

COOPERATIVES INVOLVEMENT IN THE PARATRANSIT SECTOR: EXPERIENCES AND LESSONS IN NAIROBI

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ABSTRACT

Cooperatives have become an important part of understanding performance and the provision of public transport system in many African cities. However, recently they have also become a means through which to regulate the paratransit sector. Paratransit, by definition should offer a transport system parallel to the main public transport services. However, in most African cities paratransit have become the sole providers of public transport which is characterised by atomised ownership with most operators owning just one vehicle. Such ownership structures generally affect the performance of each operator and subsequently make it difficult to regulate them. The public authority regulators have been encouraging the formation of transport cooperatives by the operators to possibly attain better organisation, ease in regulation and improved provision of service to commuters.

In an effort to achieve such benefits, In October 2010, the Kenya public transport regulators made it a mandatory requirement for paratransit operators to join Savings and Credit Cooperative Societies (SACCOs). The question to be asked is to what extent has the implementation of the policy lead to the improvement/change in the performance, organisation and regulation of the paratransit sector. The paper uses both primary and secondary data to show how the formation of cooperatives have impacted the paratransit operations in the last two years, discusses the difficulties faced in the implementation and highlight the importance of adequate timing to make feasible the realisation of the objectives of such policies.

1. INTRODUCTION¹

Kenya's matatu industry, despite being the country's main provider of public transport services, is fragmented and largely focused on short-term profits/cash flow.

¹ The study is part of a larger project funded by the Volvo Research and Educational Foundation (VREF) that covers various aspects of public transport in Nairobi, Dar es Salaam, and Cape Town. The researchers are grateful to VREF for financial support and to the African Centre of Excellence for Studies in Public and Non-motorised Transport (ACET) based at the School of Engineering, University of Cape Town, for the encouragement and administrative assistance that made this work possible.

Furthermore it is poorly organised and difficult to regulate. An important recent development in the industry is the introduction of mandatory SACCO membership aimed at streamlining the relationship between the regulator (Transport Licensing Board- TLB) and individual vehicle operators.

Existing public transport operators are a mixture of a few formal sector bus companies and large numbers of informal-sector matatus using anything from the 3-5-seat tuk tuks to buses of up to 65-seat capacity. Nairobi alone is estimated to have 15,000 vehicles, with many more plying routes within and between smaller cities and towns throughout the country. The ownership structure of the matatus is atomised with most operators owning one vehicle. The matatus operate unscheduled services, often based on first come first fill basis at the termini. They are required to apply for permits from the government body tasked with issuing them, but there are no contracts and definitely no subsidy. Fares are cash-based with no ticketing system making it difficult for the owners to control and manage the operations of the vehicles. The owner and driver act very much as free agents with the driver making decisions on almost a minute-by-minute basis as to how he is going to operate so as to make the most money. The atomised nature of ownership and their mode of operations make it extremely difficult to organise and regulate the sector. As a result many current matatu businesses have focused on short-term profitability.

However, the voluntarily formed and the inter city and the intra city Savings or Credit Cooperatives (SACCOs) and bus management companies have been seen to be more successful in regulating the operations of the members. The matatu regulatory authorities sought to replicate their success in order transform Kenya's matatu sector into a genuine public transport industry by making it mandatory for public transport operators to come together to form either SACCOs or companies as a condition for continued registration. There is, however, very little understanding of how this might be accomplished, partly because the transport SACCO differs in certain respects from the more familiar employer-based SACCO or agricultural cooperative, and also because of atomised nature of ownership and mode of matatu operations. A thorough understanding of the potential benefits of SACCOs to matatu businesses and the extent to which such businesses actually utilise these benefits is essential to assessing the potential of SACCOs in implementing public transport policies.

2. METHODOLOGY

The paper used both secondary and primary data. Primary data is based on four separate but linked studies. First was a scoping study of key informants in the road public transport sector. The second was case studies of matatu operators in various routes in Nairobi. Third were the proceedings from meetings organised by the implementing departments from the different ministries concerned. Fourth is a recent follow up interview of some of the earlier case study respondents and transport licensing board official. Key informants of the scoping study were purposively selected from institutions that closely relate to the paratransit sector. Included were: government institutions, the private sector and donor agencies. A multi stage sampling selection of cases was carried out. This began with the selection of corridors, routes and finally the cases who were PSV owners.

Notes taken during the interviews were transcribed, and reviewed for completeness and accuracy. Additional primary data came from observation of individual businesses and of matatus on the road, as well as from stakeholders' workshops. Secondary data included published literature on urban transport, web-based materials, government documents and maps.

Data analysis was qualitative, using pre-determined themes. This paper thus draws more refined conclusions from the three studies on the links between the actual operations, governance requirements and their implementations.

