smugglers use road transportation because it is the most common mode of transport between neighbouring states and chances of being apprehended are slim due to the volumes of traffic on the roads. Countries in the region share long borders with many porous routes and entry points which are abused for smuggling purposes.

The map below illustrates the shared borders between ESAAMLG members.

KEY

- 1 – Angola
- 2 – Botswana
- 3 – Ethiopia
- 4 – Kenya
- 5 – Lesotho
- 6 – Malawi
- 7 – Mauritius
- 8 – Mozambique
- 9 – Namibia
- 10 – Rwanda
- 11 – Seychelles
- 12 – South Africa
- 13 – Swaziland
- 14 – Tanzania
- 15 – Uganda
- 16 – Zambia
- 17 – Zimbabwe
- 18 – Madagascar



Though the most common method of smuggling is by land, this does not rule out the use of other methods. In the case of the Seychelles and Madagascar, cigarettes are smuggled using containerized sea freight and air cargo. In addition to road and containerized shipments mentioned by other countries, smugglers in South Africa also use rail. Another example is the scheme whereby smugglers drop sealed packages with cigarettes near the coast, where small boats later collect the shipments. It also emerged from the study that in such schemes, sometimes the corrupt border security officers or customs officers inform smugglers of the patrolling schedules of border security officers, so as to avoid detection.

## **SEYCHELLES CASE STUDIES**

An aircraft engineer was involved in smuggling of cigarettes into Seychelles between June 2014 and August 2016. Cigarettes were contained in large items such as speaker casings and air conditioning units delivered through air cargo. The total amount of cigarettes seized by Customs totaled 59,200 sticks.

In yet another case, a frequent traveler attempted to smuggle 7,400 sticks of cigarettes in his luggage through the airport.

Another traveler attempted to smuggle 2,400 sticks of cigarettes in chocolate and cornflakes boxes in his luggage through the airport.

Other factors that perpetuate the use of these preferred forms of smuggling include corrupt officials, weak controls and enforcement measures, ease of disguising and concealing cigarettes and lack of adequate skills and resources by customs officers to detect fraudulent documents.

The following case study serves to illustrate some of the points covered above:

## **BOTSWANA CASE STUDY**

### **BERNARD CHARLMES VS STATE**

Mr. Bernard Charlmes, a Zimbabwean truck driver and others were intercepted by Botswana Police inside a farm close to Paars Halt border post on 4 December 2014 as a result of a sting operation based on intelligence received. It was reported that the suspects conspired with farm laborers to export cigarettes illegally from Botswana into South Africa. The laborers subsequently turned against the suspects and reported to the Police about their plan to smuggle cigarettes.

Mr. Charlmes and others were caught red handed offloading the cigarettes from the truck that he had been driving, into another truck that was across the border in South Africa at an ungazetted point within a farm near Paars Halt border. The laborers on the South African side used the other truck into which an unconfirmed quantity of cigarette master cases had been loaded to flee. Some of the laborers on the Botswana side also fled. The Police subsequently captured the suspects and seized the cigarettes. The vehicles they used were brought to Gaborone under the escort of Botswana Police officers for further investigations.

The CID South Africa Office relayed the information about the custody of the suspects and requested for the intervention of the Customs Division on 4 December 2014. Two Customs Investigation officers were assigned and immediately joined the CID officers to commence investigations. Mr. Charlmes was identified as the main role-player since most activities revolved around him. Other suspects that were caught with him were released as their involvement in the contravention of the law was insignificant and were

reportedly fined P100 each. 217 master cases of Shasha cigarettes (a brand believed to be produced by Benson Craig), 160 master cases of Servilles cigarettes and a Namibian registered one tonner truck Reg. No: N 74664 W were seized.

Preliminary investigations also revealed that Mr. Charlmes was staying illegally in Botswana. He was therefore detained at Gaborone Central Police pending his deportation under Botswana's Immigration laws. It was further established that Mr. Charlmes was a perpetual smuggler as he was previously caught by different Customs Officers on similar offences of cigarettes smuggling. Records reveal that Mr. Charlmes had more than one count of cigarettes smuggling cases as follows:

**Count 1:** In June 2009, Mr. Charlmes was brought before the magistrate court in Selibe-Phikwe for smuggling 165 master cases of Dullas and 50 master cases of Remington Gold cigarettes. He was convicted and fined P10 000 and given a suspended sentence for 12 months.

**Count 2:** In September 2010, he was caught smuggling 65 master cases Remington Gold cigarettes at Modipane and was convicted and fined P10 000 at Tlokweng Gate.

**Count 3:** In October 2011, Mr. Charlmes was once again caught in Mogoditshane by a team of Police and Customs officers with 139 master cases of smuggled Servilles, 117 master cases of Dullas cigarettes and 2 master cases of Chelsea brand. He was fined P20 000 out of which he only paid P6 000 and escaped. He then re-surfaced in December 2014, when he was arrested at the farm.

The case was concluded in Mahalapye Magistrate Court and Mr. Chalmes was convicted. The following are details of the sentence that was passed:

- a. Payment of P20 000.00 or 24 months in default of payment,
- b. Payment to be made with immediate effect,
- c. Vehicle admitted as exhibit BC 3 that was driven by the accused person to be forfeited to the state subject to the provisions of Section 100(1) and (2) of the Customs Act,
- d. Abandoned Vehicle admitted as exhibit BC 4 to be forfeited to the state,



- e. Cigarettes being Exhibits BC 1 and BC 2 were forfeited to the state for destruction
- f. Accused person to be repatriated to his native country in terms of the Immigration Laws as he was an illegal immigrant.

Mr. Chalmes paid the P20 000.00 (about USD2 000) fine immediately, after which he was repatriated to Zimbabwe. The 2 vehicles and the 377 master cases of cigarettes were seized and accordingly forfeited to the state.

### **3.5 Role-players in cigarette smuggling**

The study revealed that the indicators of those involved in cigarette smuggling within the region vary vastly between countries.

