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Paratransit in African Cities

Operations, regulation and reform

Edited by

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Note

1 In this chapter, the terms vehicle owner, paratransit owner, and paratransit operator, are sometimes used interchangeably.

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Chapter 4

Politics, policy and paratransit

A view from Nairobi

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1 Introduction

Although paratransit – with its flexible operations and intense competition – often appears to be 'chaotic', it is in fact a complex system involving politicians, police, bureaucrats, diverse vehicle owners, insurance companies, umbrella and route associations, drivers, touts, route managers, mechanics and, of course, the users. The way these actors interact produces the distinct characteristics we associate with paratransit, which includes no schedules, fluctuating fares, variable stops and sometimes routes, competition on the road, formation of cartels, poor working conditions for labour and, on the positive side, flexibility and demand responsiveness – for those who can pay. The apparent complexity of paratransit emerges out of the way in which key actors within the system relate, capture and jockey for benefits, as well as navigate – and undermine – the formal institutional environment set up (often poorly) to regulate the public transport system.

This chapter aims to give a historically informed analysis of some of the common political and socio-economic dynamics of paratransit. Many studies have examined public transport, including paratransit operations, and we make liberal use of this excellent work. However, few of these studies have focused on the overall political economy aspects of paratransit, in particular the politics and policy gaps that are the key driving factors influencing the sector. Such analysis is critical for navigating the difficult terrain of badly needed reform.

The next section briefly reviews existing knowledge on paratransit and uses this to consider the way in which the politics of the system tends to operate in Sub-Saharan Africa. The chapter then explores how the institutional environment creates incentives for certain kinds of characteristics and action – formal and informal – to emerge and play out in the city streets. This is followed by a consideration of the specific case of Nairobi and attempts to explain why the policy dialogue around paratransit in Nairobi tends to be confined to attempts at punitive paratransit regulation without sufficient or convincing information on costs and impact, and most often without any success in implementation. In section 4, the authors look at the dynamics of contemporary efforts at reform, and analyse why attempts at more nuanced and potentially more effective regulations and targeted public investment within the existing system are limited; and why public sector investments in transport systems are often oriented toward automobility, rather than toward improving public transit by engaging with paratransit operators. Finally, the authors look at the possibilities for change in the paratransit, and hence the public transport, system.

2 A brief theoretical overview of the politics of paratransit in Africa

Paratransit forms the core of public transport in most cities in Sub-Saharan Africa (UITP 2010). In almost all cases, paratransit has arisen because of poor funding and management of municipal public transport systems, rapid urbanization (hence escalating demand for services), and a poor regulatory and institutional environment that provides opportunities for organized interests to make untaxed and unofficial money from the system (Anderson 1987; Cervero 2000; Gwilliam 2001). These organized interests form an oppositional block to change, and the large numbers of paratransit operators, which form the backbone of urban transport, also have substantial political clout. Paratransit operators, be they owners or associations, wield power through their connections with government officials and business colleagues,[1] which they use to penetrate the system or flout regulations (Wirth 1987: 175). In cases where all these tactics fail, they use the power of strikes, withdrawing their vehicles from service, with disastrous effects on the economy (see Widner 1993; Khayesi 1999; Rwenji and Ombati 2012).

In addition, colonial planning traditions persist in many cities; these tend to ignore more consultative processes and the concerns of the majority of citizens, and focus instead on services for the car-owning minority (often in the form of roads without facilities for public transport) and pay limited or no attention to upgrading services for the majority (Klopp 2012). This is despite the fact that paratransit is seen by many as a form of economic empowerment, as the vehicles are locally owned and involve large numbers of small businesses (such as the operators and the mechanics) (Mutongi 2006). Thus, a policy gap exists on how to engage the sector to improve the system within planning processes and new transportation projects.

