

# ASSESSING PROGRESS WITH THE IMPLEMENTATION OF THE PUBLIC TRANSPORT POLICY IN KENYA

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## ABSTRACT

The public transport system in Kenya is basically provided by privately owned matatu vehicles whose ownership structure is atomised. They initially entered as pirates running parallel to the then subsidised public transport system, were resisted but eventually allowed to operate through a Presidential decree but without formal regulatory provisions to govern their operations. Since then, several policy formulations have been proposed and implemented in attempts to organise the sector without much success. Using both primary and secondary data, the paper gives a chronology of the implementation of key policy formulations meant to streamline the sector. Also, using part of the information generated from a bigger study which used case studies of fifteen matatu businesses on selected routes in Nairobi, the study evaluates the progress with the implementation of the public policy in Kenya with specific reference to the latest policy directive. The paper concludes that the cost, mode and time implications should be taken into consideration in the implementation of such key policies.

## 1 INTRODUCTION<sup>1</sup>

The public transport system in Kenya is basically provided by privately owned and operated vehicles whose ownership structure is atomised. They started operating as pirates to fulfil demand that could not be met by the then franchised public transport system. On entry informally, they were initially resisted by the public transport operators and the transport regulatory authorities but were eventually formally allowed to operate by a presidential decree in 1973 without formal regulatory provisions put in place to govern their operations. Subsequently, attempts to organise them through various policy formulation and implementation have not been successful. The Kenya Government continues to seek solutions to what many see as Nairobi's chaotic paratransit sector

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through policies and directives. The latest policy notice aimed at streamlining the sector was a directive to the matatu operators to belong to either a Savings and Credit Cooperative Organisation (SACCO) or company as a condition to renewal of their operating licences. Also, a three month time frame was given to the operators owning lower capacity vehicles to move to higher capacity. The questions to be answered are: to what extent and in what ways has the government directive mandating SACCO/company membership brought about greater order in the matatu sector, and what are the emerging problems that need stakeholders' attention?

The paper is divided into six parts, part one highlights the introduction, part two gives the theoretical considerations with emphasis on institutional framework. Part three describes the methodology, part four provides an overview of the various transport policy developments and a description of the government departments dealing with transport policy implementation. Part five gives the findings and part six summarises the findings and draws conclusions.

## **2 THEORETICAL CONSIDERATIONS**

### 2.1 Institutional Theory

North (1990) defined institutions as “the rules of the game in a society, or, the humanly devised constraints that shape human interaction. In consequence they structure incentives in human exchange, whether political, social or economic”. He gives a distinction between institutions, identified as rules of the game, and their players. He also goes further to define these players as organizations, i.e. “groups of individuals bound by a common purpose to achieve objectives,” Hurwicz (1994) focuses more on the enforcement aspect, expressing the rules of the game as a triplet, which he calls “mechanism” or “game form”. Aoki (2001) states that specifications are required so as to know who plays the game, what actions players can choose (choice set) and what physical outcome corresponds to each profile of the players' choices (outcome function). The institutional approach was further refined by Alexander who saw it as an institutional design.

Alexander (2007) defines institutional design as “the devising and realization of rules, procedures, and organizational structures that will enable and constrain behaviour and action so as to accord with held values, achieve desired objectives, accomplish set purposes or execute given tasks”. By this definition, institutional design is pervasive at all levels of social deliberation and action, including legislation, policymaking, planning and program design and implementation.

### 2.2 Institutional Framework

Building on these institutional theoretical foundations, which hypothesize that institutions matter, the interaction of rules of the game and the players and the enforcement of such rules should be taken into consideration in designing policies. The contribution of this paper lies in the investigation of how the institutional design of the transport policies and the relevant government departments represented by the rules, procedures, and organisational structures, at a national level, play out and influence the implementation expressed by the operations of the matatu business owners.