The majority of countries indicated that there was no evidence of organized crime or coordination with those providing services at exit/entry points in the smuggling of cigarettes. Trends show that most of the smuggling is committed by a combination of local and/or foreign truck drivers, individuals, local traders and business people. In addition to the above, one country indicated that manufacturers, wholesalers and transport companies are also involved in cigarette smuggling. In the case of Seychelles, it is frequent travellers and cabin crew members who are the main perpetrators. It is clear from the study that locals constitute the bulk of those involved in cigarette smuggling in the region. This was supported by eleven (11) countries, while four (4) confirmed that both foreigners and locals are involved in the smuggling whereas only (2) countries indicated that only foreigners are involved.

### **3.6 Commonly smuggled cigarettes**

From the country responses received, the study established that the different types of cigarettes being smuggled are filtered and unfiltered cigarettes, cigars, cigarillos and

little cigars. The most commonly smuggled brands include Remington Gold, Oxford, Exclusive Pegasus, Pacific, Shag, Barron, Branson, Peterborough, Mega, Dakota, Dullahs, Derby, Rio, Mond, Polo, Cheeky, Seviles, Kingdom, Blue Stars, Gendhaan, MC, Premium, Royal Bus, Empire, Benson & Hedges, Goldmount, Royal Rothmans, Ausan, Grand-Turismo, Premier Filter, Director, Peter Stuyvesant, Mahe Kings, Marlboro, Cotleugh, Life, Laif, and Guard.

#### 4. LEGAL FRAMEWORK

The majority of countries define smuggling as the illegal movement of goods from one jurisdiction to another. However, the study reveals that some countries, define smuggling to have occurred when the movement of goods takes place through illegal border crossings.

All the countries confirmed that they have legal frameworks in place that deal with smuggling and associated offences. The associated offences identified include illegal border crossing, tampering with customs seals, murder, theft, robberies, tax evasion, corruption, bribery and fraud, to name but a few.

**Table A: Overview of legal provisions relating to smuggling**

No.	Country	Criminal Provision	Extent of the Punishment
1	<b>Angola</b>	Articles 190-195 of the Customs Code, Law Decree No. 05/06	Imprisonment ranging from three months to three years and a fine of one to three times the customs value of the goods.
2	<b>Botswana</b>	Section 97 of Customs and Excise Act, 2001	Fine not exceeding P40,000 or treble the value of the goods in respect of which such offence was committed whichever is the greater, or to

			imprisonment for a term not exceeding ten years, or to both, and the goods in respect of which such offence was committed shall be liable to forfeiture.
<b>3</b>	<b>Ethiopia</b>	Articles 346, 347 of the 2004 Criminal Code; Article 91 of the Customs Proclamation Number 622/2009; Article 26 of the National Bank of Ethiopia Establishment (as Amended) Proclamation No. 591/2008	Rigorous imprisonment not exceeding ten years, and fine not exceeding fifty thousand Birr, without prejudice to the confiscation of the subject matter of the crime.
<b>4</b>	<b>Kenya</b>	Section 185 of the Customs and Excise Act, 2002	Imprisonment for a term not exceeding five years or to a fine equal to three times the amount of duty and any other taxes payable on the goods in respect of which the offence was committed subject to a maximum of one million five hundred thousand, or to both such fine and imprisonment.
<b>5</b>	<b>Lesotho</b>	Sections 11, 12 and 85 of the Customs and Excise Act no. 10 of 1982	A fine not exceeding one thousand maloti or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.
<b>6</b>	<b>Madagascar</b>	Articles 363 to 365 of the Customs Code.	(a) Imprisonment for one year to two years the smuggling offenses committed by an assembly of

			<p>three and up to six inclusive, all bear or not, commodities fraud and are authors or co-authors interested in fraud.</p> <p>(b) All violations of the provisions of Articles 35, 1, 54 and 95 above, are subject to the same punishment of imprisonment and a fine of 100,000 to 2,500,000 Ariary.</p> <p>(c) Furthermore, are liable to the same penalty of imprisonment and a fine of 500,000 to 5,000,000 Ariary, all violations of the provisions of Article 90. 1 of this Code and any offense committed by a one who has been a withdrawal of authorization and continues directly or indirectly to do, customs formalities concerning the declaration for the goods.</p>
7	<b>Malawi</b>	Sections 134-136, 142-143, Customs and Excise Act, 2001	The payment of 10 times the duty prejudiced and 3 years/ imprisonment with hard labour.
8	<b>Mauritius</b>	Section 156 of the Customs Act, 1988	<p>(a) A fine which shall</p> <p>(i) where the value of the goods does not exceed 1,500 rupees, be 4,000 rupees;</p> <p>(ii) where the value of the goods exceeds 1,500 rupees, be 23 times the amount of duty, excise duty and taxes on those goods or 20,000 rupees, whichever is the higher,</p> <p>(b) Imprisonment for a term not exceeding 8 years, and the goods, the subject matter of the offence, shall be liable to forfeiture.</p>

<b>9</b>	<b>Mozambique</b>	Article 472 of the Penal Code, 2014	Imprisonment and a fine of ten to thirty-three minimum wages
<b>10</b>	<b>Namibia</b>	Section 14 of Customs and Excise Act No 20 ,1998	The Controller may, if any person is suspected by the Controller of an attempt to illegally import, export, land, ship or remove goods, or to evade the payment of duties on any goods, arrange for such person to, as soon as practicable, be brought before a Magistrates Court, or to have such person placed in custody in or at a police station or other suitable place, until he or she can be brought before such court.
<b>11</b>	<b>Rwanda</b>	Articles 216 and 218 of Law n <sup>o</sup> 21/2006 of 28/04/2006 Establishing the Customs System in Rwanda	Imprisonment of a period from one month to five (5) years
<b>12</b>	<b>Seychelles</b>	Article 98 of Customs Management Act, 2011	A fine of SCR 50,000 and any goods in respect of which the offence was committed shall be liable to forfeiture.
<b>13</b>	<b>South Africa</b>	Sections 15 and 80 of Customs and Excise Act No 20 of 1964	A fine not exceeding R20,000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.
<b>14</b>	<b>Swaziland</b>	Sections 80 (1) and 81 of the Customs and Excise Act, 1971	A fine not exceeding two thousand five hundred emalangeni or treble the value of the goods in respect of which such offence was committed,



