

PARATRANSIT LABOUR AND REGULATORY COMPLIANCE

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ABSTRACT

Matatu transport which is a form of paratransit in Kenya provides employment directly and indirectly to institutions and individuals. The sector mainly offers direct employment to drivers and conductors. These two are conceptualised to constitute paratransit labour. Indirectly, it offers work to vehicle assemblers; graphic designers; mechanics; insurance companies and petrol stations. Unlike previous studies which were based on a quantitative methodology, this paper takes a qualitative approach from the perspective of paratransit owners in an effort to explore how the terms of employment of paratransit labour affect regulatory compliance. The findings demonstrate the terms of employment such as the job responsibilities i.e. the minimum target and customer relations; working hours and breaks; and remuneration affect how paratransit labour behaves and interacts with other road users by increasing ridership through competitive behaviour that leads to violation of traffic regulations. Efforts by Government to enhance paratransit labour regulatory compliance should not focus on introducing tougher penalties but addressing the problem of corruption by traffic police and target setting by owners.

1. INTRODUCTION¹

Transport, particularly road public transport is a labour intensive activity that requires staff with a wide range of skills (Illes, 2005). Matatu transport which is a form of paratransit public transport in Kenya provides employment directly and indirectly to institutions and individuals (Khayesi, 1997). The sector offers direct employment mainly to drivers and conductors. These two are the focus of this paper and are conceptualised to constitute paratransit labour or crew. Indirectly it offers work to vehicle assemblers; graphic designers; mechanics; insurance companies and petrol stations.

Labour issues in previous paratransit studies have focused on exploitation of workers by owners in terms of remuneration and working hours (Cervero and Golub, 2007; Barrett, 2003). In their study of informal transport, Cervero and Golub (2007) found that labour

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abuses among small operators are common and these range from disregard of laws related to minimum salaries and working hour restrictions. Barrett (2003) looked at working hours in the context of taxi operators in South Africa noting that these were often abused. In Kenya, previous studies on matatu workers have taken a quantitative approach focusing on: labour conditions of employment (Khayesi 1997; Nafukho and Khayesi, 2002), and regulatory compliance (Mitullah and Asingo, 2007b).

Khayesi (1997) explored the conditions of employment of matatu workers finding that job insecurity in the sector was high because crew had verbal contracts which were temporary. Attaining profit was the main determinant of employment. Understanding the struggle for livelihood and the resultant problems of conditions of work was the central concern of Nafukho and Khayesi (2002) when looking into regulation and road safety among paratransit labour. The authors established that the financial expectations from a broad array of stakeholders influence overall behaviour of crew on the road. Nafukho and Khayesi placed emphasis on pressure from the owners and demand for bribes by traffic police officers as key factors affecting labour performance and compliance to regulations. In early 2000 in an attempt to address the increased number of road crashes, careless driving and disorganized operations of the Matatu industry, the Government of Kenya issued Legal Notice No. 161. Specific to paratransit labour, the Legal Notice required that every driver hold a valid driving license; that every driver should be of sound mental and physical health and have good eyesight; that the crew should be security vetted and certified by the police; that the crew should wear a prescribed uniform and badge and undergo compulsory testing after every two years to ascertain his/her competence (McCormick et al, 2012). There was an initial decrease in road crashes, but this was short lived (Mitullah and Asingo, 2007a). In order to establish reasons for non compliance among paratransit labour Mitullah and Asingo (2007b) found that PSV drivers and conductors were paid meagre wages, often with no benefits. Consequently observance of rules and regulations was poor and instead there was a thirst for making extra income out of the business.