Paratransit, which emerged during the colonial period to address the unmet public transport needs of the majority, has seen a significant expansion, but continues to be neglected by planners and policymakers. At the same time, bus and rail systems have declined.[2] Typically, after independence, little investment went into bus and rail, which in any case rarely provided the kind of service and coverage needed. The collapse of more formal bus systems and the decline of commuter rail came in the 1990s, with structural adjustment, slashed government budgets and the trend toward private provision of public goods

(Behrens *et al.* 2012; UITP 2010). The deterioration of these formal systems was accelerated by the poor management of existing systems, often linked to patronage politics or pressures to provide cheap services without adequate subsidies (Rizzo 2002). Relentless competition from less-regulated operators also played a key role (Gwilliam 2001; Opiyo 2002).[3]

The conditions that produce and reproduce paratransit in Sub-Saharan Africa explain some of the complexity in the power dynamics. Initially, a large number of small and diverse operators exist within these systems, which in turn organize into associations at the route, city and national level (McCormick *et al.* 2013). Once organized, some of the differences among operators come into play, leading to competing splinter groups (some beholden to gangs) that can become violent (Dugard 2001; Anderson 2002; Rasmussen 2012). Further, these organizations – from the route to regional or national level – have complex relationships with government, and can either be co-opted, seen as a threat, courted as vote-buying machines during elections, or all of the above, depending on the political context and moment (Musambayi 2005). Essentially, some of these associations become powerful as lobby groups at the local and national level, able to initiate paralysing strikes that create havoc in the cities that rely on them for service (Rwenji and Ombati 2012).

An additional important dynamic is the fragmentation of the government institutions that engage with operators – for example the police, licensing boards, and municipal governments; this allows for minimal accountability while enabling a system of 'fees' or bribes. This institutional configuration creates opportunities for collusion rather than checks and balances, which directly affects the behaviour of drivers and creates entrenched interests benefiting financially from the status quo. Cervero and Golub's description of the 'competition spectrum' involved in such a system in Bangkok is apt for many Sub-Saharan African cities:

> At the top, government officials enjoy a monopolistic position of power. Even the heads of [cooperatives] extract monopolistic profits, in the form of entry fees. It is only at the level of the operator where one finds some semblance of free-market competition. However, the organizational hierarchy extracts considerable shares of whatever surpluses workers earn. This has the effect of inducing over-competition, witnessed by problems of head running and unruly driving. Such behaviour adds legitimacy to a government police presence, which unfortunately is all too often exploited for personal enrichment. The system of payoff for protection sustains itself accordingly.[4]
>
> (Cervero and Golub 2007: 451)

To add to the complexity, in some countries senior police officers and politicians own vehicles, and may try to use their political influence to advantage their own businesses. In Kenya, for example, some of the worst violators o traffic rules are drivers of vehicles owned by senior retired and active police officers and politicians, many of whom have links to gangs and cartels (Chitere 2004; waMungai and Samper 2006). This system of benefits, arising from a lack of transparent and well-designed regulation, allows cartels to flourish at many levels, undermining the rule of law. Further, large untaxed revenues from public transport are lost to the public and not reinvested into improving the system as a whole.

3 The Nairobi case study/historical origins of paratransit

Kenya illustrates some of the typical political dynamics in paratransit, where the evolution of public transport is intertwined with the broader colonial and post-independence political economy. The colonial, segregationist urban economy failed to cater for people who were not formally employed by the colonial government; this gap in service provision encouraged Kenyan entrepreneurial skills in housing and public transport (Lonsdale 2006; Médard 2006; Murunga 2006). As in other parts of the continent, this 'self-help' approach gave rise to paratransit, which consisted of small vehicles plying popular routes. The vehicle used in Kenya is called a *matatu*,[5] a word likely coined from the 30 cents flat fare that was charged in their early days (Kapila *et al.* 1982).

European settlers and officials 'planned' the city of Nairobi around personalized transport, which facilitated physical segregation in terms of mobility. By 1928, Nairobi had 5,000 cars, making it the city with the highest per capita levels of private automobile ownership in the world; hence mobility too was segregated. Europeans and some Asians owned cars, and Africans, of course, had to rely on non-motorized transport (usually walking) to move around the growing city (Hirst and Lamba 1994: 65). Like many other Sub-Saharan African cities and towns, Nairobi did not initially provide any form of public transport. In the 1930s, the Overseas Transport Company (OTC) of London introduced the first bus in Kenya, operating 13 buses on 12 routes across the country. This was still inadequate and, as a result, starting in the 1950s, small informal vehicles begun to serve passenger demands. Khayesi (2002) calls this period of paratransit development the phase of 'piracy and illegal service'.

In the post-colonial period, some of the former dynamics and patterns in public transport would persist, albeit with more efforts to provide a proper bus service in Nairobi. In 1966 the Nairobi City Council (NCC) signed an agreement with the OTC to establish Kenya Bus Services Ltd (KBS). As a result of the agreement, KBS received an exclusive franchise to carry fare-paying passengers in and around Nairobi (Aduwo 1990). This gave the company a monopoly to operate a bus service, with the municipality receiving a 25 per cent stake in the form of land to serve as a bus terminus for the KBS fleet; the contract was to last for 25 years. This was and remains the first and only form of Private Public Partnership (PPP) in public road passenger transport in Kenya, although the partnership is no longer operational.