			whichever is the greater, or imprisonment not exceeding twelve months, or both.
<b>15</b>	<b>Tanzania</b>	Section 200, East African Customs Management Act, 2004	Imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value involved, or both.
<b>16</b>	<b>Uganda</b>	Section 200, East African Customs Management Act, 2004	Imprisonment for a term not exceeding five years or to a fine equal to fifty percent of the dutiable value involved, or both.
<b>17</b>	<b>Zambia</b>	Sections 149 and 155 of the Customs and Excise Act, 2006	(a) A fine not exceeding treble the duty-paid value of any goods which may be the subject-matter of the offence; (b) if treble the duty-paid value of such goods is less than eight thousand penalty units, or if there are no goods involved in the offence, to a fine not exceeding eight thousand penalty units; (c) imprisonment for a period not exceeding five years; (d) both such imprisonment and any such fine as is provided in paragraph (a) or (b).
<b>18</b>	<b>Zimbabwe</b>	Section 182 of the Customs and Excise Act, 2002	(a) A fine not exceeding level fourteen or three times the duty-paid value of the goods, whichever is the greater; or (b) imprisonment for a period not exceeding five years; or to both such fine and such imprisonment.

## 5. CIGARETTE SMUGGLING AND ML

### 5.1 Appreciation of cigarettes smuggling and related ML in the region

Cigarette smuggling presents a natural conduit for ML in light of its cash intensive and profitable nature as well as its perceived low levels of risk in terms of detection, seizures and prosecution.

A myriad of scholars on sociology, criminology and economics have postulated theories on the link between smuggling and ML, from the nineteen seventies through to the nineties well before Anti-Money Laundering (AML)/Counter-Terror Financing (CFT) developed as a discipline. An example is James Richards (1998) who, in his book entitled “Transnational Criminal Organizations, Cybercrime, and Money Laundering: A Handbook for Law Enforcement Officers, Auditors, and Financial Investigators”, provides a detailed study of the international crime gangs and terrorists whose operations and existence prevail between national boundaries through smuggling and ML.

Between 2005 and 2015, the FATF has published a number of typologies related to smuggling. The topics include smuggling of (i) Cash, (ii) gold, (iii) drugs, (iv) diamonds, (v) tobacco and (vi) human beings. This serves as another indicator of the strong link between smuggling and ML.

However, despite the above, most countries indicated in their responses that the understanding of the ML aspects related to cigarettes smuggling and the offence of ML in general varied from poor to moderate and that no specific ML investigations have been carried out as Law Enforcement Agencies (LEAs) focus on predicate offences. Only Angola, South Africa and Zimbabwe indicated that ML was well understood with Namibia indicating that ML was moderately understood. The countries in their responses did not explain the reasons why LEAs focus only on predicate offence investigations instead of looking beyond for a possible ML offence having been

committed. The study, however is of the view this could be due to several factors, including insufficient skills to detect ML cases, the conventional approach of only looking for the predicate offence in a criminal investigation, the complex nature of the investigations and time involved, etc. It is hoped that one of the important lessons to be derived from this report by countries will be the emphasis on the need to carry out ML investigations as opposed to merely focusing on the predicate offence.

## **5.2. Methods used to launder the proceeds associated with cigarette smuggling**

Literature shows that perpetrators use a variety of methods to launder the proceeds of cigarette smuggling. These include cash couriers, domestic and international banking systems, currency exchange, purchase of real estate property and vehicles as well as investment in a variety of legitimate businesses<sup>4</sup>.

The responses to the questionnaire indicated that most countries have no data or records on ML related to cigarette smuggling- and that the majority of countries did not associate proceeds from cigarette smuggling to ML. This was due to the fact that LEAs in the respective countries investigated cases as predicate offences and not as ML offences, as stated previously.

The countries that established and confirmed that there is a link between cigarette smuggling and ML were Namibia, Lesotho, South Africa, Tanzania, Uganda and Zimbabwe. In Zimbabwe, evidence of the link was established through trends from case studies and figures involved as reported in their Mutual Evaluation Report<sup>5</sup>. Lesotho and Uganda indicated that their legal frameworks had relevant provisions to deal with

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<sup>4</sup> FATF 2012 report on Illicit Tobacco Trade.

<sup>5</sup> Anti-money laundering and counter-terrorist financing measures Zimbabwe Mutual Evaluation Report, September 2016, <http://www.esaamlg.org/userfiles/file/2ND-ROUND-MUTUAL-EVALUATION-REPORT-OF-THE-REPUBLIC-OF-ZIMBABWE.pdf>

illegal proceeds, while South Africa, among other reasons, stated that payments to suppliers were made through sister companies in other countries and jurisdictions. Additionally, Zimbabwe indicated that the proceeds from cigarette smuggling were invested in the retail and manufacturing sectors. Goods were purchased with the proceeds and resold within the country. Zambia and Tanzania on the other hand indicated that the proceeds were invested in the real estate sector.

The above countries all provided case studies.

### 5.3 Aggregated amounts associated with ML

Aggregated amounts for the region could not be determined as the majority of respondents did not provide responses relating to the amounts associated with ML. However, those that did, reported as follows:

Country	Value of cigarettes smuggled/laundered
Malawi	USD37,700
Namibia	USD2,133,977
Seychelles	USD348,299
South Africa	USD4,271,663
Uganda	USD24,745
Zambia	USD384,299
Zimbabwe	USD250,000,

### 5.4 TF and cigarette smuggling

None of the countries reported any incidences, cases, activities or reports of TF or potential TF, funded by proceeds from cigarette smuggling activities. No evidence was found to link the proceeds of cigarette smuggling to TF. The threat level for TF activities

funded by proceeds or activities related to cigarette smuggling was stated as “low” by the majority of countries.

### **5.5 Preventative measures for cigarette smuggling and ML.**

On the question of measures in place to limit cigarette smuggling activities and ML/TF related to proceeds thereof, countries indicated that a combination of the following are present in their countries:

- strong legal framework
- strong border control processes and special investigative bodies
- implementation of effective risk analysis systems
- LEAs visibility at points of entry
- Awareness raising campaigns
- Issuing dissuasive penalties to smugglers including confiscating the smuggled cigarettes
- Routine searches of luggage of profiled travellers
- Customs authorities should review and promote guidance for cigarette traders to implement regulations properly
- Effective tracking of Cigarettes on transit
- Domestic cooperation amongst relevant agencies and International cooperation amongst customs authorities.

