ONE-STOP
BORDER POST POLICY
MAY 2022

BMA
BORDER • MANAGEMENT • AUTHORITY

home affairs
Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

NDP 2030

We Care!

CONTENTS

DEFINITIONS

Border law enforcement	The execution and enforcement of legislation relevant to facilitating and managing the legitimate movement of goods and persons within the border law enforcement area and ports of entry
Border law enforcement legislation	All relevant legislation dealing with border management including border law enforcement
Cluster	Administrative unit formed by government departments to facilitate coordination, planning and delivery
Commercial port of entry	A location where infrastructure, systems and staff are in place to facilitate the entry and exit of commercial goods and vehicles through a port of entry
Common control zone	Clearance formalities for goods, people and means of transport exiting one country and entering another are usually conducted in a shared space, where border officers of adjoining countries are entitled to apply their respective national laws
Constitution	Constitution of the Republic of South Africa, 1996
Conveyance	A system or means of transporting people or goods
Cross- border agents	Facilitates trade and, in some countries, are an essential part of the cross-border movement systems for goods and conveyances
Criminal law	The body of law that defines criminal offences, regulates apprehending, charging and trying suspected persons, and fixes penalties and modes of treatment applicable to convicted offenders
Electronic single window system	An international standard or best practice that enables cross-border traders to submit relevant documents at a single location and/or through a single entity
Exclusive zone	Refers to a facility or area within the common control zone of the host partner state designated for the exclusive use and access by border officials of the adjoining partner state to execute border controls and related matters
Extraterritorial jurisdiction	Application of national jurisdiction in another country that is enabled by a bilateral or international agreement
Facilitation	Procedures used by a state to enable people, goods or conveyances to legally transit across an international border
Jurisdiction	The right, power, or authority granted to a legal entity to administer justice or perform a function
Minister	Minister of Home Affairs
One-stop border concept	Refers to the legal and institutional framework, facilities and associated procedures that enable goods, people and vehicles to stop at a single facility for the necessary checks and controls to exit one state and enter an adjoining state while following applicable regional and national laws
One-stop border post	A land port of entry where two countries cooperate to enable a single and harmonised clearance of people, goods and conveyances
Partner state	A sovereign state that is party to a border agreement

Port of entry	A port of entry designated by the Minister in terms of section 9A of the Immigration Act 13 of 2002. It includes any port, point or place of entry or exit determined under any other legislation or approved by the Minister in terms of section 30 of the Border Management Authority Act 2 of 2020. For the purpose of this policy, the definition does not make a distinction between a commercial and non-commercial port of entry
Preclearance	Critical processing that enables importers and exporters to submit trade documents to border agencies prior to the goods arriving at a point of clearance
Single window system	Lodging standardised information and documents at one point to fulfil facilitation requirements for people, goods and conveyances
Trade corridor	In the context of one-stop border posts, the route by which most freight travels before, through and after the border, and continues to its destination
Traditional two-stop border post	Exit procedures are carried out on one side of the border for persons, vehicles and goods leaving a country

ACRONYMS

4IR	Fourth industrial revolution
AfCFTA	African Continental Free Trade Area
APEC	Asian Pacific Economic Cooperation
AU	African Union
BLE	Border law enforcement
BMA	Border Management Authority
CBRTA	Cross-Border Road Transport Agency
CCZ	Common control zone
DALRRD	Department of Agriculture, Land Reform and Rural Development
DHA	Department of Home Affairs
EAC	East African Community
GDP	Gross domestic product
HR	Human resources
ICT	Information and communications technology
IMF	International Monetary Fund
JICA	Japan International Cooperation Agency
OCAS	Operator Compliance Certification Scheme
OSBP	One-stop border post
PoE	Port of entry
POPI Act	Protection of Private Information Act
RKC	Revised Kyoto Convention
SA	South Africa
SADC	Southern African Development Community
SANDF	South African National Defence Force
SAPS	South African Police Service
Sars	South African Revenue Service
TWG	Technical Working Group
WTO	World Trade Organization

SECTION A: BACKGROUND AND CONTEXT

Chapter 1: Overview of the South African border environment

1.1   Introduction

As a sovereign constitutional state, South Africa's land border is recognised by its six neighbouring states: Botswana, Eswatini, Lesotho, Mozambique, Namibia and Zimbabwe. As independent countries, each of these states have laws that apply within their territories, which includes the right to decide what goods, conveyances and persons enter or leave their territory. states have a right to protect their territory, resources and people from natural or human risks and threats, and to make decisions in their national interest.

States must therefore enter into agreements to establish designated ports of entry (PoEs) where officials of both states use laws, procedures and systems to control and facilitate the flow of traffic across the border, which includes people, goods and conveyances. It is in the interest of both states for the process at a PoE to be secure, efficient and aligned to their development goals.

The Immigration Act 13 of 2002 empowers the minister of home affairs to designate a PoE as the point at which people, conveyances and goods may legally enter and exit South Africa. South Africa currently has 72 such PoEs. Similarly, the Customs and Excise Act 91 0f 1964 empowers the Minister of Finance to, among others, provide for levying customs and excise duties and to prohibit and control the importation or manufacture of certain goods.

Table 1.1: South Africa's border profile (2018-19)

Designated land ports	53
Designated sea ports	8
Designated international airports	11
Designated PoEs	**72**
Registered small airfields	150
SA coastal borderline	3 924 km
SA land borderline	4 471 km

South Africa has seven cross-border rail crossings that are primarily used for commercial goods and, occasionally, for passenger rail, and co-manages six trans-frontier conservation national parks with her neighbours.

South Africa's land, sea and air borderlines are presently safeguarded by the South African National Defence Force (SANDF). When the Border Management Authority (BMA) assumes border law enforcement functions within the land and maritime border law enforcement areas (or borderlines) between PoEs, the SANDF will simultaneously perform border protection functions in these areas.

South Africa's PoEs have representatives from five organs of state to enforce border law and ensure that traffic is regulated through these ports.

A further 10 organs of state are involved in managing aspects of the larger border environment. South Africa is committed to establishing a border environment that is managed in a way that is integrated, secure and efficient. This national one-stop border post (OSBP) policy is an important enabler in achieving this policy goal.

1.2 Border environment

The concept of a **border environment** encompasses the borderline, the PoEs and the context in which they are situated: environmental, social, legal, transport, economic and political.

In many instances, communities along the border have been divided by borderlines. However, the communities themselves have continued their ties dating back many years. These communities are mostly located along Lesotho, Eswatini, Mozambique and parts of the Botswana borderline. Examples of PoEs with informal border crossings include Gate 6, which is situated along the borderline between South Africa and Mozambique, and the pilot community border crossing point located at Tshidilamolomo in the North West, which borders Botswana.

There are many role players involved in the border environment and at PoEs, with local government officials, communities, workers and businesses all located near the ports. For example, Lebombo is a land PoE located on a major trade corridor with many ties between the towns on either side of the border. The towns are economically dependent on traffic from a port or industrial zone hundreds of kilometres away. Lebombo therefore has officials responsible for immigration, customs, policing, health, biosecurity and phytosanitary controls. All public transportation vehicles have to pre-clear their routes, passengers and goods with the Cross-Border Road Transport Agency (CBRTA), which operates outside of the PoE, and must comply with certain standards. Therefore, a truck with cattle from Mozambique destined for an auction in South Africa will have been cleared by customs, the Department of Agriculture, Land Reform and Rural Development officials, and CBRTA officials. A freight forwarding agent may also have been involved in the transaction and the driver would have been cleared by an immigration officer. The health official may inspect travellers for any threat to public health. Such processes involve applying both domestic and international laws and agreements that have been ratified by the two respective countries.

The SANDF is responsible for the borderline and should be informed, for example, of smuggling activities across the borderline or if persons are suspected of crossing the border illegally. The Department of Public Works and Infrastructure maintains infrastructure such as roads and fences. The Department of Transport monitors road use and works with the South African Police Service (SAPS) and other departments to prevent overloaded trucks or buses having accidents and damaging the road. Customs fraud is a huge challenge for our national economic growth. This type of fraud manifests itself through undervaluation, misdeclaration and misclassification of goods, and cheap goods that are imported into the country. As a result, factories that employ mainly working-class people have shut down and domestic producers or manufacturers have lost market share, leading to domestic retailers relying more on imports and reducing South Africa to a less-industrialised country. The OSBP will provide enough inspection facilities for goods coming into

the country. The BMA, together with the South African Revenue Service (Sars), will deploy intrusive and non-intrusive inspection technologies to detect illegal imports.

Officials from the 22 departments and agencies that are active in the South African border environment and frequently work within the PoE have regular meetings with other officials rendering their services at the PoE. The meetings serve to manage risks, combat crime and improve services and efficiency. All these officials must comply with laws and regulations, and relevant priorities and targets set out in national, provincial and local government programmes and plans. They will face foreseen pressures such as traffic flows increasing in peak seasons, and unforeseen pressures such as a flood or an outbreak of a disease that has an impact on humans, plants or animals. Officials must also respond to issues raised formally and informally by their counterparts at various levels in neighbouring countries.

Departments and local government in the border environment must manage complexities that include mixed flows of migrants such as asylum seekers and work seekers, flows of private and commercial vehicles, and travellers on foot. Officials from local municipalities and provincial government also frequently interact with PoEs regarding the services required by, and the impact of local activities on, the port. Apart from standard municipal services, local government must provide specialist services such as finding shelter for abandoned children. Local government also has constitutional obligations such as providing basic healthcare and security for all persons.

In addition to the immediate border environment, every commercial PoE is organically connected to the interior of at least two countries through the transport and trade corridors in which they are situated. A strike at the docks in Durban affects the Lebombo PoE and vice versa. Delays in clearing commercial vehicles at a PoE disrupts the flow of trade on both sides of the border and along a network of corridors stretching over southern Africa and beyond. Delays at any PoE have a negative impact on local traders and business, and on the tourism industry of two or more countries.

This logistical network and South Africa's comparatively advanced transport and economic infrastructure attract both legitimate trade and investment, and local and transnational criminal syndicates. The same syndicates may be involved in smuggling and trafficking people, endangered species, arms, drugs and/or contraband. They are involved in corruption, money laundering and fraud, including immigration and tax fraud. Some of the money generated by cross-border crime may be used to fund terrorism or criminal activity anywhere in the world. Information provided by the systems operating at PoEs is essential to national security and combatting crime, and for national statistics used in planning and making strategic decisions.

1.3   Border management risks and challenges

Regional and international supply chain movement is complex and a failure to leverage on the technology available for effective identification, profiling and screening between low, medium, and high-risk cargo and its operators allows an inherent risk for cross-border movement. Complexity, and the realisation that everything cannot be controlled, means that a certain amount of risk in supply chain movement (regional and international) must be tolerated. However, the importance of digitalising the process flows of other government agencies was deferred over many years. The old, outdated manual workflows are incapable of handling the increased volume of trade and improve the likelihood of unidentified risks not being appropriately treated or negative consequences occurring downstream.

South Africa has a unique position in Africa: supply chains (movement of goods) are characterised by local, regional, and international connectivity. In addition, unlike many other African countries, South Africa has a large manufacturing sector and a strong industrial policy aimed at growing the sector and creating jobs. This requires a dynamic alignment where supply chains are recognised as living organisms of activities that evolve and constantly require new risk remedies to effectively treat the identified risk indicators. An approach based on risk assessment that integrates with intelligence and a range of controlled methods is required and can no longer be ignored. Developing different and incompatible approaches on both sides of the border to address the same problem is pointless.

The salient border management risks and challenges facing South Africa can be summarised as follows:

- The South African border environment is characterised by poor controls and weak management that adversely affects its territorial integrity.

- South Africa has an extensive and geographically diverse land border environment that is shared with six neighbouring countries. The geographic implications are that border safeguarding and control activities are required in a variety of environments ranging from mountainous to semi-desert areas.

- Border infrastructure, such as fences and patrol roads, are inadequate. The capability of the state to secure this environment is limited and exposes large parts of the land border environment to strategic vulnerability, which contributes to problems such as wildlife poaching, human trafficking and smuggling.

- The location, number and design of South Africa's 72 PoEs are a legacy of the country's colonial and apartheid past. Key challenges include an uneven provision of border control services to travellers and traders, embedded corruption, insufficient deployment and use of human and technological resources, and fragmented border management.

- The fragmented model of poorly coordinated border management in South Africa has failed. This approach has contributed to significant imbalances and discrepancies in security, managing border risk, uneven remuneration and conditions of service for border control officials, and a silo approach to service delivery by individual organs of state.

1.4   Towards an integrated border management approach

Since 1994, South Africa has made great strides in strengthening how it manages the country's borders by introducing various capabilities to give effect to border management. Structures to coordinate the mandates and actions of distinct organs of state in the border environment included the following:

a) Border Affairs Committee Coordinating Committee (1996)

b) National Inter-Departmental Structure (1997)

c) Border Control Operational Coordinating Committee (2001)

d) Inter-Agency Clearing Forum (2010)

Despite these efforts, a silo and fragmented approach to border management, border law enforcement and border protection has persisted. Since the mid-2000, various studies and reports pointed to the failure of these structures to address the systemic and structural problems of the coordination model associated with fragmented border management. It is against this background that, on 26 June 2013, Cabinet resolved to establish a BMA in South Africa. On 21 July 2020 the President assented to the Border Management Act 2020, which provides for the establishment of the BMA as a Schedule 3A public entity. The establishment of the BMA recognises that border management is exercised by multiple organs of state that aim to secure South Africa's borders and protect our national interest. The BMA will play a key role in an integrated and coordinated border environment, and in doing so, deal effectively with the extent of illegal migration, potential terrorist threats and porous borders, among others.