While the bus service lasted, the city authority played a minimal role in its operations. Although the bus service was better than that offered by the *matatus* in terms of scheduled routes and ticketing, the KBS could not cope with the transport demand in the city; the entrepreneurs operating *matatus* and other buses exploited this gap to access the market. These *matatu* owners were also a political force and they succeeded in breaking the monopoly of the KBS in 1973, when President Kenyatta legalized *matatus* without requiring any further regulation. This began what Khayesi (2002) calls the 'growth and expansion phase in *matatu* operations'.

Although the Presidential Decree of 1973 allowed *matatus* to operate without a licence, they still had to comply with existing insurance and traffic regulations. Many operators ignored these, however, in their scramble to compete for passengers, and the police did little to enforce traffic rules. The collusive relationship became entrenched, where the police simply take payoffs from the *matatus*, and fail to apply the law. The decree opened up the sector to many unregulated and uncoordinated operators, and threatened the long-term survival of the KBS with its more planned and formal service. The Kenya Bus Service still laments that 'the 1973 decree allowed the informal sector (*matatu*) to operate, without any form of legal and institutional framework, alongside Kenya Bus, a formal franchise operator guided by traffic and labour legislations' (Mukabanah 2008).

This expansion of political and legal space for paratransit created a scramble for political influence (Khayesi 1999) and hence was a turning point in the operations of *matatus*. Most importantly, intense competition between the formal bus service and *matatus* ensued. As the public transport sector opened up to new investment and *matatus* increased in numbers, the sector attracted many interest groups, including insurance firms, suppliers, operators, workers and financiers, all of which increased the complexity of the system and the interests involved. In the meantime, the Nairobi City Council (NCC) was struggling financially, and only founded its Transport Unit in 1978 (Rasmussen 2012). In theory, the NCC was supposed to allocate and manage terminals for the Kenya Bus Service; in practice, however, they left the *matatu* industry to develop routes and stops in response to demand, leaving the sector to largely self-organize.

With the growth in the numbers of *matatus*, rapid urbanization, the absence of transport planning in the city, and few enforced regulations, problems soon began to emerge. Some *matatu* owners tried to address these by organizing and instituting self-regulation through the Matatu Vehicle Owners Association (MVOA) which formed in 1979. They also started to form route associations to coordinate and lobby for official terminals (Rasmussen 2012). These route associations lent themselves to cartel-like behaviour, charging entry fees for any new entrants,[6] but at the same time they also provided the numerous services needed for managing the terminals and the flow of vehicles in and out of them.

From the 1980s, the national government began to acknowledge the need to go beyond the 1973 Decree and regulate the sector in order to improve its operations. The first serious attempt at regulation was the Traffic Amendment Act of 1984, also known as the 'Matatu Bill', which required *matatus* to be licensed and subject to annual inspections. In addition, *matatus* could not take on more than 25 passengers and must have insurance for these passengers. It also placed age and other requirements on drivers. However, authority for various responsibilities under the Act was fragmented, and as the licensing was not tied to route planning, it simply became a way for the Ministry of Transport to make money, encouraging liberal licensing; this, in turn, enhanced the competition among *matatus*. *Matatus* had already started to form route structures on their own, with stops in non-designated areas in response to demand. This, of course, opened them up even further to bribery, as the easiest way to address the possibility of fines was to pay off the police, who were increasingly seen as part of government oppression. To make ends meet, *matatu* workers had to drive aggressively to earn money above what was owed to owners and extracted by the police.

As agitation for multi-party politics started to grow in the 1990s, posing a threat to the dominant political party – the Kenya African National Union (KANU)[7] – the *matatu* industry became associated with the opposition. This led to the ban of the MVOA in 1988 and the rise of interference in terminal and route management by KANU youth wingers (King'oina 2010).[8] In 1990, this escalated into one of the first grassroots urban struggles for multi-party politics and ultimately led to the government brutally demolishing the neighbourhood of Muoroto (Klopp 2008). According to one Muoroto resident at the time, the local KANU office 'wanted to use the youth wingers for political purposes but could not pay them, so instead they wanted them to take over the bus stand and collect fees to support themselves' (Klopp 2008: 299). When *matatu* touts resisted, the attempt escalated into violence. The *matatu* industry was clearly seen as a political and material resource for politicians, who strove to establish links with various actors within it.