Despite these preventive measures, cigarette smuggling in the region is still prevalent and problematic due to among other things porous borders, corrupt officials, faulty machines like scanners and lack of infrastructure and capacity to detect it.

On the question of the role-played by LEAs in putting in place preventative measures against cigarette smuggling and related ML/TF, only Seychelles and Zimbabwe

provided specific examples. Seychelles specified risk profiling, whilst Zimbabwe noted the proactive intensification of border patrols and searches.

## **6. ROLE OF OTHER LAW ENFORCEMENT AGENCIES AND INVESTIGATIVE AUTHORITIES**

All countries confirmed that they have special LEAs that deal with the crime of smuggling at their borders and that the following control measures are in place for customs officials and other LEAs in combating cigarette smuggling:

- intelligence gathering
- risk management
- physical examinations and inspection of goods entering or leaving the countries
- scanning of cargo
- verification of documents
- combined border patrols (joint operations)
- joint road operational blocks with relevant authorities;
- customs officials should have the authority to confiscate/detain smuggled cigarettes

### **6.1 FIUs**

It is recognized internationally that FIUs are central to national strategies to combat ML/TF. Under AML legislation in most countries, accountable institutions such as banks, accountants, money transfer companies and certain retailers which accept large cash payments are required to submit Suspicious Transaction Reports (STRs) to the national FIU whenever they have a suspicion, or reasonable grounds for a suspicion, that a transaction is linked to a ML/TF offence. FIUs receive, analyse STRs and disseminate financial intelligence reports developed from the analysis and other financial information relating to suspected predicate offences to the agencies responsible for investigating such offences. In a number of countries, FIUs operate

systems for receiving and analysing Suspicious Activity Reports (SARs), alongside or instead of STRs.<sup>6</sup>

Of the countries which provided statistics on cigarette smuggling-related STRs, only Zambia and Zimbabwe were able to establish ML trends from the information received. In the case of Zambia, cigarettes are smuggled in from neighbouring countries as contraband/goods in transit. The cash generated is then channelled into real estate.

Only three countries provided statistics on the number of cigarette smuggling-related STRs received, most of which were from the banking sector and covered the period 2011 to 2015. Whilst it is noted that the reported numbers of STRs are low, the greater concern is the total absence of any reporting in the majority of countries.

Where STRs were referred to the Police, one such referral resulted in seizure in Zimbabwe and another in confiscation/forfeiture in Zambia.

Most member countries indicated that once FIUs refer financial intelligence reports to the relevant national agencies for further investigation, there is no legal requirement and/ or process to provide feedback to the referring FIU. In the case of Zambia and Zimbabwe they indicated that feedback is provided in writing. In the case of Zambia specifically, an established process exists to provide feedback on financial intelligence reports on a quarterly basis.

On the question of whether national FIUs conducted joint investigations with LEAs, most countries confirmed that the legal mandates of the FIUs did not include conducting investigations. However, Zambia, Seychelles, Uganda, Malawi, Zimbabwe, Angola, South Africa and Rwanda confirmed that joint investigations between FIUs and LEAs were possible. No examples of joint investigations were however, provided.

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<sup>6</sup> OECD 2013:37 Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes.

The majority of the countries confirmed that there were no difficulties or major challenges faced by their national FIUs in dealing with STRs relating to smuggling or related ML during the intelligence gathering stage. Tanzania identified difficulties in as far as their STRs did not provide any indication as to the particular offence suspected to have been committed.

Countries confirmed that their national agencies that received information from their FIUs pertaining to smuggling activities depended on their domestic legislation as well as the various mandates exercised by these institutions/departments in investigations of cigarettes cases. Most countries indicated that the recipients could include the following agencies: LEAs (not limited to those investigating drugs, corruption, ML), revenue authorities, immigration services, supervisory bodies, regulatory authorities, financial services authorities, Attorney General's offices as well as licensing authorities.

Most of the agencies stated that they make use of secure formal written requests under Memoranda of Understanding (MOUs) to request information from their FIUs or international agencies on smuggling related cases. This being the case, most countries indicated that their FIUs did not receive requests to share information pertaining to cigarette smuggling activities from their local agencies or other countries. Only Namibia, Zimbabwe and South Africa confirmed that such requests had been received by their FIUs. The value of the development of typologies, case studies and keeping statistical information on ML/TF relating to cigarette smuggling cannot be over emphasized. However, jurisdictions confirmed that none of their FIUs had developed such typologies and only South Africa and Zimbabwe could confirm that such case studies were developed from cigarette smuggling cases that were referred by their FIUs to their Police. Additionally, only four jurisdictions confirmed that their FIUs kept databases on ML/TF and smuggling in general as opposed to focusing specifically on cigarette smuggling.



Only Ethiopia, Madagascar, Uganda and Zimbabwe indicated that they maintain statistical baselines to gauge the trends and the types of cigarette smuggling. The rest of the countries either did not keep them or did not provide information.

A number of challenges were identified by FIUs in executing their duties in combatting ML/TF related to cigarette smuggling activities. These include:

- Inadequate or no reports and other information being escalated to the FIU concerning smuggling activities;
- Inadequate coordination and cooperation between domestic agencies as well as with international stakeholders;
- The transnational nature of smuggling;
- Inadequate knowledge on the predicate offences and related ML/TF; and
- Inadequate training and expertise.

Countries indicated that the above-mentioned challenges hindered FIUs from executing their duties of combatting cigarette smuggling activities and related ML/TF in a number of different ways effectively, specifically because:

- There are insufficient reports to establish trends on the type of crimes for this study which specifically relates to cigarettes.
- There is inadequate coordination and cooperation between domestic agencies which makes it difficult to ascertain the level of contribution, the value and the outcome that will assist in identifying similar or other syndicates involved.
- It hinders timely reaction to information.
- Criminals are always evolving in the methods they use necessitating ongoing training.

## **6.2 Customs Authorities<sup>7</sup>**

The study revealed that the confiscation of smuggled cigarettes or proceeds generated from such smuggling activities is a policy priority for Customs Authorities.

