

THE NATIONAL LAND TRANSPORT TRANSITION ACT, (2000): HOW LONG IS THE TRANSITION?

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ABSTRACT

The National Land Transport Transition Act (NLTTA) came into effect in 2000 and all spheres of government are presently implementing the Act. The NLTTA was enacted as a response to the challenges, weaknesses, inefficiencies and problems confronting the public transport industry. The NLTTA seeks to establish a coherent, developmentally orientated approach to public transport, drawing in all spheres of government. The main feature of the NLTTA is its requirement for municipal, provincial and national level of transport planning to be the basis on which all-future public transport operating licences are awarded to operators. The NLTTA introduced key institutional structures such as Operating Licence Boards, Registrars, Provincial Appeal Tribunal, and National Transport Appeal Tribunal.

The nature of the NLTTA - as a transitional Act, is that it must be implemented within a period of about 5 years and then a National Land Transport Act must be put into place. Funding is one of the critical areas that need to be addressed in the Land Transport Act. Furthermore, the White Paper on Transport Policy (1996) stipulates that "public policy cannot be static but must at all times be perceptive to the environment within which it operates. Policy therefore needs to be reconsidered and if necessary revised on a continuing basis."

The paper discusses the progress made in the implementation of the NLTTA and the challenges that are inhibiting the effective implementation of the NLTTA and the movement towards the completion of the transition period.

1. INTRODUCTION

The NLTTA was enacted to address a number of challenges that are inherent in the land transport system in South Africa. Given the historical fragmentations, inefficiencies and poor service quality of the public transport, the enactment of the NLTTA was a necessary intervention to transform the public transport system. The enactment of the National Land Transport Transition Act 2000 (Act No. 22 of 2000) (NLTTA) represented a major step in the transformation of public transport industry in the history of South Africa. The NLTTA seeks to establish a coherent, developmentally orientated approach to public transport, drawing in all spheres of government. The main feature of the NLTTA is its requirement for municipal, provincial and national level of transport planning to be the basis on which all future public transport operating licences are awarded to operators.

The awarding of operating licences based on transport plans in an intervention to address the following issues amongst other things:

- Lack of transparency and regulated framework on criteria for awarding permits and operating licences.
- Lifelong permits for certain bus companies – thus inhibiting any competition especially from black emerging operators.
- Lack of coherence and balance between supply and demand for public transport.
- Wasteful competition and certain routes being underserved while other routes are over-served.

Transport planning as outlined in Part 7 of the NLTTA seeks to address the above challenges amongst other issues.

The NLTTA represents a major step in the transformation of land transport with its radical interventions in transport planning and the introduction of key institutional structures. However, lack of sufficient funding for the effective implementation of the NLTTA is one of the barriers that inhibits the effective implementation of the NLTTA and hence the finalisation of the transitional period.

During the drafting stage of the NLTTA, funding was identified as an essential requirement to enable the transformation of public transport. The lack of consensus between Treasury and the Department of Transport meant a compromise had to be reached. As a result a chapter on funding that was part of the NLTTA Bill was removed. Therefore funding for the implementation of the NLTTA is discretionary and provided on a year-to-year basis.

With a vision to ensure the effective co-ordination between all role players, the NLTTA introduced a number of institutional structures. These institutional structures include the Operating Licence Boards (OLBs) Registrars and the Appeal Tribunals (Provincial and National). However there are a number of challenges that are still inhibiting these institutions from functioning in a manner that was envisaged in the Act. The challenges that inhibit the effective implementation of the NLTTA are multi-faceted and some of them are outlined below.

2. OPERATING LICENCE BOARDS (OLBS)

Bus and taxi operators are experiencing many frustrations regarding the services of the provincial operating licence boards. Operators indicate that the processing of permit and operating licence applications is extremely slow (SABOA: 2004). Applications for an operating licence for inter or intra-provincial service may take up to 2 years or more. Operators also report to be dissatisfied with the backlog in processing of permits and operating licences. As a result of these problems, the operators break the law by not possessing the appropriate authorisation to operate or become unable to operate – thus not meeting the customer's needs (demand) which is enshrined in the NLTTA. Therefore, there is a need to improve service standards of the OLBs in such a manner that operators can get an efficient and effective service from the OLBs.

3. PERMIT CONVERSION

In terms of Section 32 of the NLTTA, all permits must be converted into operating licences by a due date to be determined by the Minister. There are 2 types of permit conversions that must take place viz: conversion of a permit from radius to route; and then the conversion of permits to operating licences. An audit conducted by the Department of Transport in all provinces indicated that little progress has been made in the conversion of

permits to operating licences. According to the report, Gauteng has not even begun with the conversion of permits to operating licences and only Western Cape reported to have finalised the process. A number of problems were cited as hampering the process. Lack of capacity in the OLBs, poor information systems and waiting for concurrencies from other provinces are factors cited as the most inhibiting factors.