Although widely applied in the context of crime studies, the social strain theory assumes that when the social structures fail to provide sufficient means to achieve success in the prescribed fashion, an increase in the rate of crime is the anticipated result (Chamlin and Cochran, 2007). Therefore in the context of blocked opportunities, the contradictions between the values concerning the means and the ends produce a state of anomie, which in turn, motivates some segments of society to engage in criminal activities to procure monetary goals. Specific to paratransit labour, the goal is profit maximization (Khayesi, 1997; Nafukho and Khayesi, 2002; Mitullah and Asingo, 2007b); the means of achieving the goal could imply disregard of traffic rules and regulations. In an effort to achieve commensurate returns paratransit crew were prone to violating regulations specified in the Traffic Act Cap 403² (McCormick et al, 2012; Mitullah and Asingo, 2007b). Furthermore the crew was found to engage in corrupt practices in order to get away with traffic offences (McCormick et al, 2012). According to McCormick et al. (2011), the weak institutional environment where there is corruption and lack of co-ordination among institutions

² The Kenya Traffic Act CAP 403 outlines the regulations that are to be adhered to by all road users. The Act outlines special provisions relating to drivers, and conductors of motor omnibuses or matatus stating the working hours (prohibiting driving more than 8 hours in a day); vetting and qualification of crew (licenses); prohibiting driving without a license; prohibiting touting; and prohibiting use of alcohol and drug substances while operating a PSV. In terms of vehicle operation the Act prohibits racing of vehicles, reckless driving, stopping on undesignated stops and obstructing other road users.

charged with implementing regulation contributes to poor enforcement of traffic regulations.

A key recommendation from the study by Mitullah and Asingo (2007b) was that addressing the road safety issues needed to be tackled from many angles including looking into the terms and conditions of employment of paratransit labour. This paper takes a qualitative approach from the perspective of paratransit owners in an effort to explore how the terms of employment of paratransit labour affect regulatory compliance. The terms of employment is conceptualised as the conditions that an employer and employee agree upon for a job. They include: the job responsibilities, working days, hours, breaks, dress code, vacation, sick days and pay.³ Terms of employment can be theorised as institutions because they consist of rules and norms which govern behaviour. In the paratransit sector, terms of employment are often verbal informal contracts between the vehicle owner and the crew (Khayesi, 1997). North (1990) stipulates that institutions are “humanly devised constraints that shape human interaction and guide behaviour. He further states that all organised human activities entail a structure to define the ‘way a game is played (North 2005). The assumption in relation to paratransit labour is that the terms of employment shape how paratransit drivers and conductors behave and interact with other road users. The aim of this paper is therefore to:

- To give an in depth understanding of terms of employment of paratransit labour from the perspective of paratransit owners.
- To explore how the terms of employment of paratransit labour affect regulatory compliance.

2. METHODOLOGY

This paper relies on primary data on terms of employment of paratransit labour from a case study of 15 matatu owners. The case study method provided a depth of understanding of matatu operations, operator motivation, and the strategies used in their businesses from the perspective of the business owner. The cases were chosen through purposive multi-stage sampling, involving selection of three corridors from among the seven major corridors leading to and from Nairobi City, followed by selection of specific routes from each corridor, and identification of one business from each of the selected routes. The resulting sample of 15 matatu owners was not intended to be representative, but to include businesses which differ from one another in resources, strategies, and levels of regulatory compliance.

The main data collection method was in-depth face-to-face interviews. The paper also relied on observations of individual matatu businesses on the roads. Data collected from the in depth interviews was thematically analysed. Data on paratransit terms of employment was further analysed into subthemes. These were: job responsibilities, working hours and breaks, dressing codes and remuneration. The paper aims to draw refined conclusions on the effects of terms of employment of paratransit labour on regulatory compliance.

3 PARATRANSIT LABOUR TERMS OF EMPLOYMENT

The specific terms of employment investigated during the case studies of paratransit owners included: their job responsibilities, the crew's working hours and breaks; remuneration and the required dress code.

³ Definition of ‘terms of employment’ sourced from <http://www.investopedia.com/terms/t/terms-of-employment.asp>

3.1. Job Responsibilities

According to the cases the main job responsibilities of the crew is: achieving the set target i.e. amount of money to be delivered by the crew, ensuring the vehicle is well maintained and not driven recklessly and relating well with passengers (customer relations) so as to increase ridership.