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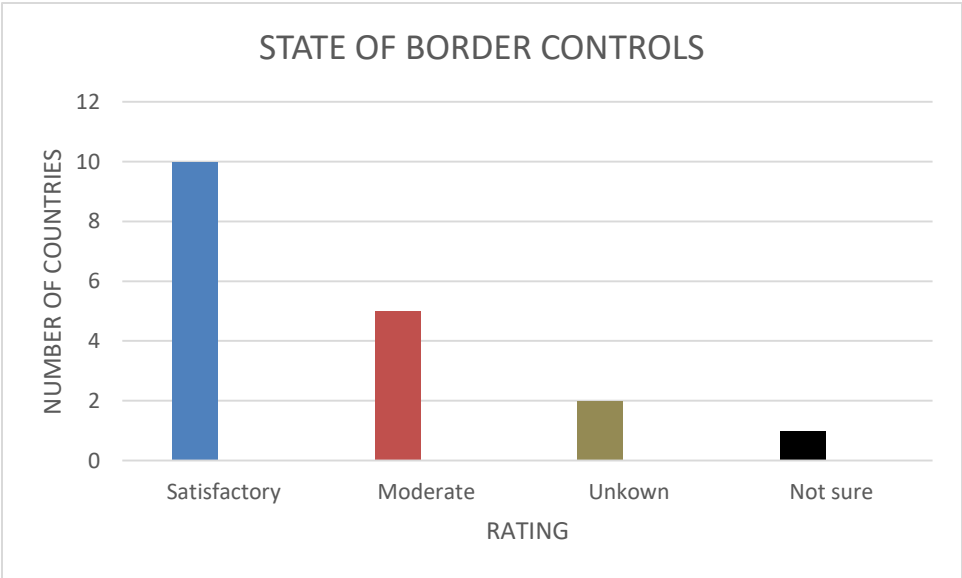
<sup>7</sup> References to Customs Authorities include Revenue Authorities which include a Customs Division as well as Customs Departments under Finance Ministries.

The majority of countries indicated that their customs officials have powers to search, seize and detain goods as well as the power to effect arrests; while in some countries these powers extend to prosecution.

Eleven countries indicated that their Customs officials are well trained and skilled to detect cigarette smuggling at entry and exit points. However, six indicated that they are not sufficiently trained and skilled.

Apart from Angola, Lesotho, Rwanda and Tanzania, all countries confirmed that their Customs officials maintain records of all cigarette smuggling cases.

Out of seventeen countries, ten countries rated Customs and border controls as satisfactory; four described it as moderate while two did not give a rating as shown in the graph below. On the other hand, South Africa indicated that the rating scale would vary depending on which entry/exit point is used as an entry point *per se* does not necessarily mean an official port of entry.



On the question of coordination at entry and exit points by LEAs responsible for border control, fourteen (14) countries indicated that coordination was good whilst four (4)

countries suggested that there is room for improvement. One example that was provided was the need to improve the sharing of information especially where the law limits the sharing of such information as cited by South Africa and Zimbabwe.

### **6.3 Other LEAs and Investigative Authorities**

The majority of countries confirmed that there are other LEAs that are involved in the investigation of smuggling cases. These include Police, Anti-Corruption authorities and Intelligence Bureaus, in addition to FIUs and Customs Authorities.

With the exception of Botswana, all jurisdictions have specialised units which investigate smuggling cases. Some countries submitted that their specialised units are satisfactorily capacitated in terms of skills and resources to investigate smuggling cases and related ML, while others are not. However, the jurisdictions did not substantiate their assertions with any ML cases detected, investigated and prosecuted except Namibia which provided one case.

Based on the submissions made by the countries, the general impression created is that LEAs have a range of powers when carrying out investigations on smuggling cases.

Some of the powers include:

- interviewing of suspects
- powers of search, seizure and arrest of offenders
- collection of testimony from witnesses
- collection of evidence from crime scene
- taking provisional measures including freezing
- confiscation of smuggled goods
- powers to prosecute offenders
- conducting surveillance
- conducting undercover operations

- conducting controlled delivery with court orders
- intercepting communication with court orders
- accessing computer systems, networks and servers with court orders

In relation to the concept of parallel financial investigations, the responses indicated that the concept appears to be fairly understood in the region although no formal policies are in place in most countries.

In fourteen countries law enforcement (or specialised unit) does not conduct parallel financial investigations for all investigations involving cigarette smuggling. Only three countries, Malawi, Rwanda and South Africa confirmed that they conduct parallel financial investigations outside the Customs Authority involving cigarette smuggling.

In the region, only three countries have referred reports/cases involving cigarette smuggling to their FIUs or other LEAs for financial intelligence gathering or parallel financial or ML/TF investigations. Seychelles referred one case in 2015 to their Police. However, the suspects fled the country when the shipment was seized. South Africa referred 3 cases to their Police but did not receive any feedback. Though Namibia referred cases to their Police, they did not provide statistics.

It was noted that there is a preference for joint operations between customs authorities and other LEAs in the course of investigations. In some instances, cases are handed over to LEAs upon completion of investigations by Customs Authorities.

The study showed that there are several difficulties which investigators encounter when investigating cases related to cigarettes smuggling and related ML/TF cases. These include:

- laws that are not water tight
- Inadequate training and expertise

- Inadequate or no reports and other information being escalated to Investigators and LEAs concerning smuggling activities
- Difficulties in distinguishing legal from illegal cigarettes
- Cigarettes are easy to conceal and it becomes extremely difficult to detect
- The shortage of human capital, equipment and other resources.
- Very often, the kingpins of the smuggled cigarettes are not caught
- The transnational nature of the crime of smuggling
- The use of shell companies
- Inadequate coordination and cooperation with international stakeholders
- Corrupt government officials.

In an effort to address the identified vulnerabilities, countries have enhanced their oversight measures by introducing patrols, searches, infrastructure such as scanners as well as capacity building.