The conversion of permits to operating licences is one of the main transitional issues that need to be addressed and closed so that there is certainty and no chaos in routes allocation especially in the taxi industry. In terms of the NLTTA Section 32(2) the Minister in consultation with MECs must set a date by which all permits must have been converted into operating licences. Consultation with provinces to set the date was done and the Minister and MECs (MINMEC) decided to set the due date for permit conversion for the minibus industry as 31 August 2005 in line with the urgency of the taxi recapitalization project. While this date has been published in the Gazette, it remains questionable if provinces will be able to meet it given little progress that has been achieved to date.

4. INSTITUTIONAL STRUCTURES

In order for the effective implementation of the NLTTA, there are key institutions that were envisaged in the Act. These include the OLBs, Registrars and the tribunals. The OLBs, the Registrars and the Planning Authorities are operational even though there is room for better co-ordination especially between planning authorities and the OLBs in verification of applications for operating licences in terms of transport plans.

One of the major concerns regarding institutional structures is the fact that the Transport Appeal Tribunal (TAT) has not been formed. The TAT's role is to consider and adjudicate disputes and appeals relating to applications for operating licences from operators. Currently the disputes and appeals are dealt with by the National Transport Commission (NTC), which was established in terms of the Road Transportation Act (1977). However, the legality of the decisions taken by the NTC is questionable given the fact that in terms of the NLTTA, the NTC is not an institutional structure. It is therefore of utmost importance that the TAT be established as a matter of urgency so that there is certainty among operators and provinces on procedures to address problems relating to disputes and appeals for operating licences and permits.

5. FUNDING

It is quiet clear that there will never be "enough funding" for transport given the scarcity of resources and competing priorities and demands confronting government. However, there is no doubt that the current funding levels available for public transport in particular, is insufficient to achieve the visions enshrined in the NLTTA. During the drafting stage of the NLTTA Bill, funding was seen as an essential requirement and hence a chapter addressing funding issues was included. However Treasury opposed and suggested that

the chapter on funding issues be removed as only Treasury has powers to legislate on funding issues. This resulted to uncertainty in determining guaranteed and sustainable funding sources for the implementation of the NLTTA. It was mainly against this background that the NLTTA became a transitional Act.

Research conducted on the progress made in the implementation of the NLTTA indicates that lack of funding is one of the barriers to the effective implementation of the NLTTA. For example, the Palmer Development Group (PDG) report on the implementation of the NLTTA (2002) indicated that "sufficient funding is not currently available to meet the

transport planning requirements as set out in the NLTTA”(PDG, 2002:14). The statutory plans and their required frequency impose significant costs on the municipalities (Ibid). Current funding for the implementation of the NLTTA is discretionary as the Minister “may” provide it.

Furthermore, the lack of sustainable and guaranteed funding also inhibits the establishment of Transport Authorities. A number of Metropolitan municipalities intend to establish Transport Authorities as promoted by the Act but the uncertainty regarding funding for Transport Authorities prevent progress. The Ethekewini Transport Authority which is a pilot project is also facing funding challenge as funding for the TA is not guaranteed and needs to be negotiated on an annual basis (Ethekewini Transport Authority Founding Agreement, 2003). Given these funding challenges there is not much progress being made to finalise the implementation of the NLTTA and move towards the drafting of the National Land Transport Act. In view of these funding constraints, it is necessary to calculate the amount of resources necessary to implement the Act and be realistic and do what is achievable and within the means.

6. CAPACITY TO IMPLEMENT AT LOCAL SPHERE

Every policy implementation process encounters some sort of barriers. The barriers could be financial, technical, political, etc. In the context of the NLTTA the lack of capacity (skilled personnel with strategic and technical capability to implement) across all spheres of government is a serious barrier to implementation. The lack of capacity is mostly dire at local sphere where implementation has to occur. In order to turn the situation around, there is a need to build capacity and channel resources towards the most needy areas especially the municipalities in resource poor areas.

Transport planning is one of the major tools and interventions to create leverage on the quality and quantity of public transport system. Transport planning also has a potential role in transformation of the public transport industry. i.e. the plans that have to be prepared at local sphere must inform decisions (funding, infrastructure, choice of modes, etc). It is also an important challenge to ensure that once the plans have been prepared, they are utilized to inform all the transformation processes. Currently, the plans are not informing the issuing of operating licence and hence the balance in demand and supply is not being realized as envisioned in the Act.

7. CONCLUSION

Given the fact that the NLTTA is a transitional Act, there is a need to guard against being stuck in the transition indefinitely. Therefore, the transitional issues need to be identified and addressed within a clearly defined time frame. If the time frame is not defined, then the transitional period might become decades. Funding, which is one of the key issues that made the NLTTA transitional, needs to be addressed so that there is certainty and sustainability in financing public transport and infrastructure. Capacity building needs to be intensified so that there are skilled people to effectively implement the Act. Better coordination and co-operation between the 3 spheres of government is necessary for effective implementation of the NLTTA. Finally, it is quiet clear that unless sustainable and guaranteed funding for the implementation of the NLTTA is provided, we are likely to be stuck in the transition.

8. REFERENCES

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