### **3 METHODOLOGY**

This study is part of a bigger study which was carried out in two parts. Part one was a scoping study which was carried out to get information from key informants knowledgeable of the matatu sector (see McCormick et al. 2011). One group of the key informants were committee members of a SACCO which had been in existence before the government directive. Part two used fifteen purposively selected matatu operators as case studies to gather information about their operations.

The study interviewed paratransit operators in Nairobi who belong to either a SACCO or company. The methods used for primary data collection were face-to-face interviews using a guide, observation and telephone interviews. The main phase of data collection on the fifteen cases was undertaken after the implementation period of the notice had elapsed between the month of May and November 2011, with most interviews being done between May and July. The key informants were interviewed at a time when the period for the implementation of the public notice was still open. A question on compliance with regulations from the study of matatu strategy was used as a basis for discussing and getting more information about the SACCO/company, from the fifteen operators who participated in that study. Additional information was gathered from a stakeholders' workshop during which preliminary findings were discussed with respondents and other key industry players. There was also a follow up by telephone to get information on the progress of the implementation.

Sources of secondary data included published literature, web-based materials and government documents. The literature review covered books on urban transport, journal articles, newspaper articles, websites, reports, Government of Kenya documents, working papers and discussion papers.

Data collected from the matatu strategy study, which formed the basis of this paper was entirely qualitative. The analysis was thematic, based on themes derived from the interviews.

### **4 POLICY IMPLEMENTATION AND INSTITUTIONS**

#### **4.1 Public transport policy making and Implementation**

Transport policy making and implementation in Kenya has been sporadic and inconsistent, with studies showing that until 2004 there was no comprehensive transport policy for both road transport and the entire transport sector (Asingo 2004). Although there was no comprehensive road transport policy, there is the Traffic Act of 1975 which has had occasional fragmented reviews and policy statements issued from time to time and presidential directives to guide the sector.

The latest policy directive was issued by the Ministry of Transport and the Transport Licensing Board gave a public notice on 1 November 2010 that requires all public transport operators to come together to form either Savings or Credit Cooperatives (SACCOs) or companies and for small capacity vehicles to move to higher capacity as a condition for continued registration. Operators were first given a deadline of 31 December 2010 to comply with this directive, but the date was subsequently extended to 15<sup>th</sup> February 2011. The directive was given on recommendation by the Integrated National Transport Policy (INTP) of 2003. The major objective to be attained with this public notice was to enable the government to effectively regulate the public transport by dealing with such PSV

operators through the corporate bodies of SACCO or company, move towards the consessioning of the routes, and decongest Nairobi city roads by phasing out the fourteen-seater lower capacity vehicles. The policy was generally expected to replicate the perceived success of the inter-city and a few intra-city SACCOs and the bus franchise companies that operate in the city.

However, the implementation of this notice was initially contested by a group of operators who filed a court suit seeking to block a government directive requiring them to join SACCOs or form a company as a condition for securing operating licences. They “argued that the notice gave an unfair advantage to public transport operators already carrying out business as limited liability companies or SACCOs” (Daily Nation 30/12/2010). Despite this initial resistance, a significant number of the operators had joined SACCOs by the time the period of the implementation expired as noted by the increase in SACCO registration. Gicheru et al. (2011) noted that in the provinces, and indeed, the whole country, majority of the SACCOs were registered in 2010 and 2011 as evident from the increased number of SACCOs registered.

#### 4.2 Transport Policy Implementing Institutions

There are several government departments that are in charge of implementing transport policies in Kenya, they include: the Transport Licensing Board, the Registrar of Motor Vehicles, the Local Authority, the Traffic Police, the Motor Vehicle Inspection Unit, the Driving Test centre, and the Ministry of Cooperatives. Coordination and cooperation within these policy implementation agencies is necessary for the transport policies to be successful. In an ideal operating condition, formal matatu operations would be enhanced through formal route allocation by the TLB, enforced compliance of Traffic Rules by the Traffic Police Department, designated operation termini managed by the local authority as well as up to date records on paratransit operators in the transport system. The latest addition, Ministry of Cooperative Development and Marketing is to vet the registered organisations and help in regulating their operations as savings credit cooperatives.