## **SOUTH AFRICAN CASE STUDY**

Description of counter measures:

- Continue to target the entire supply chain of illicit cigarette and tobacco trade through better control of warehouses, enhancement of excise systems to improve risk detection, and increase collaborations with key stakeholders.
- Engage with other state enforcement agencies such as State Security Agency and Police to agree on MOUs for establishment of dedicated resources for fighting illicit trade.
- Enhance the inter-agency cooperation in fighting tax and other financial crimes.
- Build internal capacity and capability by continuing to participate in the International Academy on criminal tax investigations.
- Increase enforcement and compliance focus on high risk goods such as tobacco and its products and other high risk commodities that should form the cornerstone of control measures. It includes increased inspections and audits of bonded warehouses as well as improved monitoring and accounting of all export acquittals.

- Increase control of borders through introduction of Manifest Processing and matching, and increased focus on high-risk flows of goods, travellers, conveyances and craft.

The Operation Task Team Approach employed by the South African Police Service (SAPS) contains the following elements:

- dedicated resources
- multi-disciplinary approach
- intelligence capacity from different agencies and private sector Industry support and intelligence sharing
- convert intelligence into evidence
- project driven investigations
- disruptive and special operations
- prosecutorial guided investigations
- seize and destroy products and machines
- concentrate on the person / target and taking the proceeds out of the crime
- eliminate the criminal business system / syndicate

#### **6.4 Trends and statistics relating to cigarette smuggling**

There is lack of data on the amounts involved in cigarette smuggling in countries and almost none of the jurisdictions have data illustrating the percentage of the total proceeds that are generated from cigarette smuggling. However, Malawi stated that 100% of the proceeds that are generated through cigarette smuggling activities are generated within its jurisdiction, while Zimbabwe stated that 50% of the proceeds generated from cigarettes smuggling are generated within and outside its borders, respectively.

South Africa made reference to two ongoing cases with a combined value of USD29million<sup>8</sup>. The prosecution of both cases is still ongoing.

## 7. INTER-AGENCY AND CROSS-BORDER COOPERATION

It is generally accepted that there is a need for continued cooperation, coordination and operational support among all the agencies involved in the fight against cigarette smuggling.

### 7.1 Inter-agency cooperation

In almost all countries, Customs Authorities are the main agencies that provided most of the information on cigarettes smuggling. In addition to Customs authorities, Police, Intelligence Services and cigarette manufacturers also provided information on cigarette smuggling and, in some cases laundering activities. It has been noted that in most cases, Customs Authorities do not share information on cigarette smuggling with other LEAs. Where applicable and within the prescripts of enabling legislation, information is shared by Customs Authorities with Police and other LEAs and mostly on a case by case basis at bilateral meetings and National ML/TF Task Forces.

The below case study provides an example of information sharing between a local manufacturer and Customs Administration:

#### SEYCHELLES CASE STUDY

In 2016, after being approached by a local manufacturer of cigarettes regarding a sharp decrease in domestic sales and a commensurate increase in duty free sales, Customs

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<sup>8</sup> *State vs Walter Cyril & 5 Others* (including 3 customs officials) to the value of R 119.5 Million (this criminal trial is currently part heard under Alexandra RC case # 882/2011) and *State vs HF Delpont & Others* to the value of R 262 Million (the criminal trial is still in progress since 2003).

began investigating duty free store sales records. Large discrepancies were found whereby it was established that sales of large quantities of cigarettes had been attributed to people who were not travelling as evidenced from their passport numbers. The matter involved duty free staff inside the airport shops. It was unclear whether all the cigarettes were leaving Seychelles and returning as concealed items in consignments or luggage, or whether they were being re-routed for home consumption with the assistance of other stakeholders in the airport environment.

## **7.2 Cross-border cooperation**

As far as cross-border coordination between LEAs on different sides of borders is concerned, countries stated that cooperation could be rated between satisfactory to excellent. Some countries indicated that they had coordinated searches scheduled quarterly, albeit not targeted at cigarette smuggling. Other countries use the surprise element of spot checks as a strategy.

The study found that it is not common for cigarette smuggling investigations to extend across borders. Only Malawi, Zambia, Mozambique, Seychelles and Uganda stated that their investigations involve extra-territorial investigations. The rest of the countries reported no such cooperation.

In Malawi, a joint operation on tobacco/cigarettes smuggling was conducted with Zambia. The cigarette manufacturing companies in these countries sponsored the operations given the negative impact of the influx of smuggled cigarettes on their revenues. In Uganda, there are ongoing cases where investigators compare statistics of cigarettes imported from Kenya with those actually received in Uganda to ascertain whether the numbers correspond. Mozambique on the other hand did not provide any



examples of any investigations while Seychelles only stated that they normally seek information from originating countries when investigating cases.

Most countries confirmed that they had measures in place to assist other stakeholders in carrying out cross-border smuggling investigations. Countries indicated that they use the following tools to facilitate face-to-face or written cooperation:

- Mutual Legal Assistance Treaties (MLATs)
- Bilateral and multilateral customs cooperation agreements
- Memoranda of Understanding
- Information exchange guidelines
- INTERPOL membership
- Information sharing between FIUs
- Customs networks, regional intelligence liaison officers in World Customs Organization (WCO) and through the WCO Customs Enforcement Network (CEN) system.

In most cases, the information that is usually sought includes:

- Profiles of suspects
- Valuation of goods
- Documentation and records verification
- Confirmation whether cigarettes were in fact imported and legally cleared through customs authorities
- Financial profile information, related tax compliance
- Assets and investments held
- Registration status of individuals in a given jurisdiction
- The compliance of a given individual and the type of activities carried out
- Business and residential addresses.

Countries provided varied responses regarding institutions in their jurisdictions identified as Central Authorities responsible for coordinating international requests. One country stated that they had none; another cited its Director of Public Prosecution (DPP); three cited their Attorneys General (AG) and FIUs; one country mentioned its Police; and three others mentioned their Foreign Affairs Ministries. The varying responses could demonstrate that the Central Authority will depend with where the investigation is taking place and where the requestor of the information is based.

Regarding specific statistics on requests for information sent or received by competent authorities, including LEAs, to/from international counterparts on cigarette smuggling and related ML/TF, the responses received were limited to 2015. Accordingly, only three requests were sent and only one received. Specifically, South Africa received one request, Botswana sent one request and Zimbabwe sent two requests. None of the other countries provided responses to this question. From the limited responses received, only Zimbabwe indicated that the quality of the information received was useful.

