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# Formalising the Matatu Industry in Kenya: Policy Twists and Turns

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## Overview

Public transport in Kenya has attracted many policy debates which remain unresolved. One debate which continues to engage policy makers, practitioners and the general public is how to handle the matatus, a form of public transport which has remained resilient to almost all policy responses. The industry plays a crucial role in mobility and economics of the country although it is often in the limelight for inability to comply with public transport regulations and attracting personnel who are careless and resistant to rules and regulations. This notwithstanding, the sector requires supportive policies to enable organizing and integration into the public transport system, as discussed in this policy brief.

## Brief History of the Sector

The matatus evolved from a quick and easy response to unmet travel demand during the 1950s to a dominant mode of transport. The industry operated illegally in the city until 1973 when President Jomo Kenyatta issued a decree officially recognizing matatus as a legal mode of public transport, without any form of licensing. This was aimed at improving public transport and creating more jobs in the informal

sector. There was also the populist notion by President Kenyatta that the industry was useful to the common man and that the owners, who were at that, time largely owner drivers, were examples of hard-working African entrepreneurs dedicated to contributing to the development of Kenya. This conceptualization of the industry partly contributed to the ineffective governance of the sector, which eventually attracted informal governance systems, including criminal gangs managing routes and termini.

Over the years, indiscipline emerged in the industry, overshadowing the services offered. In turn, most policy interventions on the sector concentrated on indiscipline and lack of organization, hardly acknowledging the public transport gap the sector was filling.

Sessional Paper on Integrated National Transport policy notes the lack of urban transport policy to address serious public transport problems facing major urban areas and cities in Kenya. There is no policy direction on which modes of transport and facilities the urban areas should encourage or provide<sup>1</sup>. Consequently, urban public transport has continued to deteriorate despite a steady increase in population requiring public transport. Considering the important role matatus play in filling a public transport gap, the sub sections

<sup>1</sup> Government of Kenya (GOK). 2010. Sessional Paper on Integrated National Transport Policy. Nairobi: Ministry of Transport

below discuss some of the key policy responses and turning points in the sector in order to inform the on-going policy debates.

## Matatu Policy Responses and Turning Points

The matatu industry is part of the Kenya private sector economy. Unfortunately, the sector has largely operated with minimal regulations. Regulation is important for any sector since uncontrolled market place cannot produce behaviour or results in accordance with the public interest<sup>2</sup>.

The industry has had five key turning points: the 1973 Presidential Decree, Michuki Rules, Central Business District (CBO) Decongestion, SACCO company requirement, and announcement of 14-seater requirement. While it is acknowledged that the rapid increase of matatus is linked to the 1973 Presidential decree, which was the first turning point, a major policy question is why the decree was never followed by adequate policy response which recognizes their unique mode of operation. Instead, our research into the operation of the sector reveals policy twists and turns whose basis

<sup>2</sup> Baldwin, R; Cave, M & Lodge M. 2012. Understanding Regulation: Theory, Strategy, and Practice. Second Edition. Oxford, Oxford University Press.

remains unclear. A sector with informal origins requires understanding before any policy intervention can be made.

## Michuki Policy Response

The second turning point was the Legal Notice No. 161 of October 2003, often referred to as Michuki rules in reference to the then Minister of Transport. In October 2003, the Minister tried to address the issue of road safety by introducing the Legal Notice that amended the Traffic Act Cap 403 of the Laws of Kenya. The Legal Notice was gazetted in January 2004, and was largely viewed as a positive move by commuters and other stakeholders.

While policy makers claimed that these rules and regulations were meant to address problems within the industry, the PSV owners, drivers and conductors viewed them as a move by the government to lock the industry out of business. The legal notice was well implemented for only six months. The policy seemed to have been rushed without diagnosing the root causes of carelessness, road crashes and traffic congestion within cities. A study by Asingo and Mitullah<sup>3</sup> concluded that 'while it is increasingly becoming evident that human behaviour and attitude significantly contribute to road carnage, neither past road safety measures nor the prescriptions of the legal notice of 2003 adequately addressed the behaviour and attitude of road users and regulators'.

## Michuki Rules – Blessing or Curse?

In theory, the Michuki rules and regulations are still in use as per the requirement of the defunct Transport Licensing Board (TLB). All vehicles and their crew are still expected to comply before being licensed and it remains criminal to flout the rules. The implementation of rules raises policy debate on policy formulation and implementation, which partly explains why the industry continues to have policy twists and turns. After the rules were implemented in February 2004, there was immediate sanity in matatu operations and reduction in road accidents. Kenyans were convinced a new era of road safety was in place.

However, the reduction in road accidents and sanity on roads was merely cosmetic. The rules failed not only because they could not be sustainably enforced but also because the tough measures were driven by factors beyond road safety. The rules reduced the number of vehicles on the road, the number of passengers in each vehicle and improved safety. On the other hand, fares doubled as a result, forcing people to cut down on travelling and use alternative means, including Non Motorised Transport (NMT) for short distances<sup>4</sup>.