The BMA will be outcomes focused, aiming to balance facilitating legitimate trade and travel functions with addressing security risks by introducing a more streamlined, secure and efficient way of managing South Africa's borders. The BMA's integrated border management approach for secure and effective borders will better support the National Development Plan, the Medium Term Strategic Framework and South Africa's economic development priorities.

Together with Sars, the BMA will play a valuable role in improving governance, security and efficiency at PoEs, placing it at the forefront of fighting illicit and unauthorised movements of goods and people through South Africa's ports. While the BMA has the overall responsibility for efficiently and effectively managing PoEs, Sars takes precedence when it comes to the cross-border movement of goods – especially on compliance with customs laws. Sars is responsible for processing and clearing all goods moving through our borders, acting as the principal agency responsible for trade facilitation and all customs law enforcement activities.

The Department of Home Affairs (DHA) is redeveloping six land PoEs aimed at modernising the Beit Bridge, Lebombo, Oshoek, Kopfontein, Maseru Bridge and Ficksburg PoEs into world-class OSBPs. Construction for this major project is expected to be complete by 2025. The benefit for the South African economy is that goods and people will move through these six busiest land ports at a faster pace and in a more effective and efficient manner. This will have specific and direct economic benefits for traders, freight carriers and all those transporting goods, as the intention is that all movement through these ports will be processed once and jointly between South Africa

and the relevant neighbouring country. The master plan of the Beit Bridge OSBP is presented below to demonstrate the envisaged design of the OSBPs.

Figure 1.1: Beit Bridge OSBP master plan
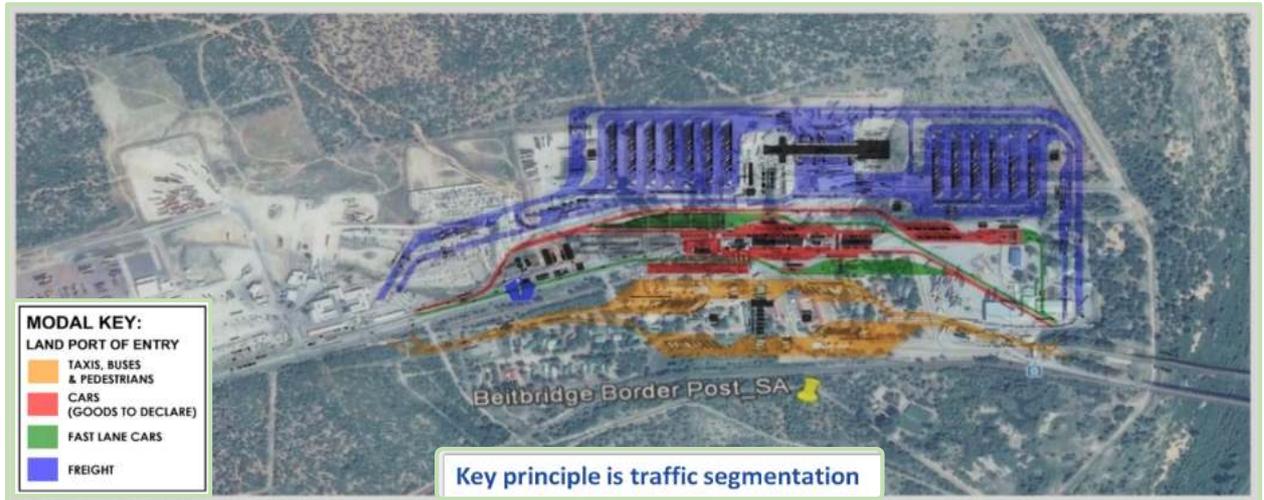
Chapter 2: The strategic role of PoEs

2.1 The corridor perspective

Trucks, trains, buses and other conveyances move people and freight in both directions along transport corridors, connecting them to land, sea and air ports and centres of production and consumption. Transport corridors that cross two or more countries enable them to trade with one another and with the rest of the world. They also serve a range of other needs, including the delivery of services and the movement of migrant workers and tourists. When this stream of traffic flows through a land border post, the PoE can act as a choke point causing costly delays and disrupting economic and social activities if the movement is not facilitated quickly, efficiently and effectively.

The concept of a trade corridor[1] refers to the streams of products, services and information that flow into and along transnational trade routes, enabled by domestic and international law, agreements, institutions and systems. From this viewpoint, a land border post is a stage in a process that begins with facilitating a shipment for export before it leaves a factory, and continues with its clearance at a PoE and the steps it goes through to reach its destination to complete the cycle, such as acknowledging receipt and paying taxes or fees due.

To realise its value, the OSBP methodology must be applied at both the transport and trade corridor levels. Steps must be taken to ensure more efficient facilitation within the border post environment, and to simplify and harmonise relevant processes and procedures at the level of the legislation and systems of two or more countries. This is an ongoing process, with minimum requirements, phased development and the need to respond to changing technology and circumstances.

South Africa's corridor networks connect the region internally, to the rest of Africa and to the world. The efficacy of the entire transport and trade system depends significantly on the effective and efficient facilitation of traffic through PoEs.

Figure 2.1 provides a map of South Africa's transport and trade corridors. The north-south corridor links the Port of Durban with Central Africa and connects with the Dar es Salaam corridor in Tanzania. This corridor network connects 26 countries, which explains why Beit Bridge, on the border with Zimbabwe, is South Africa's largest land border post in terms of volumes and value of traffic. This is followed by Lebombo on the Maputo corridor, which connects South Africa to the Port of Maputo in Mozambique. The trans-Kalahari and trans-Caprivi corridors connect Namibia with Gauteng, which is South Africa's economic hub, and the trans-Cunene corridor connects Namibia to Angola.

---

[1] *Sometimes referred to as logistics corridor.*

Figure 2.1: SADC transport corridors

SADC Transport Corridors
Roads, Ports and Border Posts

Legend

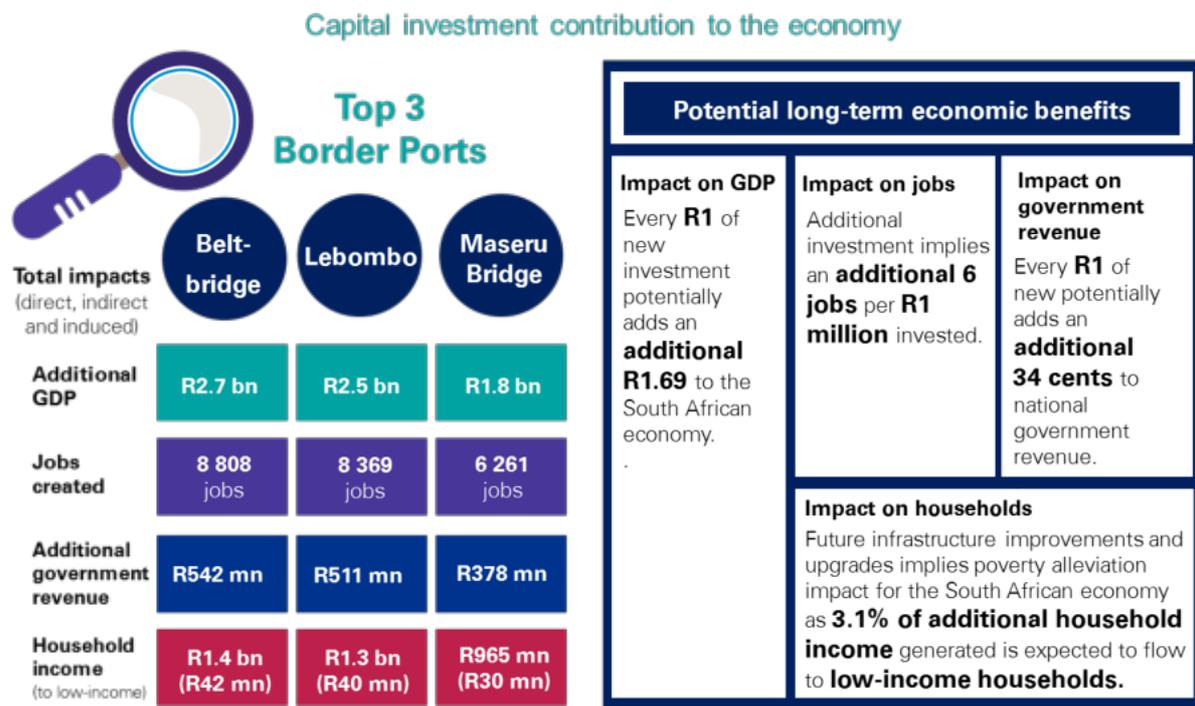|			
Main Roads	Lobito-Benguela	Mtwara	Trans-Cunene
Bas Congo	Malange	Nacala	Trans-Kalahari
Central	Maputo	Namibe	Trans-Orange
Dar es Salam	Maseru-Durban	North-South	Border Gates
Limpopo	Manzini-Durban	Trans-Caprivi	
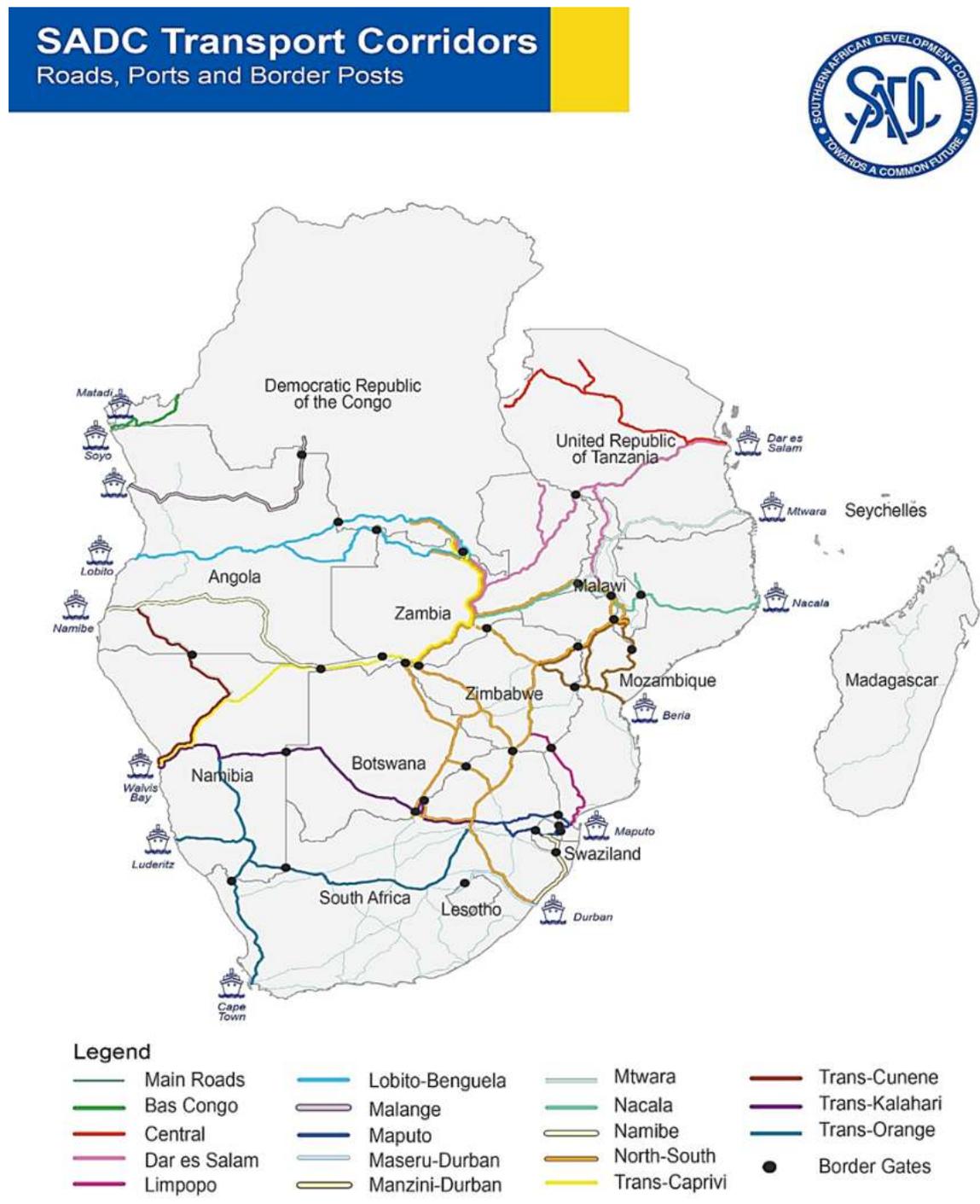
2.2   OSBPs as strategic enablers of national and regional development

As indicated in the previous section, PoEs are key points along transport and trade corridors. The importance of these corridors and land PoEs in attaining South Africa's policy goals and strategic objectives must also be considered. Given a severely constrained fiscus, a strong case must be made for including the OSBPs in the programme to modernise South Africa's six largest land PoEs.

Figure 2.2: Economic contribution of the top three PoEs

Capital investment contribution to the economy

Top 3 Border Ports

Total impacts (direct, indirect and induced)	Belt-bridge	Lebombo	Maseru Bridge
Additional GDP	R2.7 bn	R2.5 bn	R1.8 bn
Jobs created	8 808 jobs	8 369 jobs	6 261 jobs
Additional government revenue	R542 mn	R511 mn	R378 mn
Household income (to low-income)	R1.4 bn (R42 mn)	R1.3 bn (R40 mn)	R965 mn (R30 mn)

Potential long-term economic benefits

Impact on GDP
Every **R1** of new investment potentially adds an **additional R1.69** to the South African economy.

Impact on jobs
Additional investment implies an **additional 6 jobs** per **R1 million** invested.

Impact on government revenue
Every **R1** of new potentially adds an **additional 34 cents** to national government revenue.