##### *The Transport Licensing Board*

The Transport Licensing Board was created by the Transport licensing Act (CAP 404 of the Laws of Kenya). Its mandate is to license all public service vehicles after technical inspection and assign them routes. However, TLB has been unable to fulfil its mandate of allocating routes, however, the department does not seem to be conversant with the routes and the number of public vehicle requirements of any of the routes. In practice, the matatu operators normally choose the routes in which to operate and thereafter seek TLB licence to continue operating (Chitere 2006). He notes that as a result, some routes that are considered to be profitable are prone to be controlled by cartels who normally try to limit entry of new competitors and charge route entrance fee for those permitted to do so. In some instances, criminal gangs may be used to ensure potential competitors are unable to join the route.

##### *The Registrar of Motor Vehicles*

The registrar of Motor vehicles works under the TLB. The Registrar’s mandate is to register and license all motor vehicles and drivers as well as keep records. Section 100 of the Traffic Act empowers the registrar to determine and fix passenger and luggage capacity for all categories of vehicles. In a study by Asingo (2004), it was established that the Registrar registers and licenses motor vehicles and drivers largely as a revenue raising mechanism for the government. The registrar of motor vehicles is currently part of the Kenya Revenue Authority (KRA) in the Ministry of Finance rather than in the Ministry of

Transport. Another study by Asingo and Mitullah (2007) further established that the register has been unable to keep up to date information of public service vehicles on Kenyan roads thus hindering transport planning and infrastructure development.

#### *Local Authorities*

Section 72 of the Traffic Act empowers the Nairobi City Council (NCC) to designate parking places for vehicles including matatu terminuses and stages. Local Authorities tend to set up termini that are considered by the operators and passengers to be inconveniently located and small in size compared to the vehicle fleet that ply the various routes (McCormick et al.2011). This encourages picking and dropping of passengers outside the designated stages and termini.

#### *Traffic police Department*

The role of this department includes enforcing traffic rules, examining PSV drivers and issuing certificates of good conduct to the matatu operators. This makes them the most crucial road transport policy implementation institution in Kenya. However it is the inherent weaknesses within this institution that has lead to increased traffic rule violation by almost all the road users (Chitere and Kibua 2004, Chitere 2006). The Traffic Police Department is marred by mismanagement and lack of commitment to duties; they are poorly equipped and are basically underpaid. Besides, some traffic policemen are also owners of Matatus, bringing in conflict of interest when applying the traffic rules.

#### *Ministry of Cooperative*

The Ministry of Cooperative Development and Marketing is the latest government institution to be involved in implementing directives meant to regulate the public transport system. Co-operatives are essentially socio-economic private sector business enterprises. To capture their social and economic nature of cooperatives, Craig and Saxena (1984) defined it as the free and voluntary association of people to create an organization, a co-operative, which they democratically control, providing themselves with goods, services and or livelihoods rather than profiting from others, with equitable contribution of capital and acceptance of a fair share of risks and benefits arising from the joint activity. The concept has been used to pool resources together in a many fields including transport in different countries.

## **5 FINDINGS**

The progress of implementations can broadly be classified into two, those that generally lead to the improvements of the organisation of the public transport sector and the problems that need stakeholders' attention.

### **5.1Improvements to the organisation of the matatu sector**

#### **5.1.1 Sector wide improvements**

The sector wide improvements include better working environments, the relationship with the regulatory authorities, elimination of cartels and customer relations.

#### *Working environment*

The implementation of the policy has improved the working environment in the paratransit sector. Most of the respondents opine that the formation of SACCOs is a step in the right direction (R7, R11, R12). According to them, people do not want to invest where they cannot get returns, but streamlining the operations of the operators through SACCOs/companies has so far brought some as semblance of order making it possible

for them to operate profitably. Joining SACCOs/companies also improves the working environment by “bringing like minded people to work together” (R11) and providing checks and balances on operators.