The legal requirements attracted a new group of entrepreneurs with ability to invest in larger vehicles, what the Minister called "healthy competition". There was a rapid increase in the numbers of new public

transport vehicles, to the extent that the government ran out of registration plates. Competition intensified and operators reduced their fares in order to cope. By 2006, public transport fares were down to pre-2004 levels, attracting back some clients who had stopped using matatus<sup>5</sup>. Consumers were happy with the outcome.

Not all stakeholders saw Michuki Rules as a blessing. Many pessimists argued that the measures were intended to bring down established operators and replace them with monopoly establishments whose ownership was linked to powerful figures within the government. At least 20 national companies collapsed within two years of implementation of Michuki rules. As the rules implementation began, the financial strain of the arbitrary decree was more than any business could bear. Companies that were servicing loans were forced to divert hundreds of millions of shillings into seat belts and speed governors.

The matatu operators argued that the rules were discriminatory as they targeted public service vehicles only. Some of the rules and regulations should have been applied to all vehicles in order to create a national road safety policy that applies to all road users. These provisions were expensive to investors as one had to meet an estimated cost of about Ksh. 50,000-100,000 per vehicle to fit seat belts, speed governor, refurbish the vehicle and take the vehicle for inspection. A research<sup>6</sup> focusing on non compliance to rules and regulations showed that non compliance cuts across all types of vehicles, with vehicles owned by schools and colleges being more compliant, at 90.3 per cent level. The compliance rate of matatus owned by individuals and private cars was the same at 63.6 per cent compliant level. Matatus owned by cooperatives had higher compliance level at 77.6 per cent.

### Provisions of Legal Notice No. 161

The provisions of the legal notice include: fitting approved seat belts, speed governors with speed limit of 80 km/hr, painting a continuous yellow band of 150 millimeters width clearly visible from a distance of at least 275 metres on both sides and on the rear of matatus. In addition, PSV owners are required to write their name and address on the front right hand door of the vehicle, and to indicate their registered route, licensed passenger carrying capacity and tare weight.

PSV drivers and conductors must wear uniforms and have special identification badges issued by the Registrar of Motor Vehicles after obtaining a certificate of good conduct from the Criminal Investigation Department (CID). The drivers are expected to display their photographs and also undergo testing after every two years to be certified both medically and professionally fit to drive. The PSV owners are further required to employ drivers and conductors on permanent basis and pay monthly salaries.

3 Op Cit.

4 Mitullah, W.V. and Asingo, P.O. Op Cit

5 Mitullah, W.V. and Asingo, P.O. Op.Cit

6 Mitullah, W.V. and Asingo, P.O. 2009. 'Road Safety Policies in Kenya: On Search of Explanation for Non Compliance. University of Nairobi, IDS

Working Paper.

## Decongesting the Central Business District

The failure to effectively implement the 2003 legal notice provisions has not stopped the government from policy engagement with the industry, including decongesting the CBD by restricting PSVs which enter it. It is estimated that in Nairobi alone, over 6 million people commute to and through the CBD monthly, making access to the CBD one of the most lucrative areas of matatu operations in the Ksh 11 billion annual road transport sector<sup>7</sup>. Nairobi has over three million inhabitants who mostly rely on matatus. Initially, the By-laws of the City Council of Nairobi (CCN) prohibited matatus from entering the CBD to prevent excessive traffic congestion. Later they started allowing vehicles by charging parking fees, without designating and allocating appropriate parking spaces. This resulted in congestion.

To address the issue, the government in collaboration with the city authorities identified termini away from the CBD and allocated areas such as Muthurwa, City Bus Station, Hakati, Globe Cinema Round About and Khoja Mosque as termini for matatus. These allocations were not supported by any research relevant for understanding mobility demands of travellers or reflection on transfer points for those going beyond the CBD. This resulted in a situation where travellers have to alight far away from their destinations, as car owners' drive through the city without any restriction. This clearly displayed the elite thinking behind policy response since there is no rationale of diverting vehicles carrying over 14 passengers away from the centre, while private car owners access the CBD without any restriction.

The decongestion policy response has not achieved the goal of effective ferrying of passengers to their destinations. Passengers must alight before reaching their destinations,

<sup>7</sup> Government of Kenya. 2009. Ministry of Roads and Public Works

forcing them to either walk or board other means. This causes time loss, thereby reducing productivity, and also consumes resources for the urban poor who mostly walk or use public transport.

### *Phasing out 14-seater Matatu*

Phasing out 14-seater matatus is another policy response aimed at decongesting CBDs and re-organising the public transport sector. The decision was arrived at by the Ministry of Transport in consultation with stakeholders, although a number of small scale entrepreneurs claim they were not consulted. The plan was part of a broad road transport master plan to decongest urban roads, in particular CBD. According to the Notice issued, the TLB was no longer going to license 14-seater matatus beginning from January, 2011. This policy was going to drastically affect public transport within the country since a high percentage of matatus belong to this category of carriers. The Notice further stated that 14-seater matatus that are already licensed will, however, continue to operate until they are phased out through natural attrition. It was argued that the move from low capacity public transport vehicles to high capacity public transport vehicles would not only decongest the CBD but also earn the operators a higher income.