Impact on households
Future infrastructure improvements and upgrades implies poverty alleviation impact for the South African economy as **3.1% of additional household income** generated is expected to flow to **low-income households.**

Source: KPMG analysis from 2014 Social Accounting Matrix for South Africa

Africa contributes less than 3% to global trade; that contribution has not changed relative to the 387% growth[2] in international trade due to globalisation between 1980 and 2007. The growth of inter-African trade has also been minimal. There are two related reasons why Africa has not benefitted from globalisation and regional development. Firstly, patterns of industrialisation and trade scarcely changed when African countries gained their independence in the 1960s and 1970s. Africa still largely exports raw materials and imports finished products.

A major reason for the slow pace of Africa's industrialisation and the development of internal markets is its fragmentation into 54 states. Twenty-seven African countries have fewer than 10 million people, and 16 countries are landlocked without access to the coast. Without significant levels of cooperation and integrated planning and development, most will remain relatively isolated and underdeveloped.

In response to this situation, when economic growth began to accelerate in several African countries, African governments and institutions worked with international investors who committed funds to develop trade and transport corridors. By 2012, investment in 10 transport and trade corridors in the sub-Saharan region reached $27,5 billion, committed over a period of 20 years.[3]

At an international level, integrated and modern approaches to border management have been promoted globally by the United Nations Economic Commission for Africa, the World Trade Organization (WTO) and the International Organization for Migration, among others, supported by national agencies such as the Japan International Cooperation Agency. From an African perspective, a critical strategic goal is for intra-African trade to grow and build regional markets that drive integrated development and industrialisation.

At a conference in 2007, AU ministers responsible for border issues declared that there was a need "to put in place a new form of pragmatic border management aimed at promoting peace, security and stability, but also at facilitating the integration process and sustainable development in Africa." (Adopted by African ministers in charge of border issues held in Addis Ababa, 7 June 2007: paragraph 3)

This was later reflected in Aspiration 2 of Agenda 2063, which envisions Africa having "world-class integrative infrastructure that criss-crosses the continent" and "a continent of seamless borders, and management of cross-border resources through dialogue". The draft AU Border Governance Strategy was made public in 2017 but has yet to be formally adopted. The strategy has five pillars that are intended to guide the development of regional and national border governance strategies:

Pillar 1:   Conflict prevention and border security

Pillar 2:   Continental integration, free movement/migration and trade

Pillar 3:   Cooperative border management

Pillar 4:   Cross-border cooperation, borderland development and community involvement

Pillar 5:   Border governance capacity development of actors and institutions.

On economic integration and trade facilitation, the draft AU Border Governance Strategy notes the potential for regional economic communities, free trade areas and the Programme for Infrastructure Development in Africa to have an impact on the four key sectors of transport, energy, trans-boundary water, and information and communications technology (ICT). However, the strategy goes on to stress, "Specifically, trans-boundary transport corridors can only deliver on their potential with cooperative border management and corresponding infrastructure, such as joint border facilities."[4]

---

[3] *Trade Corridors: Key focus area for sub-Saharan African governments, Frost & Sullivan, 2012.*
[4] *African Union Border Governance Strategy, Final Draft of November 2017: p.25.*

At the Southern African Development Community (SADC) level, the summit of 2012 approved a Regional Infrastructure Development Master Plan. The introduction of OSBPs is one of the strategies that informed the plan. One of the first OSBPs was Chirundu, between Zimbabwe and Zambia. A 2011 evaluation found that the waiting time for commercial traffic was reduced from "about 4–5 days to a maximum of two days and often to a few hours".[5]

Table 2.1 below shows the relative size of South Africa's economy and trade, and **Table 2.2a** and **2.2b** show the direction of SADC exports and imports. It is notable that 45% of total trade has shifted to the Asia-Pacific economic cooperation region, and only 3% of exports are from SADC to other African regions. The 13% of imports from Africa is largely oil and raw materials. However, as the SADC secretariat noted, "Total intra-SADC imports have grown steadily over the past 10 years, more than tripling in total. As with intra-SADC exports, imports also experienced a significant fall in 2009 due to the global recession." (SADC secretariat website, under facts and figures)

Table 2.1: Showing South Africa's contribution to key SADC economic indicators

Indicator	Information	Indicator		Data	South Africa
Member states	16, including South Africa	Trade	Total import	USD $185 243 million (2018)	USD $83 030 million 45% of total
			Total export	USD $191 575 million (2018)	USD $88 267 million 46% of total
GDP (2018)	USD $721,3 billion				Nominal, 2019 USD $371 billion 51% of total

Adapted from SADC secretariat statistics, sourced from the IMF

Table 2.2a: Overall direction of SADC exports (2000-10)

Regional economic community/continent	Asian Pacific Economic Cooperation	European Union	Rest of world	Intra-SADC	Rest of Africa
% export	45	27	15	10	3

Source: *IMF Direction of Trade, as reported by SADC secretariat*

Table 2.2b: Overall direction of SADC imports (2000-2010)

Regional economic community/continent	Asian Pacific Economic Cooperation	European Union	Rest of world	Rest of Africa
% import	45	27	15	13

Source: *IMF Direction of Trade*

---

[5] *Data Collection Survey for Economic and Industrial Development along Economic Corridors in southern Africa: Final Report, JICA, May 2013, pp. 4–64.*

Tables 2.1, 2.2a and 2.2b above should be read with Figure 2.1 above showing SADC transport and trade corridors. In terms of patterns of transport, migration and trade, southern Africa remains, to a large extent, locked into colonial trade and production relations. As the Reconstruction and Development Programme points out, this reinforces the outdated and essentially colonial structure of the South African economy, which is geared to services and extractive industries with the industrial and agricultural sectors shrinking. South Africa has among the highest rates of unemployment, inequality and indebtedness in the world, which is racially skewed socially and spatially.

These factors impact not only South Africa, SADC's largest economy, but all SADC states, which are held back by legacy colonial transport, trade and economic systems. They all face multiple challenges and risks such as unemployment, rising debt and political instability. There is also the growing impact of climate change on agriculture, energy, water[6] and food security. This, and related conflicts, cause mass migration with the constant threat of pandemics, terrorism and transnational crime.

There are positive global and African trends that present development opportunities. These require infrastructure and network development in energy, ICT and trade corridors. Improved governance and economic performance mean that some African countries are among the world's most rapidly developing economies. This has attracted investment and steps towards integrated development.

The west and east African regions, in particular the Economic Community of West African States and the East African Community (EAC), are making progress towards integrated development and infrastructure development. They are supported by regional and African institutions that effectively coordinate local and external funding and investment. These positive trends have created a policy climate that is conducive to the growth of Africa's industrial base, driven by intra-African trade and growth, and diversified global exports.

A key factor in managing global risks and threats, and realising the vision and goals of Africa 2063, is developing regional and trans-regional networks of efficient technology and data-enabled corridors, with traffic facilitated through OSBPs. For this development to proceed, an enabling political, legislative and regulatory framework is required. The basis for developing such a framework was put in place with the signing of the historic African Continental Free Trade Area agreement on 30 May 2019.

2.3   Enabler of national and regional security

PoEs and OSBPs are enablers for national and regional security. The concept of national security implies that a nation has self-determination, an internationally recognised territory and the capacity to secure its state and borders. The Constitution declares that South Africa is one sovereign democratic state. There can be no national security if the nation loses its sovereignty and its claim on the state. Under Chapter 11 of the Constitution, which deals with security services, the principles that govern national security are set out.

---

[6] *Several states are dependent on hydro-electric power, now threatened by uncertain rainfall.*

As indicated in the governing principles, national security must be pursued within the framework of the Constitution – internationally by promoting peace and security, and domestically by having a united nation that is "free from fear and want" as set out in Chapter 11, section 198*(a)*. National security is part of the core mandate of the security services, which encompass the SAPS, the SANDF and intelligence services.

While the security services' core mandate relates directly to national security, all organs of state have a national security responsibility and can request assistance from the national intelligence structures. The border environment is sensitive to risks and threats, and security is intelligence led. In view of this, all departments active in the broader border environment play active and important roles in national security.

All states use similar general principles when managing national security in the border environment.

Firstly, border management must always be risk-based, and:

a) every effort must be made to deal with risks when they are outside the borders

b) every gap in national security must be identified and dealt with as a potential risk

c) it is important to separate low risks from high risks.

Secondly, border management should be efficient, secure, intelligence-driven and well-coordinated. Information must flow from all the departments based at a PoE concerning risks and threats, whether from abroad, within the border environment or domestically. Health inspectors, for example, receive warnings of pandemics from the World Health Organization via the Department of Health. A plan to deal with a severe health threat will involve the security services, DHA, Department of Transport and missions abroad via the Department of International Relations and Cooperation. The SAPS, Sars and the DHA each play an important role in combatting transnational crime syndicates or terrorism at international, regional, national, provincial and border post levels.

PoEs are located at the point where countries interface with one another and, through that country, the rest of the world. They are also the point at which the border and corridor environments meet and regulate persons, goods and conveyances that cross that border. Officials at PoEs must be ready for any eventuality in a world characterised by globalisation and human and natural risks and threats to the sovereignty and wellbeing of nations and states.

2.4 Enabler of national and regional human rights

PoEs and OSBPs can also promote national, regional and global human rights. The relationship between sovereignty and human rights is often misunderstood. A nation and its citizens, individually and collectively, have a sovereign right to decide whether to apply capital punishment or allow refugees to live in their country, etc. One nation cannot, in general, legally compel another to expend resources on a category of persons unless very strongly established agreements are in place, or they transgress or commit acts of aggression against another state or commit genocide. Matters are usually resolved at a political or diplomatic level, and usually in terms of individual cases and not through general agreements.

What the two countries can and must do, especially in the context of an institution such as an OSBP, is implement an agreement as a legal instrument for officials, mainly at an administrative level, to develop procedures and systems to resolve issues in ways that are efficient, effective, secure, reasonable, fair and humane.

An OSBP bilateral agreement must include provisions for the due care and protection of persons, and to uphold human rights commitments made by both states, as reflected in their respective laws and in international instruments they are signatories to, such as the UN conventions on refugees and trafficked persons.

In designing and establishing an OSBP, an audit of existing facilities, rules and procedures of both countries must be conducted by a Joint Technical Working Group (TWG). One objective of this audit must be to harmonise and simplify rules and procedures; a related objective must be to ensure that human rights standards are met.

Chapter 3: The OSBP policy context

3.1 Introduction

The high-volume commercial activity at certain land PoEs has become a major obstacle to national and regional economic development and security. Modernising key land PoEs is a strategic priority and an economic necessity. The increased cross-border movement of people, goods and conveyances between South Africa and her neighbours has led to congestion and lengthy delays at South Africa's PoEs. A re-think was necessary to speed up the clearance of goods, people and conveyances at PoEs.

The envisaged OSBP concept will be applied in the land PoE environment. This concept refers to the legal and institutional framework, facilities and associated procedures that enable goods, people and vehicles to stop at a single facility to undergo the necessary checks and controls, following applicable regional and national laws, to exit one state and enter the adjoining state. This is a move away from a traditional two-stop border post concept in which exit procedures are carried out on one side of the border and entry procedures are carried out on the other side for persons, vehicles and goods. Except for the Lebombo PoE, all the land PoEs in South Africa are based on a two-stop border post model.

The ideal solution is to establish OSBPs where vehicles, goods and people stop only once for border processing formalities. Through a negotiated bilateral agreement, officials from both countries will operate in a common control zone (CCZ), where they will apply procedures that are secure, simplified and harmonised. Through cooperation on implementing the OSBP solution, both countries enhance their capacity to manage the PoE and enforce their laws. These improvements contribute to growing the economy by strengthening key drivers, including trade, tourism and investment.

Strategically, OSBPs could in future contribute to improved regional integration by enabling goods and people to move swiftly within SADC and the continent. The continental north-south corridor also stands to benefit directly from OSBPs being established between South Africa and its neighbouring countries.

3.2 Problem statement

The main problem addressed by establishing the OSBPs is the congestion at land PoEs and delays experienced by legitimate cross-border travellers and traders. The delays are caused by ineffective and inefficient facilitation of the movement of people, goods and conveyances at various levels. This includes a lack of modernised pre-border clearance processes and systems, as well as a poorly integrated and coordinated border management approach. The underlying factors include the following:

a) Poor transport infrastructure is a colonial legacy that is often cited as a major reason for low levels of industrial development and underdevelopment of African markets.

b) Investment in roads and railways is essential, but the benefits are limited if PoEs on major corridors remain places where people queue for hours and it takes days to clear a truck carrying goods.

c) Goods, vehicles and people must stop multiple times to be cleared on both sides of the PoE.

d) Legislation, rules, processes and procedures used by the respective countries are over-complex and incompatible with facilitating the movement of goods, conveyances and people.

e) Technology and data use is limited within PoEs and at a systems level, which limits the ability to complete online preclearance procedures before goods, vehicles and people arrive at a PoE.

f) Infrastructure and equipment at PoEs are outdated, and PoEs are designed for economies based on migrant workers, exporting raw materials and a minority of privileged travellers.

g) Data sharing and coordination between countries and their respective government departments, and within departments, is lacking.

h) Accurate, real-time data that could enable efficiency, security and effective management across the whole logistics value chain is lacking.

i) Weak controls, security and enforcement result in unacceptable levels of crime and corruption, and create risks and threats for travellers, staff and national security.

j) Management systems and structures at PoEs are fragmented and lack integrated border management with a lead agency.

k) Basic human rights requirements and standards are not adhered to, such as adequately providing basic facilities and support services for travellers and staff at PoEs.

l) Non-tariff barriers in the form of unnecessary controls, charges and restrictions are imposed by one or both governments.