3. GOVERNANCE AND POLICY IMPLEMENTATION

3.1 Governance Challenges

The literature on paratransit governance indicate that the nature of their entry, the lag in implementation of governing structures and the existence of multiple and uncoordinated government institutions has often complicated the regulation of the paratransit sector in most African cities (Kumar and Barret, 2008; McCormick et al, 2011b; Mitchell and Walters, 2011). Matatus started operating as an alternative means of transport in mid 1950s when the then franchisees of public bus transport system could not cope with the growing population of Nairobi city. On entry, they were considered an illegal commercial entity (Opiyo 2002), and pirates (Aduwo, 1990)². Lack of official recognition meant that they had to be self regulated. The matatus received official recognition when a presidential decree was given in 1973, without accompanying governance structures to regulate their operations.

To fill the regulatory void, the matatu owners' nation-wide formed the Matatu Vehicle Owners Association (MVOA) which allocated Matatu routes and controlled the operations of the sector (Aduwo, 1990). Since the formation of the MVOA in 1973, it was not until 1982 that The Traffic Amendment Act recognised it as a Public Service Vehicle (PSV) operator. This official recognition of MVOA as a PSV operator was withdrawn by the government in 1988. The umbrella associations re-emerged in the early 2000s with the registration of Matatu Welfare Association (MWA), Matatu Owners Association (MOA) to cater for employees and owners respectively.

On the recognition of matatus as PSV operators, several policies were instituted to be implemented by several government departments. Such policies include the Transport Licensing Act (Laws of Kenya, Chapter 404), Traffic Act (Laws of Kenya, Chapter 403), the Regulation of wages and conditions of employment Act (Laws of Kenya, Chapter 229) and various legal notices. The policies are specific on the rules and regulation of the transport sector but are rarely implemented. Legal notices are occasionally given to reinforce their implementation. The most successful legal notice which was generally applauded for streamlining the sector albeit for a limited period was Kenya Legal Notice Number 161 of 2003. It was introduced by the then minister for transport. On enactment, the Legal Notice obligated public service vehicles; to be fitted with governors, indicate route allocated by the TLB, ensure

²The pirate vehicles were called "Matatu" which means "thirty cents", the then standard charge for every trip made.

accountability of drivers and conductors, provide seat belts and indicate their seating capacity. When that minister was transferred to another docket, the public transport receded to the prior period before the enactment of the legal notice. The most recent regulatory mechanism pronounced and implemented was made through a legal notice in 2010, when the Ministry of Transport through the TLB introduced a licensing requirement for all public transport operators to form either Limited Liability Companies or join SACCO.

3.2 Cooperatives as Governance Structures

The principle role of an operators association is to provide basic control of the operating unit, whether it is in respect of a single route, a group of routes or an area, and also usually control of the terminal connected with the operation. The literature shows that there is no uniformity in the usage of cooperatives as a governance structure for the paratransit sector in different African countries. In Ghana, the Ghana Private Road Transport Union (GPRTU) is the major union representing road transport owners and employees (Finn et al, 2011). The union organise termini and services to the members. GPRTU also arrange funding for new vehicles for its members through various aid-assisted schemes, supported by the government as well as loan financing. In Dar es Salaam, the dala dalas are joined together into Dar Commuter Bus Owners Association (DARCOBOA), (Mfinanga, 2008). The route-based associations serve as welfare organisations that pool resources and redistribute them through credit schemes, organise route operations and address members' welfare concern. In Uganda, the paratransit operators are overseen by the Uganda Taxi Operators and Drivers' Association (UTODA). In South Africa, the proposal is for cooperatives to take over operation of vehicles and drivers, employ professional management and systems as vehicles remain the property of the owners and drivers and other staff are employed on formal sector wages and conditions (Browning, 2011).

In Kenya, cooperative involvement in the transport sector can be traced to inter-city matatu welfare associations that formed as SACCOs. They were formed with the objective of accessing funding for the members through guaranteeing loans and later regulating their operations (Orero et al, 2011). The government of Kenya in attempting to replicate the success of the inter city cooperatives enacted the legal notice of 2010 for the whole of the matatu sector. The basic objective of this requirement was to eliminate individual ownership of matatus, move to higher capacity vehicles and introduce corporate ownership in the form of either SACCOs or company. The operating conditions which the SACCOs were expected to replicate are; setting terms and conditions of work to be adhered to by the crew, permanent employment of the crew for each vehicle, and the vehicle owners to be answerable to and traceable through the SACCOs. To be recognised as a transport SACCO, certain documents must be provided to verify their authenticity while individual operators also have to prove their membership to such SACCOs before being issued with operating licences. The documents to be provided by SACCOs include; certificate of incorporation, list of officials and members, list of vehicles operating under them and copies of the vehicle logbooks to prove that vehicles are owned and operated by members, minutes of meetings electing the officials, registered office and route operated.