The study further identified the following difficulties that investigators encounter when investigating cigarette smuggling cases with cross-border elements. These include:

- Challenges in getting clearance by another jurisdiction due to delays experienced in getting approvals and negotiating entry into other jurisdictions.
- The transfer of evidence is too bureaucratic.
- Domestic and public international law requirements which are rigid and at times quite complicated.

An analysis of the responses reveals that, in most of the countries, there is inadequate national and international coordination in investigating cases of cigarette smuggling

and related ML. However, where information was shared among LEAs, it assisted greatly in:

- The investigation, prosecution and conviction of offenders.
- Recovery of tax revenues.
- Confiscation of property which was eventually forfeited to government.
- Understanding the trends and tracking the key criminals.
- Intelligence gathering that has led to the deployment of officers to man vulnerable points along the border lines.

The following case study demonstrates the benefit of cross-border cooperation:

### **MALAWI CASE STUDY**

#### **NDAVIVI INVESTMENTS CASE**

This was a case of false declaration. Malawi Revenue Authority (MRA) received information from Kenya Revenue Authority (KRA) that a consignment comprising 700 cartons of Ralli cigarettes destined for Malawi for a trader called Ndavivi Investments of Lilongwe had its invoice forged and consignment under declared by 200 cartons.

Using the information, the consignment was seized upon arrival in Malawi and was subjected to a thorough physical examination. Document analysis showed that the transit document indicated 500 cartons valued at USD25, 000. However, when it was cross-checked with KRA export document, the number of cartons exported to Malawi were 700 cartons and the value was USD32, 200, FOB, Nairobi.

## **8. PRIVATE SECTOR RESPONSE**

To further understand the complexities related to ML through the proceeds of smuggling cigarettes, it was imperative to have a private sector perspective to the problem. The responses received from participants indicated that there is an

appreciation of the problems related to cigarette smuggling in the private sector. However, as it will be further elaborated in the sections below, this understanding is limited. It should be noted that the scope of smuggling is not limited to specific products based on almost an exhaustive list of smuggled cigarettes that was given.<sup>9</sup> The cigarettes according to the private sector originate from the following countries; Mozambique, Zambia, Malawi, India, Kenya, Paraguay, Democratic Republic of the Congo, Burundi, Panama, China, Zimbabwe, United Arab Emirates, South Africa, Angola, Lesotho and Swaziland.

### **8.1 Modes and organisation of cigarette smuggling**

The study revealed that the smuggling of cigarettes is undertaken through various modes which include the following:

- i) The use of illegal border crossing points
- ii) Under declaration of goods
- iii) Undervaluation of goods
- iv) Un-classification of goods
- v) Falsification of documents
- vi) False declaration in country of origin
- vii) Short-landing transit goods
- viii) Short-landing re-exports goods, and
- ix) Avoiding customs officials at official crossing points.

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<sup>9</sup> The list of smuggled cigarettes is as follows: Seviles, Shasha, Pacific (Blue, Breeze, Breeze, Mist, Storm), Madison, Remington Gold, Kingsgate, Rothmans, Supermatch, Caesar, Roxbury, Manchester, Gold mount, Pal Mall Green, Tumbaco filters, Ambassador filters, Everest, Dullah Chelsea brands, Fake Marlboro, Fake Benson & Hedges, Fake L&M, Mahe kings, YES, Forum, Aspen, LD, Chesterfield, Chicago, China Laif, Life, Brothers, Viva, GT, Safari, JFK and RG.

Of the above, under-declaration of goods, use of cover loads, misclassification of goods, falsification of documents and excise account manipulation were cited as the most prominent modes used.<sup>10</sup>

Furthermore, private sector respondents indicated that the most commonly used modes of transportation are road, sea and air transport. The reasons cited for road transport being prevalent is the fact that it is cheap and fast. In addition, road connectivity within the region guarantees increased reach and better manoeuvring when moving the consignment. This is also aided by porous borders and border posts that are not effectively managed due to corruption and the volumes of goods that pass through them. Evidence of this, can be seen in the availability of low-priced cigarette products that flood the market creating an over-supply and eroding profit margins for legitimate cigarettes as well as reducing tax that should be collected from sales of cigarettes. Furthermore, these cigarettes can be identified through their improper packaging and in most instances, do not have the necessary identification stamps as required by the revenue services. In some instances, clearly labelled “duty free only” cigarette products have been found in local markets.

## **8.2 Role of Customs and LEAs according to the private sector responses**

The study found that cigarette smuggling has become a well organised machinery that involves elaborate and well-funded supply chains from manufacturing facilities and distribution networks. Such maturity of these operations warrants their being classified as organized crime and therefore should be treated as such. The sophistication reflected by the prevalence of syndicates and the substantial volumes moved as well as the

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<sup>10</sup> Excise account manipulation refers to a process whereby the manufacture does not disclose the true nature of the product with the revenue services thus resulting to the producer being charged less duties than applicable. This allows them to sell the products in the market for a substantially low price.

modes adopted to consistently move these volumes across the ESAAMLG Region, are indicative of the presence of organized criminal systems.

According to private sector, efforts to curb the rise of cigarette smuggling have failed due to the fact that interventions by LEAs are ineffective. Poor cooperation was also cited as another weakness. Specific reference was made to the LEAs that operate at border posts.

The study showed that the problem is further exacerbated by;

- Rampant corruption among Customs officials
- Lack of resources (both human and technological)
- Unlawful involvement of service providers (duty free staff and clearing agents at points of entry/exit)

Additionally, the fact that most countries do not have proper statistics that are analysed, makes coordinated responses from LEAs impossible and where they are undertaken, they are not fully effective due to the lack of understanding of the extent of the problem and its implications. For instance, while it was understood that estimated losses of about US\$230 million<sup>11</sup> were experienced in Southern Africa in 2015, at the date of compilation of the report, there was no similar data available for East Africa. This makes the appreciation of the magnitude of the problem from a regional perspective impossible and could therefore hamper regional coordinated efforts and other trans-border interventions.