Designated PoEs are an integral part of managing the border environment to minimise risks and threats and maximise opportunities and benefits. The problems listed above indicate that South Africa has not invested in sufficient capacity to achieve this. The capacity to coordinate across all spheres of government and relevant agencies is essential; creating the BMA will greatly assist in this regard. For example, for a conveyance to transport radioactive material across a border safely, agencies of the departments of Mineral Resource and Energy; Trade, Industry and Competition; Transport; Police; as well as Agriculture, Land Reform and Rural Development must liaise with those responsible for the PoE. An accident or an attack could result in catastrophic contamination of the environment or a national key point such as the border post or a power station. Currently, the necessary level of coordination and security cannot be assured.

3.3   The OSBP framework

Ideally, as a prerequisite for being functional and sustainable, OSBPs should be rooted in a sound policy and underpinned by an enabling legal framework and implementation strategy. The process of developing an OSBP policy in South Africa commenced in 2014, under the auspices of the National Treasury, with a policy discussion paper (OSBP framework) to establish OSBPs. In 2015, this project was handed over to the DHA, as the designated organ of state, to coordinate border management activities in South Africa, including the responsibility for establishing the BMA. In December 2018, Cabinet approved the OSBP framework requiring South Africa to adopt an OSBP policy and subsequent legislation. The OSBP framework provides guidance and is the first step towards developing a more coherent policy and regulatory regime to establish OSBPs in South Africa. It is intended to allow lessons to be learnt for the future development of a more comprehensive national OSBP policy and legislation.

The following principles will guide the establishment of an OSBP:

a) Before pursuing an agreement, a business case for a particular proposed OSBP must be made to, in part, establish the economic viability of the proposed OSBP, largely through an assessment of its estimated costs and benefits.

b) Strong political drivers at the highest levels from both countries should be in place before an OSBP is implemented. This will include a memorandum of understanding between the two relevant countries supported by a legal framework allowing extraterritorial authority to implement an OSBP system.

c) The OSBP policy and legislation must be implemented in compliance with South Africa's national, regional and multilateral commitments in industrialisation, job creation and protection, trade facilitation, immigration, transport corridor management, security and other related commitments.

d) The OSBP policy and legislation must also be implemented in compliance with South Africa's related national policies, including policies and strategies on integrated multimodal transport planning, freight logistics, trade and transport corridors and national road, maritime and rail transport plans and strategies.

e) Cost sharing between South Africa and the affected neighbouring country will be an important principle in establishing an OSBP. The rationale for cost sharing is that the intended benefits of OSBPs are meant to be of mutual value to the affected parties. Therefore, the costs and resources required must be equitably shared between South Africa and the affected neighbouring country.

f) Cost sharing will also explore various financing options such as public financing, internally-generated revenue, development assistance, borrowing from multilateral financing institutions, borrowing from the private sector, and public-private partnerships.

g) All financial and other resource implications of an OSBP must be specified and quantified before its establishment. The way South Africa and the relevant neighbouring country will provide for the financial and other resources required must be clearly spelt out in a formal agreement between the two countries.

h) The OSBP must be designed in the most economical and cost-effective way possible. The design process will be guided by detailed studies conducted on both sides of the border to assess what is already in place in terms of infrastructure and procedures.

i) OSBPs must be designed as environmentally and customer friendly, especially considering the needs of small-scale traders.

j) The OSBP design must ensure that security, safety and revenue collection are not compromised.

k) OSBPs will apply intervention by exception. Unless there is a reason to challenge a driver, importer or traveller, traffic should be subject to minimal controls. The design of the OSBP will facilitate trade and move low-risk traffic rapidly, with a secondary search/control ability for all agencies.

l) When a vehicle is targeted for a more detailed check, this will take place off lane, so that upstream traffic is not delayed. The standard will be that any intervention expected to last more than one or two minutes should lead to the vehicle being diverted to a secondary inspection bay within the CCZ.

m) The process of introducing an OSBP will be accompanied by a change management process.

n) Internal consultative meetings at a national level will be convened prior to convening stakeholder meetings involving both countries.

o) The bodies or agencies of both countries responsible for implementing the OSBP will sign off on the standard operating procedures before designing the physical infrastructure and subsequent implementation.

p) Both private sector and public sector stakeholders will be consulted on the design and implementation of the OSBP.

q) Subcommittees dealing with ICT, facilities, processes and procedures, and legal issues will be set up for each proposed OSBP before the design work commences, and will continue to meet as long as it is considered necessary to do so.

r) The relevant bodies or authorities will ensure that adequate ICT and telecommunication structures and systems are in place to allow for effective and efficient service delivery at the PoE.

Aside from the OSBP policy and subsequent legislation, OSBPs will also be governed by bilateral agreements between South Africa and each neighbouring country willing and able to share OSBPs with South Africa. Such legal instruments will enable the border agencies of each state to apply their national laws in a territory of the adjoining state. As national laws cannot automatically be applied in other territories, specific provisions will be developed to give such agencies extraterritorial jurisdiction.

SECTION B: OSBP POLICY STRATEGIC INTENT

Chapter 4: **Policy thrust and vision**

4.1   Introduction

Drafting a new policy must be justified by defining the problem, how it will be addressed and a vision of what will be achieved if the policy is implemented. Studies on the implementation of OSBPs in Africa, Asia and the Americas show that a frequent cause of failure is the lack of a shared vision of the purpose and nature of the project. This chapter sets out the policy framework and strategic intent of the OSBP project to steer all stakeholders towards a common goal.

4.2   Vision statement

> An OSBP that provides streamlined and coordinated infrastructure and services to facilitate safe, efficient and cost-effective passage for people, conveyances and goods across South African land PoE's without compromising the sovereignty, development, national security or international obligations of South Africa.

4.3   Intended outcomes of the OSBP policy

The OSBP policy seeks to achieve the following outcomes:

a) Increased economic integration with neighbouring countries across the Southern African Customs Union, SADC and the continent, and under the African Continental Free Trade Agreement.

b) Faster, more efficient and cost-effective movement of legitimate goods, conveyances, and persons through land PoEs.

c) Better enabling conditions to facilitate trade and contribute to economic growth, industrialisation and job creation.

d) A flexible strategically managed corridor system using digital technology that interfaces seamlessly with neighbouring countries.

e) Enhanced collective responsibility for national and regional security, including managing threats to territorial integrity, biosecurity, public health and the environment.

f) Honour human rights and humanitarian obligations in line with the Constitution and international agreements.

g) Ensure a transparent process of OSBP design, implementation and effective and efficient operation based on consultations with key stakeholders.

4.4   Key foundational principles of OSBP policy

4.4.1   National interest

Establishing the OSBPs with neighbouring countries will enable South Africa to extend its borders. That is, the OSBP will enable South Africa to apply its border management controls extraterritorially while granting the same privilege to an adjoining state. However, such an arrangement will primarily be informed by South Africa's national interest, which should be defined in accordance with the following:

- The supremacy of the Constitution, including principles underpinning the Constitution

- National priorities such as national security and development

- Promotion of human rights, peace and stability for South Africans to live in a secure, stable and prosperous world

- Respect of, and adherence to, the rule of law.

4.4.2   Extraterritorial jurisdiction

It is an established legal principle of public international law that the national laws of a state generally only apply within the territory of that state:

> *The exercise of jurisdiction is limited, save by special international agreement, to the territory of each state, so that the state can only exercise it over persons or things within or coming within the territory.*[7]

In what amounts to a paradigm shift, the principle of extraterritoriality or extraterritorial jurisdiction allows a state to extend the application of specific national laws to a place physically located outside its own territory.

Given that establishing an OSBP neither moves the physical international border or territory nor cedes it to an adjoining state, legislation must be enacted to stipulate applicable and non-applicable jurisdictions in the OSBP geographical area. That is, the OSBP enabling legislation in both countries must enable border officers of the respective countries to carry out their applicable national laws in a CCZ in the adjoining state and provide for hosting these officers. The bilateral agreement must clearly stipulate national jurisdictions and/or duties, powers and functions that will not be applicable in an OSBP or CCZ.

---

[7] *J.E.S. Fawcett, The Law of Nations, 1968, p. 54; quoted in the JICA OSBP Sourcebook, p. 8-13.*

4.4.3 Reciprocity

In international law, reciprocity describes an environment in which states agree to cooperate on a matter of **mutual interest** by balancing rights and responsibilities towards one another. An OSBP that is efficient and secure is of mutual interest to participating states, and the bilateral agreement must clearly stipulate areas of cooperation and associated responsibilities towards each state. Areas of cooperation would include hosting arrangements, and a reciprocal application of border control and enforcement laws, systems and procedures in the territory where the CCZ is located.

4.4.4 Simplification and harmonisation in coordination

Establishing OSBPs requires harmonised border crossing procedures for people, goods and conveyances. Designing buildings and facilities, ICT systems and traffic segmentation without consensus on new processes and procedures will result in ineffective OSBPs. The OSBP bilateral agreement or manual should clearly stipulate the new processes and procedures that will be harmonised to allow border controls to be processed rapidly. This will include harmonising procedures in the following areas:

- Aligning opening hours for OSBP partner states

- Information sharing by countries

- Sharing facilities, equipment and other resources by border agencies (e.g. scanners, weighbridges, sniffer dogs, etc.)

- Traffic segmentation

- Sterility of the OSBP

- Paying levies to use of the OSBPs

- Jurisdiction in case of offences

- Preclearance

- Privileges and immunities of foreign officers.

4.5 Key defining features of the OSBP

A land PoE must satisfy the following criteria to be legally classified as an OSBP:

a) It must be a single land PoE, established and recognised by two or more countries that share a border, to enable facilitating a more efficient, effective and secure movement of persons, goods and conveyances across the border.

b) It must be legally based on, and governed by, a bilateral or multilateral agreement that has been concluded according to the domestic laws of both countries.

c) Policies, legislation, systems and procedures relating to the main functions of a PoE must be simplified and harmonised by both countries to enable people, conveyances and goods to be cleared at a single point.

d) One-stop border processing arrangements must be implemented in each country by establishing and designating control zones (common and exclusive) at their respective common border posts. The control zones may, with the agreement of the two states, be juxtaposed, straddled, wholly located in the territory of one state or follow some other mutually agreed configuration.

e) The control zone must enable border officials of the respective states to apply their respective border law enforcement legislation within the agreed control zone.

f) Extraterritorial jurisdiction for each state must be clearly articulated in the bilateral agreement.

4.6 Implementing the OSBP approach

The following minimum elements of the OSBP must be jointly implemented by the two countries:

a) Legislation, systems and procedures relating to the main functions of a PoE must be simplified and harmonised by both countries to enable people, goods and conveyances to be cleared at a single point.

b) Control zones must be established in one or both countries where officials can apply their respective identified border laws (or specific provisions) as defined in enabling legislation in their countries.

c) The respective identified border laws and related provisions must address and enable all the relevant border law enforcement functions, powers and duties that need to be executed within the OSBP control zones.

d) Digital data or information must be exchanged where necessary in the context of simplified processes and procedures.

e) Bilateral and domestic governance, administrative and financial arrangements must be in place to enable the sustained operation of an OSBP.

f) Stakeholders must be consulted and kept informed or involved as appropriate in developing OSBP policy and the OSBPs themselves, in line with constitutional principles and good governance.
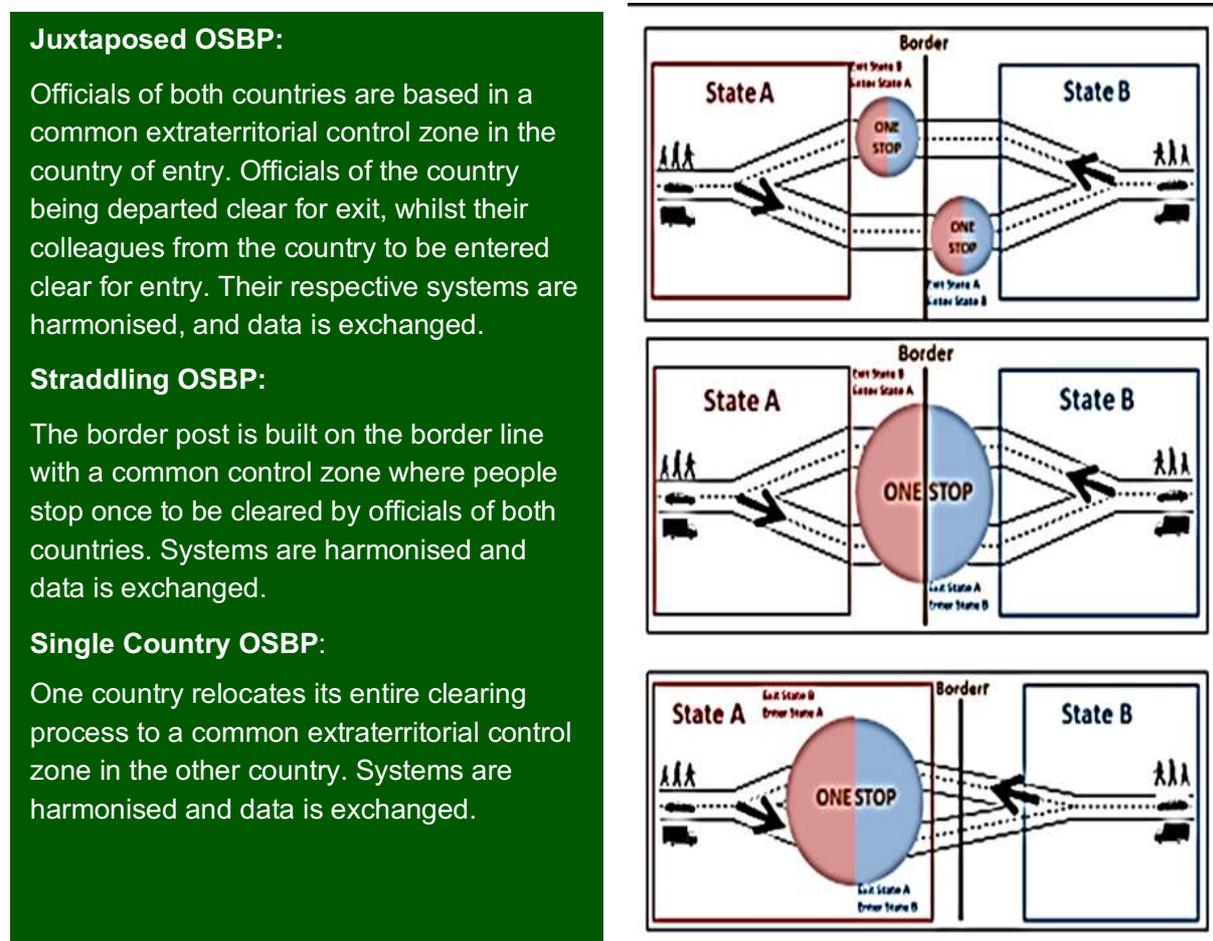
Chapter 5: Different models of OSBP and South Africa's preferred model

5.1 Introduction

A traditional two-stop border post is completely separated by the border line, although there may be various forms of cooperation in place. Each country maintains separate facilities, systems, processes and procedures, and exit and entry roads. Travellers, goods and vehicles go through at least two sets of procedures located at the two respective border posts.