3.1.1 *Achieving the set Target*

'Target setting' is the common practice by which a vehicle owner sets a goal of the minimum amount of money to be delivered by the crew. The money is collected by the owner at the end of the day or at the end of a working shift. The target will then determine the wages of the crew and the profit of the owner. It will also determine the working hours and how the crew promotes ridership in order to attain the set target. Case studies reveal that in most circumstances the target amount is determined by the age of the vehicle. New vehicles have a higher target than old vehicles because they have higher ridership. New vehicles have higher ridership than old vehicle because they are least likely to break down and are more comfortable. Furthermore a new vehicle is also least likely to be stopped by patrolling traffic police officers during routine vehicle inspection.

There are paratransit owners who set a fixed target of the minimum amount to be delivered by the crew, while others have a range of what is acceptable. Periods of high demand such as when schools open, during holidays, rainy seasons and when there is a transport crisis(e.g. during matatu strikes) also results in owners setting higher targets. Case studies on matatu owners revealed that operators expect to collect high returns from the crew in the morning. For owners with vehicles financed through a bank loan, the money collected from the morning peak hours is immediately banked in order to service the loan on the vehicle. Money collected from the afternoon and evening shift is used for fuel, paying the crew and the owner, meaning that the crew have to work extra hard in the evening to ensure that they have a good income at the end of the day.

In order to determine the amount of money a new vehicle can bring in a day, some owners opt to personally drive their vehicles or closely monitor their crew. Monitoring involves hiring vehicle managers or joining the crew as they operate the vehicle. For others conducting a market research on the amount a vehicle can earn in a given day or period is essential before setting a target. However there are a number of instances where vehicle owners arbitrarily set targets. If the crew is unable to meet that target then they lose their job, indicating that job security is pegged on achieving the set target.

3.1.2 *Vehicle Maintenance*

Although vehicle routine check up, repair and maintenance is mainly done by the matatu owners, owners sometimes delegate minor repairs to the crew. Vehicle owners however expect that the crew will ensure the vehicle is fuelled and not driven recklessly. The crew is required to return the vehicle when it is fuelled at the end of the day or shift. Matatu owners require drivers to identify mechanical problems before they become worse. A case study respondent stated that he once fired a driver who did not tell him that his vehicle had a mechanical problem.

3.1.3 *Customer relations*

Vehicle owners are concerned with how crew relates with passengers. Customer relations may either encourage ridership or deter it. Case studies revealed that in some residential routes, owners are keen on keeping the same employees especially if they relate well with passengers. There are vehicle owners who prefer to hire crew who have lived in the residential areas where the vehicle will be operating so that the crew can appeal to their network of friends to increase ridership.

For those owners who are concerned with customer welfare, efforts are made to provide phone numbers where passengers can contact them in case they are harassed by the

crew. Since operators are registered under Matatu Savings and Credit Cooperatives (SACCOs) and Transport Management Companies, the organisations' contacts are provided so that grievances by passengers can be communicated. In some instances customer relations extend to ensuring the passenger's property is safe while they are in the vehicle. A case study respondent stated that "If you have a good driver and conductor they know who the pickpockets are and they try not to allow them in the vehicle."

3.2 Working hours and breaks

Paratransit crew typically start their job at 5.00am and end vehicle operations at 11.00pm translating to about 18 hours of work in a day. Some vehicle owners hire only one set of crew, they work from morning to evening. Others hire two sets of crew. One set works the morning shift from 5.00am to 1.00pm while the second shift works from 1.00pm till late in the night. Under such an arrangement, drivers working in shifts do not continuously drive for more than eight hours. A case study respondent stated that implementing the shift method results in higher revenues at the end of the day because the crew works extra hard to meet the set target, get their wages and fuel the vehicle. However to another matatu owner a significant trade off is that the vehicle is overworked with no time allocated for routine maintenance hence prone to mechanical problems.