### **8.3 Preventative measures**

Private Sector responses indicate that they are actively involved in national efforts to combat cigarette smuggling. The Private Sector participates in national forums where

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<sup>11</sup> Private sector estimate

information is shared with government agencies and with their counterparts. Notwithstanding their efforts, Private Sector is perturbed by the fact that they are aware of government inter-agency coordinated efforts which are intended to exclude them from other efforts to address cigarette smuggling. They also believe that these efforts are not effectively dealing with the problem.

The problem, as articulated by the private sector, lies in the ineffective policies that governments have adopted. In this regard they are of the view that revised policies ought to be adopted. These policies should seek to:

- Enhance regulation of the industry by introducing and effectively implementing better controls and oversight of cigarette manufacturers through proper licensing and registration of manufactures;
- Increase government-mandated controls on production within cigarette factories, so as to eliminate the use of ghost shifts and have better declaration mechanisms for production; and
- Articulate clear and harsh punitive measures that would serve as a deterrent and they should be equivalent to the gains accrued from financial benefits gained from the illicit trade of cigarettes.

Over and above the aforementioned measures, it is the submission of private sector that to successfully deal with cigarette smuggling, the enforcement measures at points of entry/exit will have to be improved from a human capital as well as a technological perspective.

It is the Private Sector opinion that failure to implement necessary policy revisions will continue to have negative impact on cigarette sales and revenue collected by authorities. This is due to the fact that cigarette smuggling and effects of the proceeds generated from it are not victimless crimes as they continuously harm governments,

societies and businesses. One of the manufacturers in the region indicated that revenue losses to both government and industry have exceeded US\$2bn since 2010.

From a business perspective, the impact has been the shrinking of the market in which legal cigarettes are sold. This is through the flooding of the market by illegal and cheaper cigarettes. Moreover, it undermines investments worth millions of dollars that are made every year in the local value chains. This was further corroborated by one manufacturer who stated that due to market shrinkage, 540 jobs had been lost in the production sector and the general tobacco value chain had been negatively affected as manufacturers had to source less input for their products.

Governments therefore, do not only suffer loss of revenue but are also faced with the problem of a sector that is shedding jobs. Not only are jobs shed in the primary sector in focus but also in those sectors that participate in the value chain.

## 9. CONCLUSION

It is our submission that this document has identified the risks, trends and methods of cigarettes smuggling and proffered recommendations and mechanisms against the criminal activities related to cigarette smuggling and resultant ML, thereto. Contributions from both the public and private sectors have highlighted gaps pertaining to information in the cigarettes manufacturing industry. Gaps which might have led to some of the vulnerable areas and ML risks regarding the smuggling of cigarettes not being identified in this study. While the study did not find information linking cigarettes smuggling to terrorist financing the profits and low risk associated with this crime may be an incentive for terrorists to partake in the smuggling of cigarettes.



In light of the above, better policy regulations and government controls are required. Due to the nature of the problem, this should not only be a response that is taken by governments in isolation but should rather seek to give a coordinated regional approach due to the trans-border nature of smuggling.

## 10. RECOMMENDATIONS

The recommendations are drawn from the responses received to the questionnaires circulated.

1. Given the responses by the majority of countries that their understanding of ML is poor to moderate, more capacity building should be conducted in this area.
2. As stated in the report, the majority of participating countries define smuggling as the illegal movement of goods from one jurisdiction to another. However, some consider smuggling only when the movement is through illegal border crossings. These countries should revisit their definition and bring it into line with that of the majority of the countries which is considered more encompassing.
3. The filing of STRs, sharing of information and providing feedback to FIUs should be prioritised by all Competent Authorities manning exit/entry points. Countries should set minimum requirements for providing feedback to the FIU and vice-versa.
4. The study shows that the capacity to maintain statistics on cigarette smuggling and related ML as well as information sharing is still very low. Countries should therefore come-up with mechanisms which will enable them to maintain accurate and up-to-date statistics as well as enable effective information sharing.
5. The report highlights discrepancies in the approach to parallel financial investigations. Countries should do more to ensure that parallel financial

investigations become a minimum requirement in matters involving smuggling of cigarettes.

6. Given the prevalence of cigarette smuggling, its resultant job losses and impact on government revenues, countries should review their penalties and consider imposing heavier penalties.
7. One of the major challenges identified was LEAs moving from their conventional practice of only investigating the predicate offence of smuggling without escalating the investigation in deserving cases to that of ML and ensuring that illicit proceeds are identified and confiscated. Countries should ensure that there is adequate supervision of such investigations so that appropriate guidance in deserving cases of ML can be provided in addition to consultations with the Prosecution Authorities.
8. From the study it is evident that more needs to be done to develop MoUs between stakeholders to strengthen cooperation at domestic and regional level. MoUs should be supported by SOPs. Such MoUs will go a long way in addressing bureaucratic requirements which hamper cooperation, coordination and information sharing. Countries should also consider regional harmonization of legislation or approaches.
9. In general, the issue of training was highlighted time and again. The region should explore mechanisms to increase and improve training, and exchange of expertise through exchange programmes or secondments. Consider standardizing procedures and processes through benchmarking.
10. There is a huge difference in opinion between authorities' responses and those of manufacturers; especially in as far as the role-players in cigarette smuggling are

concerned. Whilst the authorities are of the view that it is not organised, manufacturers are directly of the opposite view. These different views should be further interrogated to benefit investigators who are carrying out the investigations on the ground and if possible, to establish the actual trends in member countries as they might be different.

11. Promote awareness on the dangers of smuggled or illicitly produced cigarettes as their quality is not assured which means the levels of tar or 'poison' will not have been properly tested or determined.
12. The cigarettes manufacturers and distributors suggested that governments should consider reduction of duties on cigarettes as this could reduce the attractiveness of smuggling of cigarettes.
13. There is need to develop regulations with stakeholder consultation especially the private sector. This collaborative approach could address/eliminate the varying perceptions brought out in this study between the response of the authorities and that of the private sector.
14. The varying degree of the level of controls amongst countries probably leads to the countries with weaker controls being used as conduits to circumvent laws in countries with stronger controls. Based on the findings of this typology therefore, countries should learn from each other and align their controls so that cigarette smuggling is effectively eradicated.