There are three generic ways in which two countries can cooperate in operating an OSBP that facilitate the cross-border movement of people, goods and conveyances in an efficient and effective manner. These three options - the three OSBP models - are compared in Figure 5.1 below.

Figure 5.1: The three OSBP models compared

Juxtaposed OSBP:

Officials of both countries are based in a common extraterritorial control zone in the country of entry. Officials of the country being departed clear for exit, whilst their colleagues from the country to be entered clear for entry. Their respective systems are harmonised, and data is exchanged.

Straddling OSBP:

The border post is built on the border line with a common control zone where people stop once to be cleared by officials of both countries. Systems are harmonised and data is exchanged.

Single Country OSBP:

One country relocates its entire clearing process to a common extraterritorial control zone in the other country. Systems are harmonised and data is exchanged.

The three generic OSBP models have the following basic characteristics in common.

a) There is one PoE and both countries are responsible for

    i. the part that falls within their territory

    ii. shared facilities according to an agreement.

b) They employ the same OSBP methodology.

c) There is no change to the international border line.

d) Some officials from both countries operate in a designated CCZ, the location of which varies according to the model being implemented, as shown in Figure 5.1 above.

e) Legislation must be in place to allow officials to apply the specified laws of their country extraterritorially in the CCZ. This does not extend to matters that must be referred to the respective states' criminal justice systems.

5.2 Definitive features of each of the OSBP models

5.2.1 The juxtaposed model

The two countries sign an agreement that establishes a CCZ in each of their territories where relevant officials of both countries can apply specific laws. The main advantage is that there may be fewer issues relating to sovereignty, as neither country must give up a physical border post and existing facilities can be adapted to suit the prevailing circumstances. A related advantage is that the model is reciprocal in nature, with each country having similar roles, expectations and responsibilities. There are fewer legislative changes compared to the single-country models, as the hosted officials will have a comparatively restricted set of functions. Risks can be managed more effectively as the flow of traffic is designed so that officials of state A who are based in state B can process people, conveyances and goods exiting their country, while officials based in their own territory clear traffic that is entering their country.

One disadvantage is that for the port to function efficiently and effectively, both states must meet their obligations fully in hosting the officials of the other state. This requires sustaining high levels of commitment and cooperation. It also requires robust governance structures and arrangements to ensure, among other matters, that conflicts can be resolved. The model is flexible and the PoE can continue to function, if the basic agreement is adhered to, without implementing or sustaining some key elements of OSBP methodology. However, this is also a disadvantage as the benefits of the OSBP methodology will not be realised if preclearance is not done by both states, systems are not harmonised and data is not exchanged.

5.2.2 The straddled model

Geography and existing infrastructure may create conditions to establish the CCZ on the borderline. The main advantage is that issues of sovereignty, legislation and extraterritorial jurisdiction may be simpler and easier to deal with. A CCZ will straddle the borderline, with extraterritorial jurisdiction being legally granted to designated officers. However, the range of laws they administer may be more limited than in the other two models and fewer disputes and complications may arise from cases that must be referred to the criminal justice systems of the respective countries. This is mainly because, in general, criminal justice systems do not enjoy extraterritorial application and, in the straddled model, states have clear jurisdiction up to the borderline.

This positive factor could potentially reduce the time required for negotiations and the substantial time required to create a viable legal basis for the PoE to operate. South Africa and Mozambique have a ratified OSBP agreement that applies to any OSBP that the two countries might establish, which was negotiated over a relatively short period with the intention of establishing a straddled OSBP at Lebombo. One reason for the relatively short period of negotiation was that there appeared to be few changes needed to existing legislation.

Disadvantages may include challenges in adapting existing port infrastructure and facilities. Straddled PoEs are possibly less costly to establish on greenfield sites where a purpose-built structure can be put in place that straddles the borderline. There must be enough space for segregation of traffic (such as commercial and private conveyances) in terms of approach roads and flows within the PoE, and for additional zones and facilities.

In a juxtaposed model, the traffic flow can be designed for officials operating on the territory of the other country to clear traffic entering their country, while officials of the host country clear those exiting their country. In a straddled model this division of labour, which helps to manage risks, may be harder to achieve or require more expensive technology and infrastructure. This reduces the funds available for critical areas such as simplifying, automating and harmonising processes, procedures and systems.

5.2.3 The single-country model

In this model, one country relocates its entire PoE one-stop operation to the territory of the other. The reason might relate to local geography, or the host country might have more resources. As a holistic solution this model has few advantages, and the juxtaposed or straddled model is almost always to be preferred.

The main disadvantages relate to issues of legislation, extraterritorial jurisdiction and sovereignty. Both the host country and the hosted country will have to make extensive changes to their domestic legislation to enable the wide range of functions to be performed at a PoE in an extraterritorial control zone. Complex arrangements will have to be agreed to refer cases to the criminal justice systems of the respective states, return persons, goods and conveyances, and take care of officials operating and possibly staying in the host country.

Such asymmetrical circumstances require stable relationships between countries and a high level of trust. Disputes may arise between the two countries regarding sharing the costs necessary to run operations and purchase and/or maintain facilities. These risks will be particularly pronounced if there is a wide gap in the level of development between the two states.

5.3   Factors to consider when selecting a model of OSBP

The choice of a preferred model is dependent on bilateral diplomatic relations, existing facilities, geographical constraints and a cost-benefit analysis of building new infrastructure and the value derived from traffic passing through the PoE. It also involves finding a common vision for the future development of the PoE over a 15 – 20-year period, as well as the transport corridor passing through it.

Just as important is assessing the kind of relationship that could be developed between the countries and the risks involved. For an OSBP to function efficiently, effectively and sustainably, a minimum level of good governance and trust is needed to ensure the necessary level of cooperation. Other important factors are the funding model adopted by each country, and their willingness to establish a viable legal framework, to simplify and harmonise rules and procedures, and to enforce border laws and regulations.

Given these considerations, each OSBP project will have unique features. A comprehensive and creative solution must be negotiated and set out in a bilateral agreement. The degree to which the regional context makes this process possible is important. South Africa is a member of SADC, which unlike the EAC, does not have a common OSBP policy or legislation in place, and is less advanced in terms of integrated planning for trade and transport corridors. A factor that enables integrated regional development in the EAC is that its six countries have comparable economies and levels of technical development. The South African economy is far larger and more complex than those of the other 15 SADC member states.

5.4   The possibility of mixed OSBP models

A coherent OSBP solution for a PoE would involve selecting one of the three models as a basis for governance and legislation. However, elements of the other models could be incorporated, even if only for certain phases of the development. This approach provides the flexibility needed to implement OSBP projects in complex and dynamic environments. For example, it may be necessary to locate an OSBP function, such as application of sanitary and phytosanitary measures, in one country if the necessary facilities were only available in that country.

Another example is to have joint teams, as prescribed in the juxtaposed model, operating in zones located away from the main PoE, which may be based on the straddled model. This is the case at Lebombo where commercial conveyances are precleared by joint teams at sub-posts established several kilometres from the intended straddled OSBP port on both sides of the border. This arrangement continued even after the failure of the larger project, although without the benefits of it being part of a larger OSBP solution. The arrangement could be retained for a period after re-establishing the project, although it would benefit from having a stronger policy and legal basis, and be discontinued when online preclearance and the development of the OSBP was sufficiently advanced.

The use of increasingly integrated technology to automate and manage processes and generate data will allow complex solutions to be implemented that would further allow flexible approaches to the use of OSBP models. For instance, central biometric access could be used to measure the use of equipment accessed by officials of the respective countries and per-second billing would be enabled by smart accounting and management information software. Carrying out these functions manually would cause delay, be vulnerable to abuse and corruption, and likely result in disputes.

5.5   Options and recommendations

A country could have objective reasons why it declares its preference for a specific OSBP model. Declaring a preference would help it to plan and budget for legislative, systems, human resources and infrastructure requirements.

5.5.1   Policy options:

The OSBP policy should either:

a) state a preference for an OSBP model without qualifications

b) not state a preference for an OSBP model

c) state a preference for an OSBP model with qualifications.

5.5.2   Policy recommendation:

Option c) of the policy options above is recommended as the preferred option, with the preference being for the **juxtaposed model**. The motivation for this recommendation is as follows:

- It is likely to make the best use of existing facilities.

- Usually, it creates fewer problems related to sovereignty and is symmetrical in terms of obligations placed on both states.

- It is the most flexible and can incorporate elements of the other two models.

- Given the levels of asymmetry in development between South Africa and its immediate neighbours, the juxtaposed model enables South Africa to better manage socio-economic and border-related risks.

- The juxtaposed model works better with the existing geographic and topographic conditions.

- The juxtaposed model provides financial benefits in relation to incinerating unwanted agricultural products.

- The juxtaposed model is flexible and could allow for reverting to the traditional two-stop PoE model should there be a change on the grounds of posing a security risk to the country. The grounds for reverting to the traditional model may include changes to the economy, geo-political reasons, environmental factors or legislative changes by either of the respective countries.

- The juxtaposed model is generally preferred in Africa and by most of South Africa's neighbouring countries, with more lessons that can be learnt.

While stating a preference for a juxtaposed model, South Africa will keep other options open. Geo-political or funding factors, for example, may lead to another model being chosen or aspects of other models being incorporated into the design of the OSBP. Therefore, the preference for a juxtaposed model is informed by historical and current factors that are not fixed. Should the factors change in future, South Africa will consider implementing other models.

SECTION C: OSBP OPERATING AND LEGISLATIVE MODEL

Chapter 6: **OSBP operating model**

6.1   Introduction

The main purpose of an OSBP is to rapidly and securely facilitate the movement of people, conveyances and goods across the land borders. To achieve this goal, both countries must implement the following five key OSBP pillars:

- Implement a policy, legislative and governance framework

- Establish an OSBP extraterritorial jurisdiction

- Simplify and harmonise policy, processes and procedures

- Establish and manage the ICT and data exchange capacity

- Establish and manage hard infrastructure and facilities.

These OSBPs are meant for established PoEs that also serve as commercial PoEs. The OSBP is based on the principle of integrated and coordinated border management and will be enabled by technology that includes the single window system (SWS) and smart border concept.

6.2   Extraterritorial jurisdiction of the OSBPs

As a primary prerequisite, establishing an extraterritorial jurisdiction is cardinal and forms part of the governance framework of an OSBP. A CCZ is therefore dependant on the extraterritorial jurisdiction and serves as the designated area where officials of both states apply their respective legislation.

Foreign missions in a country are protected by international laws and by bilateral agreements that give them the right, to a defined extent, to apply their own law in defined zones in the territory of another country. Host states are required to implement legal instruments that exempt designated foreign officials from the jurisdiction of the host state and hosting arrangements, which include the functions foreign officials are authorised to perform. By implementing these provisions, the borders of South Africa, its Constitution and its criminal justice system remain essentially unchanged.

The same broad principles apply in the case of OSBP common control or exclusive control zones and arrangements made for areas outside the zones, such as joint training and operation or emergency procedures. There are no changes to borders; the control zones and limited rights accorded to another state exist because of agreements that can be changed or rescinded. Governance and control depend on establishing and managing applicable legislation, institutions, rules and norms. Internationally, the enabling legal instrument created is an OSBP Act that, among other things, provides the enabling legalisation to establish common and exclusive control zones.

Providing officials of another state access to government zones, officials, operations, data, information and systems – and giving them the right to extraterritorially apply their laws – creates risks and opportunities for both states. To mitigate the risks, all the elements listed above must be strictly limited, clearly defined and ratified through a bilateral agreement that, includes provisions covering jurisdictions, conduct, disputes and emergencies. The opportunities will be to raise the level of cooperation and the efficiency and security of both states, and to achieve large savings in time and costs.

6.3 Delimitation of the physical location of the OSBP premises

The control zone is at the heart of all OSBP models. Essentially, the designated laws, systems and border controls of two states are applied in a common space that can either be in one of the states, be replicated on both sides of the border or straddle a border. The models vary according to how expensive, difficult or risky they are to implement and operate. However, the policies, laws and systems of the respective states, and the agreements they sign, should largely determine how the officials work within a control zone regardless of a model.