The standoff between matatu operators and the government on this issue required informed policy response, which this policy brief contributes to. Although most African cities are initiating public transport projects to replace paratransit modes such as matatus, research has shown that African cities are better off embracing hybrid systems<sup>8</sup> of public transport which accommodates all service providers. What is important in this model is to have an adequate understanding of transport demand, followed by proper planning and

<sup>8</sup> Pablo, S.F; Behrens, R; and Wilkinson, P. 2011. Hybrid Urban Transport Systems in Developing Countries: Portents and Prospects. Durban: International Conference on Competition and Ownership in Land Passenger Transport, 11 - 15 September, 2011

assignment of modes and routes. There is hype across Africa on Rapid Bus Transport (BRT) and Rail Transport (RT) without thorough reflection of how these two systems, which in most cases are still to be planned and implemented, will work. Irrespective of the planning approach adopted, there is need for other modes of transport to feed into the BRT and RT. The two modes on their own will not be able to effectively serve the entire country, urban and metropolitan regions.

### *Getting the Industry Organised through SACCOs*

Savings and Credit Cooperative Societies (SACCOs) are self help schemes acknowledged for organising individuals and sectors and assisting members to pool resources and expand their businesses for development. The SACCOs have been operational in many sectors of the economy, including partial operation within the transport sector. Noting the ineffectiveness of SACCOs in organising matatus on some inter-city routes, the TLB required matatus to be members of SACCO or alternatively part of management companies. However, in October 2010, the Minister of Transport directed that by January 2011, operators had to belong to a SACCO to ensure self regulation; efficient operation as per the requirement of the legal notice of 2003; cushion individual matatu owners from cartels, and eventually eliminate the cartels from the sector.

To prevent cartels from penetrating the SACCOs, the TLB directed that only SACCOs formed by genuine vehicle owners would be registered. The requirement for registration included submitting a list of SACCO members and officials, certificate of registration, list of vehicles owned by the SACCO and copies of vehicle logbooks.

While the idea of SACCOs has been good and has potential of organising the sector, the initial implementation of the policy faced a number of challenges. People

# IDS Policy Brief

without vehicles, largely cartels, continued charging illegal fees to operators who wished to join the SACCOs and locking out others. In some cases cartels merely branded vehicles by colouring and naming without embracing the good practices expected of cooperatives. Thus, the same criminal gangs and cartels who had been controlling matatu routes devised crafty schemes to legalize their operations in order to beat the policy of forming SACCOs.

## IDS Policy Brief

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Most SACCOs were formed in a hurry without education on management of cooperatives, management structures and without change of attitude, which makes the institutions quite fragile. Some SACCOs are also too small, with some routes having more than one SACCO which creates a serious management problem<sup>9</sup>.

In spite of the challenges faced in organising the sector and ensuring safety, the government has continued to focus on the sector with an ultimate aim of bringing sanity to the industry and ensuring that all stakeholders, especially matatu owners and operators, comply with the laid down rules. Frequent police crackdowns on defective vehicles and errant crew continue although with poor results. Many PSVs operators have fake documents, which they access through shoddy brokers.

To curb the increasing number of fake documentation and streamline the industry, KRA and the Ministry of Transport have put a tracking mechanism to access all information about the vehicle, its routes and the driver. However, the success of this system is yet to be evaluated. The National Transport and Safety Authority (NTSA) is also determined to ensure that the roads are safe by enforcing the regulations and carrying out public awareness education.

## Input into Policy Responses

Reflections on the various policy responses aimed at improving the operations of the matatu sector, shows mixed outcomes. However, it is clear that both the government and stakeholders are yet to come up with approaches that adequately address the challenges facing the industry. This can partly be attributed to the ad-hoc nature of policy responses, which are inadequately informed by knowledge

and holistic consultation with relevant stakeholders. These factors are important for sourcing knowledge and inputs into policy formulation, planning and enforcement of regulations.

As discussed in this policy brief, all the policy responses geared at the industry are facing challenges. The Michuki rules were only effectively enforced for a few months, the programme for decongesting the CBD is not facilitating movement of people and goods, while the plan to ban 14-seater vehicles is facing an uphill task and seems to have been suspended due pressure from operators. Matatus serve a huge population in Kenya and a pull out by the industry has potential of creating an economic crisis. It seems not much reflection was given to the policy responses. The 14-seater vehicles are serving a market and cannot be removed without adequate analysis of the sector, including the population they serve and investment involved. A proactive informed approach should embrace a hybrid system of public transport which accommodates matatu mode of transport. This should entail adequate route and mode planning. Matatus, irrespective of the seating capacity, should be assigned specific routes to feed into the main corridors which can be serviced by other formal modes with higher capacity depending on demand.

Overall, there is need for regulations to correct market failures and protect vulnerable groups. However, some of the existing policies and regulations are good but have been poorly implemented; while some elements of present regulations - such as seat belts, standing passengers in buses, and speed governors - are expensive and unnecessary. The 14-seater phase out does not make sense. Addressing these issues requires exposure to relevant knowledge, including policy relevant research.

<sup>9</sup> The Standard, Article by Michael Oriedo. 2012