3.3 Policy Implementation Process

Implementation is vital but often neglected phase in transport planning and management. Implementation is not an administrative or managerial subject but it is a complex political process, where multiple actors are concerned with what, where, how, when and from whom they get something. Implementation meanings vary with change in the policy environment, socio demographic cultures, and institutions (Akram et al, 2011). According to Paudel (2009), implementation is an understanding, distributing, carrying out and completing a policy decision or a task within given time frame. Van Meter and Van Horn (1974) define policy implementation as "... encompassing those actions by public or private individuals (or groups) that are directed at the achievement of objectives set forth in prior policy decisions". Policy formulation and implementation are two separate but interconnected functions which construct interaction between a plurality of stakeholders possessing separate interest, objectives and strategies. For example, current Kenya transport policy implementation operates at national level by different departments in different ministries, local levels by the local authorities and within the private confines by the many operators. McCormick et al (2011a) found that there are at least nine government departments dealing with the planning and implementation of transport policy. Among them is the Transport Licensing Board (TLB) which is the transport authority whose mandate is to guide the development and implementation of transport policies. The private actors to implement the current policy are the SACCOs who have their operating objectives and strategies.

4. THEORETICAL UNDERPINNINGS

Collective Action

Collective action was defined by Olson (1965) as any action which provides a collective good. He defined a collective good as one which, if provided to one member of a group, cannot be withheld from any other member (called non-excludability or "impossibility of exclusion). Later work by Olson (1970) categorises the potential benefits of associations into two groups, which he calls public or collective goods, and non-collective goods. Public goods are those that, once available to any person in a particular group, cannot be withheld from others. In the context of associations, public goods are most often the result of using collective power. An association creates a public good for example when through its lobbying effort; it secures favourable tax treatment for its members. The benefit is available to all its members, regardless of whether they personally contributed to the lobbying. In contrast, non-collective goods can be given to some and withheld from others.

People join together in voluntary organisations to do things they would find difficult or impossible to do alone (McCormick 1999). The benefits sought may be tangible goods. The classic work on associations views them as vehicles for collective action on issues of immediate concerns (Oliver et al 1985). SACCOs may offer similar benefits like any other association. Associations' benefits include: collective action on issues of immediate concerns and future benefits to the members; public goods are those that once available to any person in a group, cannot be withheld from other; networks and linkages; and financial benefits (McCormick et al (2003).

5. FINDINGS

Both the regulators and the operators are of the opinion that the performance of the paratransit in Nairobi has improved but the improvement is way below what the policy implementation was expected to achieve. However, there is a difference in perception of implementation success/failure by the regulators and the operators. The findings look at the areas stipulated in the legal notice regarding SACCOs.

5.1 Formation of SACCOs

Majority of SACCOs have been formed and joined by genuine operators as per the legal notice requirements. The Transport Licensing Board (TLB) even has a computerised list of all the transport SACCOs, their physical address and the details of vehicles under their management. However, according to the operators interviewed, the TLB has no capacity to verify the genuine SACCOs. They claim that the fake SACCOs exist on the ground and it has not been possible for TLB to weed them out. All the fake SACCOs were registered by those who do not have vehicles for the purposes of selling the operating rights to matatu owners who are not willing to form associations with the others. Also, some operators stated that there are some influential matatu owners with a bigger fleet of vehicles who simply do not want to cooperate with the others. According to one operator, 'they buy their way into the system and are untouchable; they do what they want as long as their vehicles make money, they even buy fake TLB licences'.

5.2 Operations of the SACCOs

The benefits that the regulators expected the matatu owners to achieve from mandatory formation of SACCOs have barely been realised. Most of the SACCOs formed are operating more like credit and finance cooperatives than transport cooperatives. They are actively involved in collecting funds from members and lending out to them for repairs and maintenance of vehicles and in a few instances, purchasing new ones. The transport cooperatives are trained by personnel from the Ministry of Cooperatives on how to run the SACCOs in terms of general book keeping, making annual returns, and dispute resolutions among the members. However, the ministry of cooperatives does not give training on the operations of the SACCOs as transport operators because they do not have the capacity to do so. The SACCOs also provide a forum for the operators to discuss with TLB issues pertaining to route improvement such as extension of coverage.

The SACCOs management of the operations of their members is limited to supervision of the termini within the city, which is mainly intended to regulate passenger queues and to ensure that vehicles load in their proper turn. From the TLB point of view, operators rushed to form SACCOs without fully understanding the workings required of them.

5.3 Ownership of the Vehicles

Most SACCOs have not raised enough finances to purchase any vehicle. Although there are a few SACCOs which have bought a negligible number of vehicles, individual ownership is still fiercely guarded. The drivers and conductors are also still

being employed by individual owners. Some SACCOs which were formed before the implementation of the legal requirement implement rules and regulations on the acceptable behaviour of the operating crew. However, most of the newly formed SACCOs still do not have the capacity to enforce such rules and generally find the crew operating in their routes uncontrollable. The policy to move to higher capacity vehicles is almost not being implemented, although there is an observed increase in the number of such vehicles on the road.