With the absence of the rule of law and this collusion with politicians, it is not surprising that some route associations became cartels linked to gangs, including in particular the Mungiki.[9] The Mungiki had emerged out of political violence in the 1990s and spread rapidly into the slums of Nairobi, running elaborate protection rackets and often violently taking over some routes and their associations (Anderson 2002). This led to the persistent problem of the sector being dominated by two competing organizations: self-organized 'mafia-style' cartels; and owners' associations' (Khayesi 1999; Rasmussen 2012).

To complicate matters further, in 1988 – the same year the KANU government banned the MVOA – the government started its own bus service (Nyayo Bus Service Corporation operated by the National Youth Service[10]), leveraging political power to carve out market access to this lucrative and growing business worth billions of Kenyan shillings. This move came after the KANU government started to recognize the political clout of those in the transport sector, which were largely deemed oppositional at the time. For example, when the government tried to enforce a 'no standing rule' in 1986 for the Kenya Bus Services, this was perceived as a political attack on the business, and the KBS suspended service – creating a public outcry. The KANU government, seeing a business and political opportunity, morphed the Nyayo Bus Service into a fully fledged bus service in 1986 (Widner 1993: 182). The new company, the Nyayo Bus Service Corporation, received new buses from the Italian, Dutch and Belgian governments, and within a few years had a fleet of more than 300 vehicles.[11]

According to the KBS, this move was a violation of the franchise agreement between the Nairobi City Council[12] and their company, and created unfair competition. Indeed, Nyayo buses could charge lower fares than the KBS: they were given subsidies in fuel by the government; used free labour from the state through the National Youth Service; and could easily import spare parts for the buses in an environment of foreign exchange restrictions and privileges emerging out of the patronage of key state actors (Opiyo 2002: 3). At the same time, the government introduced commuter rail though the Kenya Rail Corporation, another form of competition. This service persists today, and plays an important if underplayed role in public transport service provision, albeit with many problems. Facing at times intense and sometimes unfair competition, KBS had to rethink its survival in the city public transport market.

Nyayo Bus Service eventually folded in 1994 through mismanagement (Chitere *et al.* 2012) and was declared insolvent a year later. The Kenya Bus Services struggled on in competition with paratransit, which had become a powerful constituency. Eventually, in order to survive, the KBS restructured as a franchise in 1998, through a consortium of local investors. In this model of operation, KBS owned buses but leased them out in the form of a profit-sharing arrangement with independent operators on agreed terms and conditions, leaving the City Council of Nairobi (CCN) out of the equation. Rebranded as Kenya Bus Service Management (KBSM), the arrangement enabled some *matatu* operators to join the franchise and therefore advance their businesses by purchasing larger occupancy vehicles (45 seaters). The franchise increased the potential of KBSM to compete in the new public transport market dominated by *matatus*, in effect by becoming more like paratransit. The independent operators had fewer bureaucratic rules, and responded to the emerging shifting trends of the market. Like the paratransit mode, they easily altered schedules, fares and operated services in response to daily variation in market conditions and in response to changes in travel patterns and behaviour (Opiyo 2002: 9). To a large extent this marked the end of scheduled and more planned bus services within the city. To enhance competition even more, in 2002 Citi Hoppa, a competing private franchise operator, emerged, with powerful former politicians as owners.[13]

Unfortunately, the service quality, efficiency and scheduling of the former bus service was compromised by this continued struggle by many operators to compete in a highly unregulated transport market. As smaller routes were carved out as part of this competitive market, previously continuous KBS routes were fragmented. This significantly reduced the efficiency of the system as a whole, with passengers having to make frequent transfers. With most exchanges taking place in the already congested city core, this exacerbated the traffic gridlock.