International practice demonstrates that the configuration of each OSBP's control zone is agreed between the two partner states that have a common OSBP. The control zones are arranged so that, for each direction of travel, border controls will be carried out in the state of entry and, depending on the configuration, from a single stop location. The physical location and spatial extent of the OSBP premises will need to be defined in the bilateral agreement. That means a control zone will comprise the specifically demarcated and secured physical areas that are mutually agreed between the relevant partner states. This delimitation should include the definition of the CCZs within which officers from both states will perform controls and in which they may circulate freely. It should also define the areas set aside for the exclusive use of each state's officers.

6.3.1 Common control zone

The CCZ is the geographical area designated and delineated within, or as part of, an OSBP for the purpose of jointly executing border law enforcement controls. The border controls exercised by officials of both states within a CCZ include the following:

- Immigration controls

- Customs and revenue controls

- Port health/biosecurity controls

- Environmental management controls

- Agricultural/phytosanitary controls

- Border policing

- Cross-border roads, traffic and transport controls

- Safety and security controls

- Border infrastructure development and maintenance.

6.3.2 Exclusive use zone

An exclusive use zone (EUZ) is a facility or area within the CCZ designated by the host state for exclusive use and access by the partner state's border officials to execute border controls and related matters. This means that South Africa will grant border officials from the adjoining state access to a working area set aside for their exclusive use; and a similar provision will be made for South African officials in the adjoining state.

International practice[8] shows that to protect each state's interests, the host state agencies may not enter an exclusive area, except at the express invitation of an officer from the adjoining state. The only exception to this principle is where a law and order offence has been committed in an exclusive area. The host state's police officers may enter that area without permission, provided that they would otherwise have the power to enter premises under their own law. Such powers may only be exercised for the purpose of making arrests (if applicable) or obtaining evidence. However, it is strongly recommended that these powers be exercised based on clear joint operational procedures agreed to by the partner states.

6.4 Extraterritorial application of laws in the CCZ

A distinction is usually made between offences committed in terms of border law enforcement legislation (e.g. immigration) and those committed in terms of criminal law legislation (e.g. murder, theft). In the former, each state has jurisdiction over offences under its border law enforcement legislation that are detected while its officers are undertaking their controls. In essence, officers enforcing the border laws and procedures in a control zone must do so according to the border law enforcement legislation of the state that they work for. Once the state's officers have completed their border controls, they no longer have jurisdiction on border law enforcement matters, except with the agreement of the officers of the other state.

Regarding criminal law offences, the accepted approach is that jurisdiction lies with the country in whose territory the offence was committed. Criminal offences will be dealt with according to the territorial jurisdiction of each state and may not be confined to the OSBP arrangements. In other words, a crime that is committed in the adjoining state shall be considered as a crime against that state whether or not border control procedures have been concluded. Law enforcement authorities of both states will enter into an agreement for enforcing such provisions.

6.4.1 Extraterritorial application of border law enforcement laws

International practice shows that where the CCZ is in the adjoining state, border management officers (immigration, customs, health, etc.) of the exit state retain jurisdiction until all border controls have been handed over to the officers of the adjoining state. South Africa will adopt a similar principle in applying border law enforcement. For example, where the CCZ is in Mozambique, South African border control officers retain jurisdiction between the borderline and the CCZ (as long as all border controls have not been handed over to the Mozambican border officers).

---

[8] *JICA OSBP Sourcebook (2016): pg. 8-15.*

As a matter of principle, at the CCZ within the adjoining state, a South African officer has the same powers as they would have working within South Africa under the border control laws, subject to any exceptions defined in the enabling legal instruments. The powers of an officer working in the adjoining or host state are only restricted by the action of handing over control. Once control has been handed over to an officer of the receiving state, the officer of the exit state can no longer exercise that power, except with the express permission of the officer of the receiving state. Exit formalities should therefore be completed before entry formalities begin. Jurisdiction moves from the state of exit to the state of entry once exit formalities have been completed.

6.4.2 Extraterritorial application of criminal laws

It is an established principle in international law that a crime can only be prosecuted and tried in the territory where it took place. For such a jurisdiction to be extended to another state, international or regional measures, including agreements, and institutions like courts and parliaments (legislative jurisdiction) must be established. This is the case in the EAC where a regional legislation, court and Parliament are in place to deal with extraterritorial criminal jurisdiction. Given the absence of such regional measures in SADC, the bilateral OSBP agreement must specify how such cases will be prosecuted and tried, including escalation and conflict resolution procedures.

The accepted approach for criminal law offences is that jurisdiction lies with the state in whose territory the offence was committed. Criminal offences will be dealt with according to the territorial jurisdiction of each state and may not be confined to the OSBP arrangements. In other words, a crime that is committed in the adjoining state shall be considered as a crime committed against that state, regardless of whether border control procedures have been concluded. Law enforcement authorities of both states will enter into an agreement for enforcing such provisions.

6.4.3 Officials' immunity from the criminal jurisdiction

Officers from the exit state enjoy immunity from prosecution by the host state for any action related to them performing their border control functions. These offences are dealt with by the officers of the exit state that has jurisdiction in terms of its laws. However, an officer's immunity does not extend to criminal offences. If officers from the exit state commit a criminal offence in the host state, they are subject to the criminal jurisdiction of that host state.

6.4.4 Safety and security management of the CCZ

The host partner state is responsible for ensuring the safety and security of the CCZ, the officials and the assets of both the adjoining partner state and the users of the border control zones that access the OSBP for services. However, for national security reasons, the adjoining partner state could enhance such security measures for its officials and assets in the host state's CCZ. These measures must comply with the applicable laws of the host state.

The host state's law enforcement officers responsible for maintaining peace, security, law and order in the CCZ may carry the arms mandated in their national laws to discharge their obligations. The type of arms should reflect the perceived security threat within and around the OSBP and the sensitivities of the travelling public to carrying such arms.

The adjoining state's law enforcement officers may not carry arms in the host state's CCZ regardless of whether carrying such arms is mandated by their national laws, except by special arrangements with the host state. Such special arrangements may include officers carrying arms or non-lethal safety and security equipment through the CCZ to the adjoining state's exclusive use areas, where it has full control and security responsibilities. Similarly, the type of arms carried in such exclusive use areas should be proportionate to the security threat to such areas and consider the sensitivities of the travelling public that may have access to these areas.

6.5   Human resource considerations

The Constitution and labour laws oblige the state as an employer to make provision for any substantive changes to the conditions of service of officials working in another state. Some standards that must be met may require additional training, such as acquiring language skills. The domestic organised labour forums must be consulted as prescribed in existing legislation.

Officials of the adjoining state who are appointed to perform OSBP-sanctioned functions in the host state's control zone:

a) must be provided with state tools of trade as required by their job functions

b) may receive a state guarantee against any personal damage or loss in the host state that their insurance policies will not cover when they occur outside the adjoining state

c) shall suffer no deprivation of the conditions of employment. The Labour Relations Act 66 of 1995 will apply as if the employee was performing such functions in the territory of their home state.

d) shall not be liable for any damage or loss caused to anyone while exercising any power or performing any duty in terms of the OSBP Act, or failing to exercise a power or perform a duty under the OSBP Act.

General principles relating to labour relations and conditions of employment should find expression in the OSBP legislation and bilateral agreement.

6.6   Simplification and harmonisation of procedures

6.6.1   Introduction

A border post is a space where the border laws, administration and systems of two states interact with one another and with many international and regional regulatory regimes. Bodies such as the WTO, the World Customs Union, the AU and SADC promote enabling economic development by simplifying and harmonising regional laws, processes, systems and procedures. South Africa is a member of all these bodies and has endorsed policy positions held by these bodies, as articulated in various international agreements.

Border crossing procedures under the OSBP framework differ from operations at traditional two-stop border posts, although the role of each agency generally remains. Establishing an OSBP as a bilateral project supported by multiple stakeholders provides a platform for both states to cooperate and to simplify and harmonise their processes and systems. Simplifying and harmonising operational procedures and joint controls are cornerstones of OSBP operations.

The core objective of any border modernisation programme, including OSBPs, is to introduce streamlined procedures that are synchronised to take advantage of the various tools available to achieve a good balance between the controls required and facilitating trade and the movement of people. Often, it is easier to begin with constructing the infrastructure for the OSBP than with developing procedures and systems. However, while Africa has had many examples of this approach, designing buildings, negotiating a legal framework and reviewing ICT systems without a consensus on new procedures will not produce an effective OSBP.

Border crossing procedures for people, goods and conveyances must be streamlined and harmonised to establish an effective OSBP. Extending the border procedures applied under the traditional two-stop framework to an OSBP framework without simplifying and harmonising them undermines efforts to reduce the time spent at a border and the associated costs and security threats. Border crossings are logistics points along integrated international supply chains that can easily become unnecessary movement control bottlenecks if processes are not simplified, streamlined and harmonised.

This section deals with simplifying, streamlining and harmonising border controls to process persons, goods and conveyances moving across borders, as depicted in Figure 6.1 below. The general principle for processing all movement is that the controls of the adjoining country should be completed before the host country begins its controls.

Figure 6.1: The general process flow at the CCZ
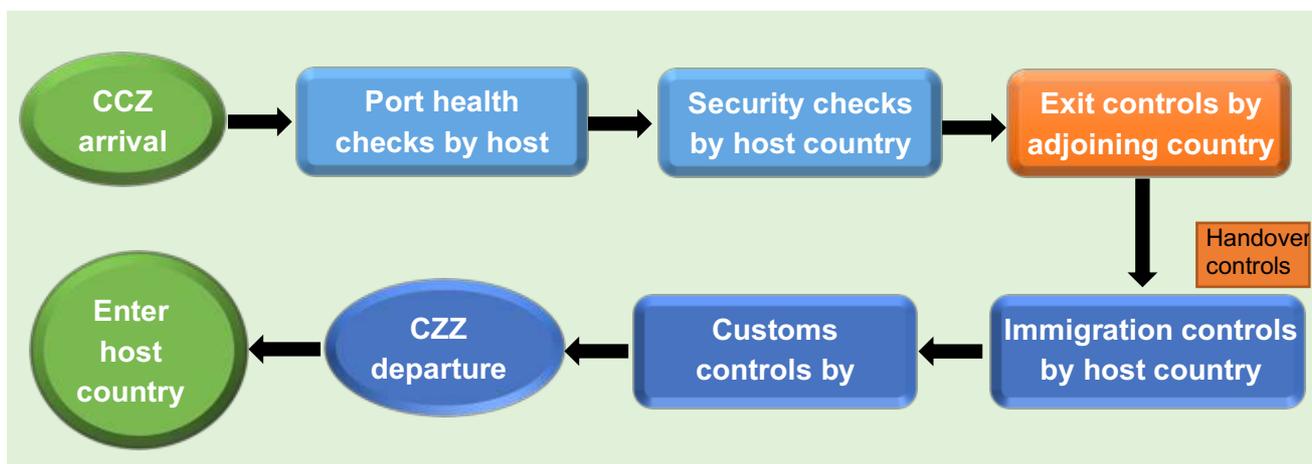
6.6.2 Harmonising and simplifying border procedures related to the movement of persons

Travellers and traders should complete the exit requirements of the state they are leaving before seeking permission to enter the next state. In South Africa, the DHA administers the Immigration Act 13 of 2002 as the principal legislation regulating the cross-border movement of persons, and arrival and departure controls. For instance, every person who intends to visit the state must have a valid passport and, if applicable, a visa, and must comply with the prescribed entry requirements for that state.

Another relevant legislation is the National Health Act 61 of 2003, which establishes the port health function within the border environment. Port health is important to protecting human health by preventing the international spread of communicable diseases through South African PoEs and monitoring imported health-related goods. The port health service is defined as the first line of defence to protect the citizens of South Africa and visitors against the health risks associated with the cross-border movement of people, conveyances, baggage, cargo, shipments and other imported consignments.

At traditional two-stop border posts, the immigration and port health controls are repeated on either side of the border. These controls will still be undertaken twice at an OSBP, but only at the entry country in the CCZ. In exercising port health functions at any PoE, best practice dictates that it be the first border processing formality that all travellers, traders and conveyances encounter. Within an OSBP, the port health function can be either the first border formality jointly exercised by both South Africa and the neighbouring country at a location to be determined by both parties, or the first function separately performed during the exit and entry procedures of the two countries respectively.

The Refugees Act 130 of 1998 is also important to regulating the cross-border movement of persons. A person fleeing from the fear of persecution from the exit state will be dealt with as prescribed in the Refugees Act.

In using OSBPs to manage cross-border movement of persons, states must consider the standards and protocols derived from customary international law and regional and international agreements that they have either signed or ratified.

To eliminate red tape and a duplication of processes, the following standards must be detailed in the OSBP manual and institutionalised:

a) Technology-enabled fast-track clearance system for the movement of persons

Generally, the cross-border movement of persons through the PoEs includes the following legitimate categories:

- Citizens and permanent residents

- Visitors or tourists

- Traders or businesspersons

- Students and academics

- Migrant workers

- Asylum seekers and refugees.

Low-risk travellers, including citizens and permanent residents of OSBP partner states, frequent visitors and businesspersons will qualify to apply for enrolment in the fast-track automated clearance system. Key elements of the system are summarised below:

- **Automated e-passport gates**: e-passport gates are automated self-service booths or mobile device that will be located at immigration checkpoints in each CCZ.

- **Frequent traveller programme**: the programme will allow eligible travellers to enjoy convenient immigration clearance via automated clearance facilities. Services will include fast-tracking frequent travellers such as truck and bus drivers, businesspersons and tourists. Border officers will only need to check that the travellers are the authorised holders of the written authority. Border processes that still need to be undertaken at border crossings should be informed by risk and kept to the minimum.