5.4 Policy Regulators

Several government departments are directly involved in the implementation of the directive. The main ones are the motor vehicle inspection unit, the transport licensing board (TLB) and the traffic police department. The motor vehicle inspections unit is supposed to verify the mechanical soundness of the vehicles and issue inspection sticker. However, both the TLB and operators state that there are some fake inspection stickers on motor vehicles which may not be mechanically sound. For TLB to issue route operating licence, vehicle owners must produce motor vehicle inspection certificate and proof of registration from a SACCO. Here also there are issues of fake SACCO certificates and TLB licences. To guard against this, TLB is computerising its system to track the fake SACCOs and are importing the operating licences. They also train the traffic police on how to identify the fake TLB licences.

The traffic police are supposed to enforce the implementation of the requirements by vehicles on the road. But according to TLB officials, some traffic police officers are not able to distinguish the fake operating licenses. The operators are of the opinion that the traffic police do not have the capacity to enforce the implementation, because they are few, and not trained on the issue at hand. They are also accused of sometimes demanding bribe instead of charging the operators with the offence committed. Also by basing their operations on the vehicles on the roads, they deal more with individual owners than SACCOs.

5.5 Discussion of the Findings

There seem to be lack of clarity in the role of cooperative in streamlining the informal transport sector. Much as the SACCO requirement policy is meant to ease the regulation of the sector, its implementation becomes difficult because of the major distinguishing characteristic of paratransit of being overwhelmingly owned by individuals, each with just one or two vehicles. It seems the members are not willing to forgo their control of the daily cash flow from their investments. This may explain the operators' actions which are currently being seen as embracing the use of SACCOs more as a credit finance cooperative than a transport cooperative.

There seems to be some disconnect between the different government institutions tasked with implementing the regulation. The TLB as regulator of public transport deals only with issuing licences upon being supplied by certificates whose authenticity it has no capacity to verify. Even allocation of vehicles to the routes is done by the TLB on recommendations by the SACCOs who sort of 'own' the routes because they have to be paid 'goodwill' by any new entrants. The enforcement of the implementation by the operations is left to the traffic police who sometimes cannot

distinguish between fake operating licences from genuine ones. Thus, there seem to be some institutional deficiencies in the policy-implementing sphere and perhaps lack of leadership and capacity. The coordination and operation implementation sharing is not clear.

The role of the local authorities is not clearly spelt out, yet our observation and information from the operators indicate that they are heavy handed in dealing with transport operators. The legal notice is very loud on the requirement that operators should move to higher capacity vehicles, but silent on the source of financing.

6. CONCLUSION AND RECOMMENDATIONS

The transformation of the paratransit sector using SACCOs seems to be seen differently by the operators and the regulators. The regulators approach of wanting the sector to spear head controlling itself through the cooperatives is not likely to be achieved because of implementation difficulty and the somehow conflicting perspective of the objectives, strategies and expectations of the two sides –the regulators and the operators. For the purposes of bringing greater order to the paratransit operations, the SACCOs need to undertake actual management of the operations. The coordination of the implementing institutions with respect to their powers, policy and plan of operations sharing are not clear or non existence.

It is important for the cooperatives to operate efficiently as per policy requirement from the outset. Since they are charged with implementation which is a complex political process where multiple actors are concerned, they should be seen to be knowledgeable and just to all parties in the broader transport society. For them to do so, during the transitional phase there should be some form of specialist assistance on matters of operations, finance, technical and others.

As in the case of intercity SACCOs, the implementation should embrace the strategy of centrally collecting and receipting the fares at the termini or any point of origin. This could be more acceptable if, the policy formulation process obtains sufficient input from the broader transport society to initially come up with some agreed mechanism of dividing the proceeds between the owners and the SACCOs on a regular basis. Such mechanism should be considered as an initial step towards gradually moving the sector from informality which is currently characterised with lack of accounting records, daily receipts of revenue and payment of wages. The SACCOs need to be empowered with adequate expertise and experience to take over operation of vehicles and drivers, employ professional management and systems as vehicles remain the property of the owners and drivers and other staffs are employed on formal sector wages and conditions.

The policy implementation time frame set should be realistic. There is need for adequate monitoring of the implementation process to inform the necessary adjustment to the policy to accommodate issues/circumstances which may have been unforeseen at policy planning stage.

It is also important to strengthen TLB by injecting more funding for employing additional and qualified labour force to man the operations of other implementing

agencies. It may be necessary to decentralise TLB's operations for it to be more actively involved in the implementation of the transport regulations and move past just issuing licences which it is currently doing.

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