Nonetheless, some of the operators felt that there is need to vet SACCOs that register because currently anybody can purport to own vehicles hence qualify to register a SACCO/company. Some gangs took advantage of this loophole and formed their own SACCOs/companies on certain routes with the purpose of exhorting money from vehicles owners who according to the directive, have to show their affiliation to such organisations in order to get operating licence (R7, R8).

#### *Relationship with regulatory authorities*

SACCOs provide a forum for matatu operators to communicate with the regulatory authorities. Through the SACCOs, members are able to communicate any grievances with the police and forward any recommendations to other organs of the Government that deals with paratransit operators. “If we have a problem we can go to the Traffic police and inform them. If the Traffic Police have a problem with the crew then they come to us and we will assist them” (R5). In some instances, the SACCOs hire lawyers to defend the crew when the Traffic Police harass them (R5, R6, R7, R8, R9, R10, R11). The Matatu owners forward any complaints and suggestions they have to the SACCO which in turn forwards such issues to the Government on behalf of the owners. As one respondent aptly said, “there is power when people work together” (R11).

However, some respondents felt that there was lack of consultation with, and readiness to recognize the views of other stakeholders when the new directive was given and implemented (R2, R4). The directive was in some instances rejected, not understood and could not be complied with by some operators.

#### *Elimination of cartels*

The formation of SACCO/company has largely resulted in the elimination of cartels from most of the routes. In some routes the cartel gangs were eliminated with the help of the police while others were done by the management committee of the SACCOs (R5, R7, R11). However, one respondent admitted that they cannot control what happens on the road once the members are registered at their SACCO (R7). Other respondents also said that cartels are still operating in some routes (R3, R11). Some operators even admitted using the services of such cartels at some daily fee (R6, R12). In the cartel free routes, the daily protection fee which used to be paid out are now channelled as contributions to SACCOs.

#### *Customer relations*

There is observed improvement in relations between the operating crews and the passengers. This is illustrated by queuing by passengers as they board and having a channel of airing any grievances. Passengers can forward their complaints through the SACCO clerks manning the termini (R2, R5, R7, R11). The passengers can also forward their complaints directly to the SACCO management through the telephone numbers which are now displayed on the vehicles. Officially all SACCOs are required to display their contact telephone numbers and have suggestion boxes in each vehicle.

### 5.1.2 Individual level improvements

#### *Source of financing*

Members benefit by pooling resources together in three ways. First, they jointly purchase SACCO/company owned and operated vehicles (R2, R4, R8, R9, R11, R14). Second, individual members are able to access SACCO loans at three times the value of the saved shares and bank loans at discounted interest for the operators affiliated to any SACCO. Third, some SACCOs give their members interest free soft loans for branding vehicles and purchasing spare parts.

However, some operators stated that they may not have sufficient capital to upgrade their vehicles to higher capacity (R 7, R15). According to them, the cost implications of moving to higher capacity vehicles were not adequately considered before the policy was adopted. Some of them were of the opinion that it may not be possible for most of the small vehicle operators to raise the additional money without Government assistance (R2, R4, R9, R15).

#### *Getting and vetting employees*

Individual operators source their employees on recommendations of SACCO members. Such employees are also vetted by the SACCO management committee (R2, R9, R11). The SACCO members often discuss the conduct of the route operating crews, making it difficult for such employees to move from one employer to another within the same SACCO.

#### *Networking*

The formation of SACCOs has made it easier for individual members operating in the same route to know each other making it possible for them to deal with any problems that may arise. Before the policy directive, each owner operated as an individual, tackling any problem encountered during operation individually. For cost control purposes, some have network with the fuel stations for drivers to fill up using fuel cards (R6, R13).