- **Long-term multiple entry visa**: this visa will be available to eligible frequent travellers including businesspersons, students and academics who do not have long-term residence authority in the host country. It is preferable that the two countries agree on the categories of frequent travellers.

Frequent travellers who would like to apply for enrolment to the fast-track clearance system should apply at any location determined by each state. South Africa regards fast-track clearance as a fundamental principle that must be operational at the OSBP to enable a seamless movement of people. Parameters and criteria for the fast-track service will be agreed by both countries.

The design of the clearance process for cross-border movement of persons at the OSBP should consider various means of transport:

- Clearance of pedestrians, and passengers, drivers and crew using public transport

- Clearance of passengers using private transport

- Clearance of drivers and crew of freight vehicles.

The bilateral agreement and procedures manual should have embedded in it the general principle that the traveller's clearance is only complete after all exit and entry controls have been satisfied. A traveller who has been cleared to exit the adjoining state by immigration officers may still be refused departure if other controls, including those related to goods and conveyance, are not met. Equally, a traveller who has been cleared to enter the host state by immigration officers may still be refused entry if these other controls are not met.

b) Granting or refusing leave to enter

Both states operating within an OSBP examine travellers according to their respective immigration laws and policies. Where travellers do not qualify for leave to enter, they should be refused entry and returned to the officers of the state of departure.

c) Harmonising and simplifying border procedures for the movement of goods

The Revised Kyoto Convention (RKC), effective from 3 February 2006, provides international standards and recommended practices for modern customs procedures and techniques. The RKC supports facilitating trade and effective controls using simple efficient customs procedures. It is mandatory for all contracting parties of the World Customs Organization to accept its obligatory rules.

The Customs and Excise Act 91 of 1964 regulates movements of goods across the border of South Africa. The Customs Control Act 31 of 2014 already provides for customs services in an OSBP setup.

d) Electronic single window systems

The electronic SWS is an international standard or best practice that enables cross-border traders to submit relevant documents at a single location and/or through a single entity. A single window is defined as

> *A facility that allows parties involved in trade and transport to lodge standardised information and documents with a single-entry point to fulfil all import, export, and transit-related regulatory requirements.*

The OSBP Act will make provision for establishing an SWS to enable cross-border travellers and traders to lodge relevant documents on a single platform. Introducing an SWS will benefit all stakeholders who meet the criteria of a trusted traveller and traders will be fast-tracked because they have already completed part of the preclearance process.

e) Preclearance and fast-track

Preclearance processing is a critical element of the SWS that enables importers and exporters, through their clearing agents, to submit trade documents to border agencies prior to the goods arriving at a point of clearance. Preclearance processing provides sufficient time for border agencies to examine documents thoroughly and allocate appropriate resources and a risk rating in anticipation of the goods' arrival.

A customs administration requires traders to put their precleared goods under its physical control to collect import duties and taxes, prevent contraband smuggling, and execute all trade-related laws and regulations. Many customs administrations prefer traders and clearing agents to lodge a declaration prior to their arrival, under a prearrival lodgement scheme, but cannot release goods before confirming their physical arrival at the border post.

The OSBP concept is based on the principle that deploying the right systems (back and front office) and officials can allow 80% or more of cases to be fast-tracked while actively managing risk. Therefore, an important element of any OSBP operating model must be to enable a prearrival clearance system allowing documents to be pre-lodged and preregistered. The preclearance system could also be linked to online systems such as those established by Sars.

All preclearance systems require another area to be simplified, harmonised and strengthened: controls related to risk management. This should include simplifying and improving policing and border control enforcement procedures to raise the level of security. A related step is to raise awareness of these procedures among key stakeholders, including logistics agents and local communities.

To make the OSBPs agile and sterile, the preclearance requirement must be embedded in the OSBP Act and bilateral agreements. It should apply reciprocally; i.e., conveyances carrying commercial goods should not be granted the right to approach an OSBP unless they have met preclearance requirements. Should a conveyance approach an OSBP without a preclearance certificate, the operator or owner of the conveyance should be subjected to a fine or levy.

f) Cross-border clearing agents

Cross-border agents play an important role in facilitating trade and, in some countries, are an essential part of cross-border movement systems for goods and conveyances. In designing an OSBP, the two states must agree on the extent to which cross-border clearing agents can have access to the OSBP and areas such as CCZs.

Ideally, to maintain acceptable levels of security, the CCZ should be sterile. In upgrading its procedures and systems, a solution must be found that allows clearing agents to play their necessary role without compromising security. The general principle is for as many of the procedures as possible to be completed before the freight arrives at the port and for the necessary data to be made available in real time. In principle, clearing agents should not be allowed to operate within the OSBP, which means that they should not have physical offices at the OSBP.

6.6.3 Harmonising and simplifying border procedures related to the movement of conveyances

In South Africa, the Cross Border Road Transport Act 4 of 1998 regulates moving conveyances (public and commercial conveyances) across the border through a PoE. The Act provides for cooperative and coordinated advice, regulation, facilitation and law enforcement for cross-border road transport by the public and private sectors. Section 25(1) of the Act states that no person may undertake cross-border road transport unless they hold a permit.

The Act also provides for establishing the CBRTA, which is responsible for issuing permits to cross-border road transport operators. It is responsible for regulating access to the cross-border road transport market, freight and passengers, through a permit administration regime.

6.7   ICT and data exchange

6.7.1   Introduction

This section deals with the policy and strategic issues relating to ICT and the exchange of data and information. Data and information are essential for a modernised OSBP to function efficiently and effectively. All border controls and processes involve receiving and updating digital data and information. To effectively use this data and information, the data flow must be harmonised and simplified.

The OSBP methodology works on a risk management principle that is data dependent. Relevant information may be exchanged regarding persons, goods and vehicles; however, this will need to be mutually agreed by the OSBP partner states.

6.7.2   Collecting and sharing traveller information

Collecting traveller information can be time-consuming at an OSBP as the traveller has to provide their information twice. Using interoperable systems will enable states implementing an OSBP to explore the possibility of requiring travellers to provide their information only once, with the results transmitted to both states. However, each state's minimum standards and security considerations will be built into the system. Collecting and sharing traveller information will be guided by each state's domestic laws.

6.7.3   Collection and sharing of freight information

For smart logistics corridors and near-future OSBPs to operate, the data or information from sources including weighbridges, seals on containers and car number plates are transmitted in real time to be analysed. In the longer term, the plan is to have no-stop border posts for most traffic where officials will monitor for risks, investigate exceptions, and continually improve the services and systems. This requires robust policy, legislation and institutions to enforce common standards to develop ICT that enables interfaces and other aspects of interoperability.

6.7.4 Technology-enabled OSBPs

The OSBP Sourcebook (2016) makes a critical observation regarding the approach that should be adopted to modernise OSBPs and enable seamless movement of persons, goods and conveyances.

> *ICT is a critical component of collaborative single window systems, simplification of documentation, border management, and modernisation of customs, immigration, and related services. The increase in the number of travellers along with increases in volumes of vehicular traffic and cargo at borders requires a strategic balance between controls and facilitation. ICT allows for the efficient use of limited resources to manage borders by facilitating intra/interconnectivity of agencies while promoting the exchange of data, which is vital for implementing risk management systems and for understanding mobility and trade patterns.*

Once the policy and legal frameworks are largely in place, an ICT and data and information exchange strategy must be agreed at national, and then bilateral, levels.

6.7.5 Border connectivity to national headquarters

While the head offices of border agencies rely on information obtained from each of the country's borders, in many instances the ICT connections are weak and data or information is transferred manually. The lack of connections or slow systems reduce productivity and are a major problem in many border environments. There is an urgent need to develop an ICT system that will establish an interface with national systems to provide prearrival information. In this case, subject to risk management criteria, the freight may be precleared or prioritised for clearance, leading to much faster clearance and release.

6.7.6 Common control zone connectivity

A basic element supporting effective border services is the availability of a modern ICT network in the CCZ. This is especially so in a juxtaposed OSBP where exit controls are carried out in separate facilities. The lack of connectivity may cause officers to revert to manual procedures and only enter the data onto the digital system when the system is functional, with a consequent adverse impact on productivity and security. The entire CCZ needs to be technology-enabled to be effective.

The ICT system employed for CCZ connectivity should:

a) have a central database generating alerts that provide real-time data or information on the cross-border movements

b) have an efficient and timely system for collecting, processing, and sharing data and information on all border activities

c) enable automated information exchange between states on agreed data and information

d) ensure cryptographic security

e) ensure interfaced electronic systems with the OSBP partner states

f) enable authorised users' real-time access to specific data sources.

6.7.7 Essential enablers of ICT technology and data and information exchange

All the functions at a PoE depend on digital processes being secure. Without adequate security for the ICT infrastructure, ICT becomes a risk and not an asset. Therefore, the ICT infrastructure used in the control zone must meet the Minimum Information Security Standards, which outlines the security measures that institutions must implement for sensitive or classified information to protect national security.

A critical enabler for OSBP modernisation and connectivity is adopting, monitoring and enforcing common ICT and data transfer and information standards and rules. Such standards and rules must be agreed between the OSBP partner states and should be embedded in their bilateral agreements. Another critical enabler would be the ICT infrastructure in the form of networks that must be an integral part of the OSBP design, including mapping present and future equipment and workstations.

In the context of the 4IR, the same security systems would enable:

- risks to be managed and safety and security enhanced

- essential and reliable data and information to be generated in real time

- greater efficiency by rapidly facilitating low-risk transactions

- secure interfaces with OSBP partner states.

Expanding digital platforms with a growing user base requires systemically managing risks by applying a security system that includes cyber security. An effective system must be able to continually monitor the ICT systems. The Cybercrimes Act 19 of 2020 establishes security processes, standards and structures that must guide the design of the cyber security measures required, and provisions for backing up data and business continuity.

Finally, the DHA is currently developing a business case for a National Targeting Centre (NTC) for the border environment in South Africa. The NTC is envisaged as a centralised technology, information and data hub for the South African border environment with a central focus on identifying and mitigating border-related risks. The NTC will be a crucial ICT and intelligence enabler for efficiently functioning OSBPs.

6.8 Infrastructure and facilities

6.8.1 Introduction

The purpose of OSBP infrastructure is to facilitate rapid, secure and seamless movement of people, goods and conveyances through a PoE in line with the rights and standards set out in a bilateral agreement and the applicable domestic laws of each state.

The state must invest considerable resources when modernising a commercial PoE and implementing OSBP methodology. **Therefore, the design must be fit for purpose and based on an objective cost-benefit and risk analysis.** Underlying the three OSBP models is a standard model based on the principles of applying harmonised procedures and systems at one location to a differentiated flow of traffic. High-risk traffic is diverted to an alternative process for further investigation and a decision while low-risk traffic proceeds. The following principles must be applied when designing an OSBP's physical infrastructure (roads and buildings) and soft infrastructure (facilities, networks, equipment).

6.8.2 OSBP design principles

The infrastructure design must be fit for purpose and cost effective, taking account of:

    a) the foundational principles of the OSBP as outlined earlier in the document

    b) the location of the OSBP, on a strategic logistics corridor and being connected to core functions and systems of the state and the economy

    c) the physical terrain, topography, environmental considerations and any other natural features or constraints at the OSBP

    d) the OSBP laws and standards of both states, in the region and at a global level

    e) the ratified bilateral agreement.

Given trends in port and corridor use, and the uncertain and dynamic nature of changes that are already happening, the following infrastructure design principles must be formally adopted. Infrastructure design and planning for implementation must allow for:

a) a phased approach to replacing functions performed at ports with preclearance through online platforms, which will have an impact on roads, buildings and the use of space

b) unpredictable changes in the patterns and volumes of trade, the nature and use of conveyances and the development of smart, flexible logistics systems

c) vehicular traffic segmentation through the port

d) the central importance of generating, using and networking data

e) the need to maintain high security and sterility in physical and digital security standards, including in designated zones

f) the need to limit high-cost hard infrastructure and shift funds strategically to sustainable and environmentally friendly modular designs, smart facilities, networks, systems development and training at the port, corridor, back office and national levels.

6.8.3   Design standards and harmonisation

Harmonising physical designs could provide a user-friendly approach by eliminating confusion regarding flows at the CCZ. However, facility requirements are not necessarily symmetrical as the required capacity may differ by traffic direction. Given that different designers may be involved on opposite sides of an OSBP, close coordination between both sides is likely to be necessary to maintain a certain level of harmonisation in design and standards.

a) Selection of facility components

OSBPs may include several facility components that can be categorised by function:

- cargo clearance facilities

- vehicle inspection facilities

- scanning facilities

- incineration and short-term quarantine facilities

- passenger clearance, interviewing and holding facilities

- administrative facilities

- supporting services.

Core facility components are those required for every OSBP, which should be developed in the initial development phase, while others are optional facilities depending on the size or characteristics of the OSBP. Facility components should be selected by examining the OSBP characteristics and its requirements to attain the procedures agreed by the adjoining state. The following sections detail each component.

b) Segregation and segmentation of traffic flows

For OSBPs to be efficient, the traffic flow and physical facilities must be planned to save time and provide for traffic moving quickly through the facility. Generally, passenger and freight traffic should be segmented, and separate parking areas provided. Travellers can generally be cleared much faster and should be expedited through the facility in dedicated lanes, channels or parts of the building and traffic patterns. Where heavy volumes of passenger traffic are handled, the design should provide for clearing vehicles in lanes.