By early 2000, with the obvious problems in the sector, the state attempted to once again play a regulatory role over the industry and allowed the registration of key associations to assist in managing the system: the Matatu Welfare Association in 2001; and the Matatu Owners Association in 2003. Route-based Savings and Credit Cooperative societies followed (SACCOs).[14]

A landmark for reforms came with a series of legal notices called the 'Michuki rules',[15] which contained a number of prohibitions and requirements for Public Service Vehicles (PSVs). For example, the Michuki rules prohibited the carrying of standing passengers (the 'no standing' rules referred to above), and introduced seat belts, speed governors and uniforms for drivers and conductors. Once a driver had obtained a certificate of good conduct from the Criminal Investigation Department (CID) of the police, the Registrar of Motor Vehicles would issue identification badges. In addition, drivers were expected to display their photographs in a position visible to all passengers, and undergo testing every two years to show that they were both medically and professionally fit to drive. Public Service Vehicle owners were required to employ drivers and conductors on a permanent basis and pay monthly rather than daily wages; this included removing the daily target income, which the crew had to deliver to the vehicle owner, a practice that was thought to contribute to careless driving, unnecessary increase of fares, and cutthroat competition (Odula 2012; Interview with Rongai Matatu Welfare Association members 2013).

The Legal Notice intended to bring some order to the *matatu* mode, although there was also speculation that John Michuki, the then Minister for Transport,[16] was benefiting from the sale of speed governors. The new rules attracted criticism from a number of interest groups, however, who were ready to protect the substantial income they accrued from the lack of regulation. The main opponents of the new restrictions were the Matatu Owners Association and the Matatu Welfare Association; although they had their differences, these groups shared an interest in the survival of the industry, and were ready to protect it at all costs. Overall, some vehicle owners were unable to meet the demands and sold their vehicles, while others adjusted. The regulations had little impact on the cartels run by Mungiki, who continued to run certain route associations and terminals, where they asked for fees from every vehicle. Furthermore, given the weakness in the police, the rules were not properly enforced (Government of Kenya 2009b: 60). Recently, former Transport Licensing Board chairman, Hassan Kamwaro, noted that 'many defective Public Service Vehicles were still plying the country's roads and blamed this on runaway corruption, which he said had been "institutionalized" by the traffic police' (cited in Kemei 2014).

Throughout the 2000s, alongside and sometimes linked to problems in the police force, the role of Mungiki became a serious institutional problem, producing violence and leading to lost revenue for the government. As a CEO of the Transport Licensing Board noted, '*matatu* operators are losing millions of Kenyan shillings every day to cartels' (quoted in King'oina 2010: 61). In turn, the government was losing substantial revenue that might be invested in infrastructure and organization of the sector, although the lack of positive intervention and, in some cases, actual collaboration by the police are also key factors in these losses.

King'oina (2010: 61) notes that:

> at the route level, drivers, touts and managers are aware of the opinion that the cartels are illegal and they desire their removal in order to improve route management and ensure security. They admitted that they were aware of cartels in the routes, in particular route 36, and that they complained to the police but nothing had been done to remove them or protect the operators especially those who refuse to yield to the demands of the cartels.

In his interviews with Mungiki members, Rasmussen (2012) notes that many prided themselves on providing more efficient security and route management than the government, which appears to tolerate the status quo for the reasons we discussed above. He notes:

> In its security provision and its route management, Mungiki acted as the law, in some instances allegedly with the acceptance of formal law. However, given its illegal status, it is not formally restricted by the law ... To a certain extent, the state is informally outsourcing its right to violence, or at least accepting the presence of other security actors by turning a blind eye to their activities that make for greater order ... This seems to be a central feature of Mungiki's ability to gain and keep a foothold in the matatu industry.

Whether popular or not, the way in which Mungiki operates to control routes and extract fees in return for protection has become part of the paratransit system.

Table 4.1 Chronology of key moments in the evolution of the regulatory framework for *matatus*