Only one case study respondent made reference to allowing crew to have breaks mainly during lunch hour. Other owners allowed crew to make their own arrangements. It was observed that in such circumstances, squad drivers were often employed when driver was on break. 'Squad driver' is a term used by paratransit operators to refer to short term drivers not employed by the vehicle owner who may drive the vehicle for a few hours or a day. The regular driver hires a squad driver when he is on break or otherwise unable to drive.

3.3 Remuneration

Closely related to the target system is the remuneration of crew. The wages of the crew are determined by the amount of money collected at the end of the day. Matatu drivers earn about 1000 Kshs while the conductor earns 500 Kshs per day. This may however go lower if they fail to meet the set target. For instance in case the crew fails to reach the set target, they crew is forced to split the difference of what remains after the owner has taken his share and the vehicle has been fuelled. For other owners any money collected above the target belongs to the crew. Therefore when the crew attains more than the set target, then they are assured of higher wages at the end of a shift or day.

3.4 Paratransit Labour Dress Code

Legal Notice 83 of 2004 specifies that the drivers' uniforms are to be navy blue while those of conductors are to be maroon in color. Bus management companies are permitted to have a different colour code for their uniforms. Owners require crew to purchase their uniform. Despite the requirement matatu conductors opt not to where their uniforms. An owner stated that, 'Traffic police will arrest them because they know they are the ones with the money. The uniform is an indicator that the person works for the matatu and has cash. Not wearing uniform is a camouflage. Drivers must have uniform since they don't leave the vehicle.' The crew becomes vulnerable to law enforcers who sometimes fictitiously charge the crew with offences to extort money.

4 THE EFFECTS OF TERMS OF EMPLOYMENT ON REGULATORY COMPLIANCE

Paratransit owners and crew are concerned with achieving commensurate returns at the end of a working day or shift. This ensures that all parties have an income and the vehicle is fuelled. According to one respondent 'achieving good returns will guarantee job security for paratransit crew'. Consequently in an effort to attain commensurate returns, paratransit labour is observed to increase ridership at all costs, and often demonstrates competitive

behaviour which leads to violations of regulations spelt out in Traffic Act Cap 403. The assumption here is that the terms of employment pertaining to the crew i.e. the job responsibilities, working hours, breaks and remuneration influence how crew behave on the road and therefore influence compliance with regulations (see Table 1).

Table 1: The effects of terms of employment on Regulatory Compliance		
Terms of Employment	Effects	Implication for Regulatory Compliance
Job Responsibilities <ul style="list-style-type: none"> • Achieving the daily set Target • Customer relations 	Increase ridership at all costs Increase number of trips	<ul style="list-style-type: none"> • Going above the speed limit • Route adherence decreases during traffic jam • Overlapping i.e. driving on the wrong side of the road, driving on pavements and pedestrian walk ways • Picking and dropping passengers in undesignated stops • Touting
	Increase ridership	<ul style="list-style-type: none"> • Picking and dropping passengers in undesignated stops • Standing Passengers
Daily Remuneration	Increase ridership to ensure one has an income at the end of the day	<ul style="list-style-type: none"> • Violation of Labour requirement that PSV crew is paid on a monthly basis
Working hours	Fatigue and reduced concentration	<ul style="list-style-type: none"> • Violation of traffic regulation stating that drivers should not drive continuously for more than 8 hours
Working breaks	Hire Squad Drivers	<ul style="list-style-type: none"> • Some squad drivers are not trained and are prone to cause road crashes • Some squad drivers lack PSV Driving licenses

Source: Field Research 2011

In order to meet the set target the crew is observed surpassing accepted speed limits, picking and dropping passengers in undesignated stops and encourage touting. Moreover in order to reduce the time lost in traffic jams, operators often overlap i.e. drive on the wrong side of the road, drive on pavements and pedestrian walk ways. Where as it is an offence to divert to a route in which one is not licensed, some operators do so in order to avoid traffic on major trunk roads. While there have been recent amendments to the traffic act introducing fines and jail terms for such behaviour, operators are still observed committing these offences.