This principle of traffic segmentation in the OSBP requires design creativity that balances security with the efficiency of port operations. The OSBP design should make provision to include dedicated lanes, facilities and/or parking bays that cater for:

- private passenger vehicles

- public transportation, such as buses and taxis

- hazardous cargo and abnormal freight

- VIP and diplomatic vehicles and travellers

- trusted travellers, traders and conveyances

- specialised inspection bays

- general avoidance of cross-contamination of different types of traffic flows and movement

- separation of entry and exit traffic flows.

c) Processing requirements

The types of processing at an OSBP does affect traffic flowing through the facility, parking requirements, and facility design. Identifying the predominant types of cargo and projections for growth or decline must be considered in the OSBP facilities' design.

The use of scanning and inspections is also a major consideration when planning for traffic lanes and parking within these facilities. Unless properly situated, they could cause considerable congestion in the CCZ or force an awkward traffic flow.

Secondary inspection areas must also be provided for vehicles in a manner that will not impede or obstruct the dominant flows of traffic through the port.

Chapter 7: **Enabling legal framework**

7.1 Introduction

Border controls involve various functions performed by officers from different government organisations using the specific authority granted in a state's national laws. It is necessary for officers' functions and powers to be authorised in law as they potentially entail a limitation of the rights of persons. These functions are the expression of the sovereign power and therefore cannot be privatised.

The OSBP concept envisaged for any PoE requires legal authority beyond what is provided by current legislation for two reasons. Firstly, it will entail various officers of one state performing border controls in terms of its national laws extraterritorially in another state.

Secondly, a legal mandate is required for arrangements to host another state's border control officers where they operate in terms of their own national laws within the host state's territory.

This chapter provides an outline of the legislative framework and instruments necessary to establish and maintain OSBPs.

7.2 An OSBP Act

As discussed in the preceding chapters, an OSBP Act is required to put the OSBP concept into operation. The following headings indicate the possible main elements of an OSBP Act:

a) Objective of establishing the OSBP

b) **Definitions:** it is important that all definitions and any statements of purpose are clear and aligned to policy.

c) **Foundational principles:** these principles are discussed in Chapter 4 and are non-negotiable.

d) **Establishing the OSBP:** the geographic area of the OSBP and related zones (CCZ and EUZ) must be clearly demarcated and stated in the respective OSBP Acts and bilateral agreement.

e) **Competent government authority:** for negotiating agreements with one or more adjoining states. Each State must designate a single national authority to negotiate an agreement and any subsidiary annexes or memorandums of understanding. The BMA has been designated as the competent government authority in South Africa.

f) **Extraterritorial application:** of the legislation of the parties to the OSBP agreements. The application must cover both South African officials and officials of the other party. This is discussed in Chapter 6, which deals with the challenge extraterritoriality may present and suggests an approach to ensure laws comply with the Constitution.

g) **Determining jurisdiction**: including establishing and delimiting physical and soft infrastructure of the OSBP. These will have to be carefully specified in the Act or

regulations together with the roles of states, and functions and roles of respective officials. The models of OSBP discussed in Chapter 4 have an impact on the nature and extent of extraterritoriality that may have to be specified in the Act.

h) **Applying criminal law in relation to the OSBP:** an OSBP is a highly regulated environment and ensuring adequate enforcement by both parties is fundamental to its success. A policy framework on applying criminal law is dealt with in Chapter 6.

i) **Schedule of national laws that must be extraterritorially applicable**: this is based on a review of legislation of both countries.

j) **Responsibility and financing for shared facilities:** equitable sharing of responsibility and costs for shared facilities must be clearly stated in the respective OSBP Acts and bilateral agreement.

k) **Disputes between OSBP partner states:** escalation and conflict resolution procedures must be clearly stated in the respective OSBP legislation and bilateral agreement.

l) **Provision for emergencies**: examples are a natural disaster or terrorist attack, in which case the security services of one or both countries would have to intervene, and rules and procedures must be clearly stated in the respective OSBP Acts and bilateral agreement.

m) **Provision for regulations**: given the nature of the legislation and the need for long-term management of agreements and other factors, there will be a need for regulations.

7.3 Changes to existing legislation

Key functions pertaining to immigration, customs, public health, phytosanitary and environmental inspections, cross-border public transportation and biosecurity will need to be assessed in relevant pieces of legislation. Additionally, the laws that impact directly on core OSBP processes must be reviewed and may, where necessary, be amended or repealed to provide for executing associated border services extraterritorially:

a) Border Management Authority Act 2 of 2020

b) Immigration Act 13 of 2002

c) Customs Control Act 31 of 2014

d) National Health Act 61 of 2003

e) Agricultural Pests Act 36 of 1983

f) Cross Border Road Transport Act 4 of 1998.

This list is not exhaustive. A separate legislative and regulatory audit will need to be done when drafting the OSBP legislation. Each department will take full responsibility for making the necessary policy and legal changes. Coordination and oversight will be the responsibility of the BMA as the lead agency for establishing the OSBP.

7.4 The OSBP bilateral agreement

The OSBP bilateral agreement is a legal instrument that is key to ensuring that two states cooperate and succeed in establishing a sustainable OSBP. A viable agreement will be comprehensive, well-defined and have a solid policy and legislative foundation. The following principles should guide the drafting of an OSBP bilateral agreement.

a) A bilateral OSBP agreement is negotiated and signed by the authorised ministers of two countries, supported by their respective technical teams. The agreement only comes into force after ratification by both countries.

b) South Africa should have an OSBP policy to guide OSBP bilateral negotiations, and legislation in the form of an OSBP Act. The minster of home affairs would be designated as the lead authority in OSBP negotiations.

c) An OSBP agreement or its annexes must have a schedule identifying applicable legislation and the relevant authorities.

d) The minimum list of border functions to be addressed in the bilateral agreement include:

   i. Customs and revenue

   ii. Immigration

   iii. National security

   iv. Border policing

   v. Agriculture

   vi. Food, animal and plant inspection

   vii. Public health

   viii. Biosecurity

   ix. Public transport

   x. Environment management inspections

   xi. Other relevant border functions.

The OSBP bilateral agreement must provide for developing an OSBP procedures manual and guidelines, and provide for institutional arrangements to manage the OSBP.

Chapter 8: **Governance and institutional arrangements**

8.1 Policy principles

Good governance is essential for the sustainability and success of OSBP programmes and projects. A national OSBP policy must reflect a commitment to good governance as demanded in the Constitution. This requires an explicit OSBP governance policy and institutionalising the policy by establishing and maintaining appropriately accountable and resourced governance structures.

The King IV Report sets out the general principles:

> *The role of the governing body is to lead the organisation through the discharge of its responsibilities in relation to strategic direction, policy approval, oversight and accountability such that the good governance outcomes of an ethical culture, good performance, effective control and legitimacy with stakeholders are achieved by the organisation.*

The King IV Report and other governance codes increasingly emphasise sustainable development and good stewardship as an essential resource. A country invests in an OSBP with the expectation that it will be maintained for at least 15 – 20 years, which requires governance processes to be institutionalised at bilateral and national levels.

The overall OSBP institutional arrangements should provide for multilevel governance modalities that will be formalised across the strategic, operational and tactical levels between and within the OSBP partner states. Key principles that should inform the multilevel governance arrangements are:

- Transparency

- Public participation

- Accountability

- Subsidiarity

- Co-responsibility

- Rule of law

- Respect for fundamental human rights

- Mutual respect for the sovereignty of the partner states.

Various governance structures will need to be established at various levels to oversee and manage functions at the OSBP. This could include:

a) A ministerial committee that will exercise political oversight

b) A steering committee that will be supported by relevant technical committees or working groups

c) Technical committees / TWGs that will be responsible for executing the work programme and all technical activities

d) A joint border operations committee as a local committee based at the border post.

The principle and value of good governance is foundational in the Constitution. The challenge is how to ensure that the importance of governance and governance institutions is explicitly recognised in bilateral OSBP agreements and other relevant policy and legal instruments, and to establish and maintain strong governance institutions at a national level in South Africa.

The OSBP Act should specify the lead authority and lead agency responsible for OSBP governance; and in some countries it should also establish a national OSBP oversight structure. In South Africa, the BMA, with the support of other relevant organs of state, will be the lead agency responsible for managing the OSBP.

8.2   Political commitment

Political commitment is critical to the success of any OSBP. The political considerations are whether South Africa's neighbours are as politically committed to making the OSBPs work as South Africa is. To be successfully implemented, the OSBP framework must involve not only considerable changes in how border agencies work with each other in one country, but also complete cooperation between the border agencies of the two countries.

The effort required to implement an OSBP does not end at the official opening. Border improvements are an ongoing process that should continue with an active development plan led by the lead agency, ministry or department, which in the case of South Africa, is the DHA. In future, the BMA will assume operational responsibility for PoE infrastructure and maintenance, making the OSBP and the estate easier to manage.

8.3   Joint technical working group

A joint TWG, comprising senior technical officials from South Africa and the adjoining country where an OSBP is to be introduced, must be established.

The TWG will be made up of representatives from all the border agencies operating at the border. The chair and the host of the TWG meetings and workshops should be rotated between the two countries and each country, in principle, should meet the cost of participating in the activities to develop procedures, unless agreed otherwise.

Chapter 9: **OSBP implementation framework**

9.1   Introduction

In its effort to develop a well-researched and extensively consulted policy document, the DHA engaged with various stakeholders that have an interest in effectively and efficiently managing the PoEs. Most entities that operate in the border environment were also consulted through an interdepartmental OSBP steering committee that was formed to oversee the establishment of the OSBPs.

Technical consultations at a regional level were also undertaken through study tours to the Chirundu (Zimbabwe and Zambia) and Namanga (Tanzania and Kenya) border posts. Additional technical binational meetings were held with neighbouring countries (Namibia, Lesotho, Botswana, Mozambique, Eswatini and Zimbabwe) on redeveloping the six land PoEs as OSBPs, the OSBP policy and, in particular, the preferred OSBP model. Most of the neighbouring countries prefer a juxtaposed model.

The minister of home affairs has also consulted with, and met, his counterparts from Botswana, Lesotho, eSwatini, Zimbabwe and Mozambique. Their discussions included the project of redeveloping the six land PoEs as OSBPs and improving border movement operations. All these countries support the concept of establishing OSBPs between South Africa and their countries.

9.2   Business case and baseline survey

A full OSBP business case will be prepared to assess the feasibility, benefits, costs, etc. of a proposed OSBP. This business case will address the rationale, feasibility, preconditions and cost-benefit analysis of establishing an OSBP, and will also include a baseline survey.

A baseline survey will be carried out for every border that is to be transformed into an OSBP. The baseline survey will be used to assess the situation prevailing at both borders that are to be merged into an OSBP before any activities start. Information that should be collected includes the traffic using the border posts (both ways), disaggregated as much as possible (passenger vehicles, small buses, medium buses, long-distance coaches, container carriers, break-bulk, refrigerated, tankers, etc.), and the average time taken to clear the borders for each class of vehicle (upper and lower limits). This information will be used to project traffic flows for the following 10 – 20 years so that the design for the OSBP is able to accommodate this traffic.

A baseline will detail the processes followed by all border agencies on both sides of the border for entry and exit procedures. These processes will be used as the basis for mapping the standard operating procedures to ensure that no processes are omitted. A baseline will detail the infrastructure in place, which will be used to plan the new infrastructure required. The baseline will also itemise the computerised systems and the ICT and telephony hardware currently in place. This information will assist to perform an ICT software and hardware gap analysis.

9.3 Design the physical facilities as a common integrated facility

Physical facilities will be designed according to the planned procedures to allow for a logical and smooth movement of vehicles, persons and documents at the border post. The infrastructure development at borders will follow a minimalist approach when they are converted from two-stop borders to OSBPs. This is to encourage completing as many of the clearance processes as possible behind the border and to discourage delays at the border, simply because the infrastructure is in place and should be used.

South Africa and the adjoining state will each provide comparable office space and accommodation for the other, within the facilities located in the host state, and waive all costs related to the occupation and maintenance of such premises. Both states should offer utilities on a reciprocal basis to the adjoining state.

South Africa and the adjoining state should harmonise the structures and facilities in the control zones to mirror each other, using coordinated designs and procuring related construction, maintenance and management services. In doing so, the states will consult both internal and external public and private sector stakeholders for input on their requirements in the control zones.

9.4 Institutional arrangements

The appointment of a lead agency is important to the success of OSBP operations. While South Africa already has a BMA (established by the Border Management Act 2020), its neighbouring states will be encouraged to appoint a lead agency to coordinate OSBP preparatory and post-implementation activities. However, the choice of a lead agency by any country should be purely based on national considerations.

9.5 Change management

The start of joint border operations at South African PoEs is going to represent a major change in work habits and conditions for South African, and its neighbouring countries' staff.

\firstly, it will imply a new mind-set, with staff working side by side and, sometimes, in an integrated manner. This will also lead to changes in some procedures and streamlined activities, which will be centred on the objectives rather than the institution. There will be a shift to minimal intervention when there are no grounds to suspect any fraudulent activity.

The emphasis at the OSBP will be on providing good conditions of control while offering greater facilitation to both travellers and commercial operations. Methods of work will change, facilities will need to be improved, and new equipment will be needed. This should be accompanied by a change management strategy, aimed at both officials and users (including clearing agents/brokers).

9.6 High-level OSBP implementation plan

The following critical interventions will be undertaken over the short- to medium-term to give effect to the OSBP implementation plan:

Intervention	Deliverable	Time frames
OSBP policy	Final OSBP policy approved by Cabinet	March 2022
OSBP legislation	OSBP Bill approved by Cabinet for submission to Parliament	March 2023
OSBP bilateral agreements with affected neighbouring countries	Draft OSBP bilateral agreements to be finalised in consultation with South Africa's 5 neighbouring countries (Zimbabwe, Botswana, Mozambique, eSwatini & Lesotho)	March 2023
Redevelopment of six priority land PoEs as OSBPs	Construction completed and the six priority land PoEs are operational as OSBPs	December 2025