### 5.2 Problems that need stakeholders' attention

The implementation of the policy is considered to be slow because of inadequate capacity of the implementing institutions, cost considerations, insufficient knowledge, lack of wider consultation with the stakeholders in the industry, and limited time span for enforcing the implementations

#### *Implementing institutions*

The government departments charged with the responsibility of implementing the various public transport policy issues were seen to be too many and their activities uncoordinated. The respondents came up with nine such institutions namely: Transport Licensing Board, the Registrar of Motor Vehicles, the Local Authority, the Traffic Police, the Motor Vehicle Inspection Unit, the Driving Test centre, and the Ministry of Cooperatives. Also mentioned were Ministry of Transport, Ministry of Nairobi Metropolitan, Ministry of Roads, Judiciary, and National Environmental Management Authority (NEMA).

There was also a wide spread belief that transport policy implementation had not been subjected to any test in Kenya. One respondent even suggested that the government should have done a pilot project before to gauge the feasibility of such policy (R7).

The main reason for the lack of successful implementation of transport policy was held to be the lack of political will and leadership and skills within the bureaucracy. The political will depends on the Minister in charge of transport at any one time. Those with the strong will to have the traffic rules followed try to enforce its implementation. In an election year

the politicians encourage the operators not to implement such policies to gain political favour from such operators.

Little if any, regular and structured monitoring of transport policy implementation has taken place since the directive was given. According to some respondent, the officers from the Ministry of Cooperatives were supposed to be monitoring the implementation process but had not been seen on the ground by the time of the study (R8, R9, R11). However, one of the respondents had actually been trained by the cooperative Ministry officials (R5).

Some respondents felt that the operation permit processing offices (TLB) were not effectively dealing with operators licenses (renewal, extension and issuing new), because their activities are centralised making the operators loose valuable time looking for them in other parts of the country (R2, R10, R11).

There are inadequate institutional structures to deal with public transport at the local government level of government such as small bus parks and lack of termini to cater for the newly formed SACCOs in cases where they are more than one in one route (R2, R4, R5, R10, R11, R14).

Another failure by the implementing institutions may be that of corruption by some Government officials who are supposed to enforce the new regulations. They often fail to take any action against errant operators after receiving bribes, thereby encouraging such vices (R2, R3, R9, R11, R14, R15).

#### *Operators' knowledge*

There was general lack of knowledge on how SACCOs should be run; even keeping records was a problem in almost all the newly formed ones (R3, R4, R8, R9, R15). According to some respondents, most operators rushed to form SACCOs (R2, R9), although they had no management know how. Even some of the respondents who had formed companies as a result of the directives were not keeping any accounting records and were not aware of the general law requirements of running such businesses. Some operators are using fake SACCO/company affiliation certificates to get operating licences from TLB.

#### *Implementation time-span*

The implementation of the directive was done in a hurry without taking into consideration of the situation on the ground. It assumed that once the SACCOs are registered then their running is a forgone conclusion. However, once the SACCOs are registered then there is the problem of running it in terms of availability of the members' time and knowledge. One of the respondents suggested that "if Government wants to help SACCOs, they should train officials and members" (R9).

## **6 SUMMARY AND CONCLUSIONS**

Directive requiring matatu businesses to join SACCOs or form companies appears to be bringing more order into the sector. There are general improvements in the public transport sector in the form of better working environment, relating to authorities, elimination of cartels and customer relations. There are improvements even at individual level in terms of finance, getting employees and networking.

Nevertheless, some problems remain: the most notable is the lack of capacity to implement the policy, major operational issues in the permit and registration offices, a lack



of policy direction at the local levels of government, inability to take into consideration the cost implications to the operators, and too short implementation time span. Respondents pointed to corruption in many forms, existence of fake SACCOs, existence of informal groups in some places, lack of training for SACCO officials.

In conclusion, the findings given are tentative but there is a general need to have a centralised transport authority that can plan, implement and monitor while being sensitive to the cost and time implications of such important policies. There is need for consultation and strengthening the lobbying functions of SACCOs. Also, corruption must be addressed or SACCOs and their members will become discouraged. Finally, further key informant interviews of selected government and other institutional stakeholders need to take place before conclusions can be finalised.

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