Although owners encourage crew to have good customer relations with passengers, such relations have in some instances resulted in the crew allowing standing passengers in vehicles. Such behaviour is observed in residential to Nairobi Central Business District (NCBD) routes and especially where crew is well acquainted with the residents. According to one case study respondent, customer relations in some routes have gone to the extent where passengers and crew exchange phone numbers. Passengers can then call crew in advance and book seats. If the vehicle is full then the passengers will opt to stand. The standing passengers may pay slightly less or just the same as the sitting passengers. Although there is increased ridership, the money collected in excess of the set target is

kept by the crew. Furthermore in order to maintain favour with passengers, crew will often pick and drop passengers in undesignated stops, violating regulations on stopping at designated bus stops.

The Government has instructed owners to pay crew on a monthly basis. According to the case study respondents, vehicle owners are however in violation of this regulation because there is a lot of mistrust between the owners and the crew. The owners are of the perception that since the crew is in control of the money they will pay themselves daily and expect a salary at the end of the month. An owner commented that, 'they are rarely paid on a monthly basis because they don't have an assurance that you will pay them at the end of the month'. Owners also recognize that paying crew monthly is not feasible especially when the vehicle is out of the road for a period due to mechanical problems.

The Kenya Traffic Act Cap 403 specifies that drivers are not allowed to drive continuously for more than 8 hours in a day because they are likely to cause road crashes due to fatigue and reduced concentration. However when an owner has only one set of crew i.e. one driver and one conductor, then the crew will have to work for more than eight hours in a day. Some owners however argue that the crew is mainly active during peak hours i.e. between 6.00am to 10.00am and between 5.00pm and 8.00pm hence driving for about 8 hours. The validity of this is however needs to be determined as the primary concern of the owners is the ability of the crew to achieve the set target. Hiring of squad drivers violates regulations requiring licensing of PSV operators. Some squad drivers are learners lacking the necessary training qualifications to operate PSVs hence are likely to cause road crashes.

Violation of traffic regulations by paratransit labour takes place despite the presence of Traffic Police on the road. Some owners encourage the crew to give bribes to police so that they are not arrested. This is by allocating a specific amount which can be given to traffic police officers or Nairobi city council officials. Getting arrested means that the vehicle will be impounded and the owner will not get any income for a while. Furthermore the fines that he will pay in court are higher than the bribe demanded by traffic police. Links between the crew and traffic police are therefore encouraged so that the vehicle operation is not hindered. Paratransit labour can therefore get away with violating regulations because they can give traffic police bribes to turn a blind eye to their actions.

5. CONCLUSIONS AND RECOMMENDATIONS

On the links between terms of employment and regulatory compliance, the findings suggest that meeting the target determines paratransit labour job security, determines the working hours and wages. Attempts to meet the target which is the goal, result in efforts to increase ridership which often leads to competitive behaviour on the roads. The outcome is the violation of regulations.

Law enforcers are not blind to the traffic rule violation by the crew. In some instances traffic police may apprehend vehicles and crew found violating regulations. In other instances traffic police readily accept bribes. Crew have often forged corrupt networks with traffic police so that their operations are not hindered in turn exacerbating the cycle of corruption.

There have been recent amendments of the Traffic Act Cap 403 introducing tougher penalties for traffic offences especially those committed by paratransit crew. There is no one off solution to enhancing regulatory compliance among paratransit labour. Efforts by Government to enhance paratransit labour regulatory compliance should not focus on introducing tougher penalties but addressing the problem of corruption by traffic police and target setting by owners. However given that paratransit is controlled by the private sector, addressing the problem of target setting may prove to be a challenge not only to the Government but also the numerous profit driven investors in the sector.

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