1973	*Presidential Decree* legalized *matatus* and classified them as legitimate Public Service Vehicles (PSV).
1979	Matatu Vehicle Owners Association formed.
1984	*Traffic Amendment Act of 1984 ('Matatu Bill')* required all *matatus* to get PSV licenses, undergo annual vehicle inspection.
1986	*No standing rule for Kenya Bus Services* (revoked after protest).
1987	*Speed governor requirement* (revoked after protest).
1988	Ban on Matatu Vehicle Owners Association.
1990	Matatu Welfare Association registered.
1993	*Traffic Act Cap 403** banned the use of loud noise by touts and increased penalties for violations of the act.
1999	*Transport Licensing Board Rules* required *matatus* to register with the TLB as well as state and remain on the routes for which they are licensed.
2001	Matatu Owners Association registered.
2003–2005	*('Michuki rules') Legal Notice No. 161 of 2003, Legal Notice No. 83 of 2004, Legal Notice No. 97 of 2004 and Legal Notice No. 65 of 2005* required fitting speed governors in all PSVs and commercial vehicles whose weight exceeded 3,048 kg and speed limited to 80 kph; fitting of seat belts on all vehicles (public, commercial and private); employment of drivers and conductors on permanent basis, issuing of badges to PSV drivers and conductors, issuing of uniforms to PSV drivers and conductors, indication of route details and painting of yellow band on *matatus* for purposes of easy identification; re-testing of drivers after every two years; every driver was required to prominently display his/her photograph. Every owner of a Public Service Vehicle held liable for non-compliance or tampering with speed governor fitted in his/her vehicle. The notice also specified that drivers' uniforms were to be navy blue while those of conductors were to be maroon in colour. Increased penalties established for violations.
2010	*Transport Licensing Board Directive* This required all PSV owners to join organized groups such as Savings and Credit Cooperatives (SACCOs) or companies in order to be registered. By 2011 no individual *matatu* owners were to be registered.
2012	*Sessional Paper No. 2 of 2012 on the Integrated National Transport Policy* is not yet approved and now may need to be revamped. The Policy document analyses many key problems in the sector and suggests a number of policy directions to improve them.
2012	*Traffic Amendment Bills No. 8 and No. 29 of 2012* impose more severe penalties for traffic offences.
2012	*National Transport and Safety Authority Bill 37* sets up a new body that takes over the functions of the Transport Licensing Board.
2013	*Night travel rules* for PSVs intending to operate at night are issued, which few, if any, operators were able to meet.
2013	*National Transport and Safety Authority (Operation of Public Service Vehicles) Legal Notice 219.* New licensing and reporting requirements.
2014	National Transport and Safety Authority directive that all PSVs must go cashless by 1 July 2014 (deadline was later postponed indefinitely).

Note

* The Traffic Act would go through continual revision from its beginning in 1954.

4 Contemporary politics of reform: continued cartels, institutional fragmentation and automobility

Public institutions are crucial for effective management of public transport, especially in cases where there are many modes of public transport. Currently, Kenya is in the midst of a long struggle to reform its institutions and establish a democratic, constitutional order, which has an impact on the institutions involved in regulating and planning for public transport. The 2010 Constitution, which embodies this new order, contains many important implications for the transport sector, including the right to information, reform of the police and the formation of county governments, which have local assemblies, executives and county land boards, all of which will be expected to deal with land-use, planning and transportation issues.

There also appears to be an increasing awareness on the part of some elements within government that transport matters to the public and the economy. Currently there is a great deal of public dissatisfaction with the low quality, expensive service, unregulated and unpredictable fares, poor public safety including robberies, sexual harassment and other crimes (waMungai and Samper 2006), and the high rate of crashes. Commentators refer to these elements when they talk about the '*matatu* menace'. Some groups are also concerned about the poor working conditions for drivers and conductors (ILO 2012). Further, increasingly this situation is linked not just to punitive measures but to broader discussions of policy and reform ushered in by the new constitutional dispensation.

The Integrated National Transport Policy – adopted by Parliament in December 2012 – states that:

> Inadequacy of laws and poor law enforcement have aggravated the already disorganized public transport service operations, especially *matatus*. Traffic regulations are flouted while illegal gangs charge unauthorized fees, which inhibit the operations on certain routes by interested industry investors. In general, there is indiscipline in the urban transport passenger operations (e.g. noise pollution from shouting touts and loud music) due to lack of standardization of vehicles and services. In Nairobi and Mombasa, this situation worsened with the expiry of the franchise granted to Kenya Bus Services.
>
> (Government of Kenya 2009a: 54)

Perhaps because of public pressure and the growing body of research and policy focus, the national government made an attempt to reform the entire transport sector in 2012, with the introduction of another set of regulations under the Traffic Amendment Act (2012) and the passing of the National Transport and Safety Authority Bill (2012). More recently, in response to a number of deadly road crashes, the government introduced stringent rules related to night driving for PSVs, and introduced requirements for a cashless system with passengers expected to pay by smart card or mobile phone. However, none of these measures fully addresses the institutional problems outlined in this chapter, and once again seem to involve top-down measures without serious engagement with the sector. The night driving rules were immediately challenged.

Under the 2010 Constitution, the Cabinet Secretary, a Presidential appointee, leads the Ministry of Transportation and Infrastructure. The Ministry is the policy formulation body and custodian of the legal and regulatory framework for the sector. The National Transport and Safety Act under the Ministry provides for the establishment of an Authority that will have the overall responsibility for regulating the transport sector, including the registration, inspection and licensing of motor vehicles, testing of drivers, and road safety in general. How much of a change this will be and how the Authority will relate to the Ministry is unclear, as the Ministry itself has a poor reputation in terms of transparency and public consultation within design and planning processes (Kara 2012; Klopp 2012).

The National Transport and Safety Authority Bill also repeals the Transport Licensing Act, which had established the Transport Licensing Board (TLB), and transfers functions of the TLB to the new National Transport and Safety Authority (NTSA). The TLB had been the main coordinating body for paratransit in the Ministry, but it was mostly concerned with revenue collection and issuing licences (and more recently the collection of route data). The new authority is mandated to implement policies relating to road transport and safety; plan, manage and regulate the road transport system; and ensure the provision of safe, reliable and efficient road transport services. The old TLB had minimal focus on regulatory aspects, and it is unclear which agency will now conduct route management and transport planning. Presumably Kenya's new devolved structures – the counties – will play a key role, since transport is one of their functions. How the counties and this new authority will work together is likely to become an issue, which may need to be resolved through an inter-governmental summit. Further, given the weak tradition of traffic management and transport planning, the counties will need a great deal of support. If such support is received, the newly created counties could play a major role in ensuring efficient and more accountable delivery of public transport. In the past, local governments largely failed to conduct adequate transport planning. Paratransit was left to private entrepreneurs, the Ministry of Transport, and the police, while local government extracted fees for parking and for 'managing' a few terminals. Little evidence exists to suggest that any of this revenue was invested in improving public transport. In recent years there has been discussion on establishing Metropolitan Transport Authorities for the areas around the major cities like Nairobi, but this has yet to be realized.

In Kenya's capital, Nairobi, the City, now under the new county government structure, continues to be a point of call for agencies keen to undertake or fund

transport studies, engage in public transport, or distribute information relating to public transport. While these are good collaborative engagements, the City does not seem to be in charge of public transport operations. The Ministry of Transport and Infrastructure, the Kenya Urban Roads Authority (KURA), and the Kenya National Highway Authority (KeNHA) tend to engage in road projects most often without consulting residents, paratransit operators, or the City (now known as the City County of Nairobi) (Kara 2012; Irandu and Malii 2013; Klopp 2012). As Nairobi county gains more power and engages in its planning processes, we are likely to see this change.

In the case of Nairobi, the City had been responsible for providing *matatus* with adequate parking and pick-up points, although most of the designated stages and pick-up points are inconvenient and not always in line with activities or destinations. A recent attempt by one of the authors to learn what data were available revealed a legal document from 1997 that included a small number of newly designated routes. It does not appear to have ever been updated since then. Clearly, the City has not worked with the paratransit sector to develop new and needed stops and routes and have them designated (Klopp *et al.* 2014). This has partly contributed to *matatus* creating their own passenger pick-up and drop-off points, resulting in obstruction, congestion and disregard for public transport regulations and City by-laws. This causes

Figure 4.1 *Matatus* stuck in traffic congestion on Kenyatta Avenue, Nairobi CBD, October 2011. Credit: Roger Behrens.

tension between the City authorities and *matatu* operators, making coordination and enforcement of regulations and by-laws almost impossible. A review and updating of these laws to fit the contemporary situation will be an important task.

A similar situation is found with new road projects, where little provision is made for designing safe and convenient stops. Even the upgrade of the new Nairobi–Thika Highway did not cater adequately for public transport; instead, developers, paratransit operators, some road engineers and even passengers created their own stops. The absence of good data and the requirement for operators or a government agency to collect data exacerbate this situation. It is too early to see how counties will approach these matters at a local level, but there is a clear danger that elements within counties will merely collude and replicate the existing problematic system, while continuing to blame the *matatus* for all problems.

The Transition to Devolved Government Act requires that before a service can be transferred, counties must have in place a framework of service delivery, the necessary laws, human resource capacity, infrastructure, and an approved plan. The City County of Nairobi will have to submit an implementation plan to show its readiness to fully undertake the transport function. Meanwhile the City has authority to oversee access roads, street lighting, traffic and parking – which it has not efficiently overseen in the past. The poor performance of the City has been observed by many analysts. In respect to parking, the Extra-Ordinary Inspection Report observed that the City lacked a comprehensive parking management policy and that there was no proper inventory of parking spaces and no traffic statistics to enable optimal allocation of manpower for revenue collection, supervision and enforcement. Furthermore, there was lack of maintenance of parking areas, lack of security and corrupt practices (Government of Kenya 2004).

The traffic police play a more active role than do the city authorities, although without necessarily positive outcomes (Government of Kenya 2009b: 60, 78). The police are charged with enforcing traffic rules, examining *matatu* drivers, and issuing Certificates of Good Conduct to *matatu* crews. However, they also make large sums of money[17] from extortion and do not necessarily enforce the rules. None of the recent transport reforms deal with this entrenched corruption; if anything, the recently introduced Traffic Amendment Act (2012) reinforces the powers of the police by introducing more possibilities for fines without checks or oversights. This is one of the reasons the Act has been unpopular with the *matatu* industry, as it enhances the extractive power of the police, at much higher fees than before. In fact, the head of the Matatu Owners Association claimed that 'police used to ask for $2, and now they want $11 for a minor offense and $117 for a major offense' (Odula 2012).

Further, while the Traffic Amendment Act (2012) stipulates that a worker in the transport industry may only work for eight hours, the Act does not change

the structural conditions that create the long work shifts (sometimes as long as 15–20 hours a day), nor the high levels of casualization that are the norm in the industry (King'oina 2010: 55; ILO 2012: 21–23). Particularly vulnerable are the approximately 16 per cent of *matatu* workers who make up 'squad' drivers and conductors at the *matatu* terminals. These are casual workers who give the more regular workers a break; they tend to line up at the *matatu* terminal, and spend much of their time waiting their turn to work (King'oina 2010: 55). The Matatu Welfare Organization and the Matatu Drivers and Conductors Association emerged to cater to the needs of all *matatu* workers who face these trying working conditions (Graeff 2009).

These associations, along with the SACCOs, are important actors in paratransit operations in Nairobi. The intention of these associations is to improve operations through self-regulation and by means of a consultative forum with which to negotiate with government. However, the associations often rally their members against policies and regulations not only because many of these policies are punitive and extractive, but because of the sector's history and the history of poor regulation. These organizations are a powerful lobby courted by politicians, as they are, for example, able to paralyse the city through strikes. The Matatu Owners Association Facebook page shows photographs of members with President Uhuru Kenyatta, who most likely made promises to the association in exchange for votes in the 2013 election[18] (Musambayi 2005). These relationships with powerful politicians support the defiance of some elements in the *matatu* industry toward regulation. Although the various associations have different interests as well as different ideas for reforming their sector, they all converge when it comes to protecting the industry against punitive regulations. While government agencies largely work at cross-purposes, *matatu* operators exploit this incoherence and further undermine institutions by establishing informal support networks within various government agencies. Furthermore, a number of individuals employed by the regulatory agencies are also key actors in the industry, with some owning vehicles, which operate at an advantage. In this regard, the Task Force on Police Reform (2009) notes that:

> One of the most important components of the code of ethics for the police services should be the avoidance of a conflict of interest. The Task Force was informed that some of the police officers who are charged with the responsibility of traffic management own public transport vehicles or breakdown vehicles, which is a clear conflict of interests. The problem of conflict of interest has become so widespread that it has undermined the capacity of the police to impartially enforce traffic regulations. Where the police officers have financial interest in public transport, they will not act impartially in enforcing the law in the face of traffic violation, road carnage and dealing with cartels involved in public transport.
>
> (Government of Kenya 2009b: 78)[19]

The current situation causes tension among operators and increases the level of non-compliance toward rules and regulations. How the new series of legislation will play out in this regard remains to be seen, but so far none of it deals explicitly with this serious problem of conflict of interests within government, which already appear to violate the Public Officers Ethics Act (2009) and the spirit of the constitution. In sum, although the new legislative framework provides new mechanisms and tools to improve paratransit, so far these opportunities have not yet been taken by reformers.

Overall, while there are many actors engaged in public transport, the actors also lack coordination and face institutional fragmentation at many levels. This has been noted as a major challenge by the government (GoK 2010) and many policy analysts (Asingo 2004; Kanyama and Goran 2009; Asingo and Mitullah 2007; Klopp 2012). Kanyama notes that most of the government agencies draw mandates from different laws, which make coordination difficult. This situation is complicated by the lack of a framework for engaging key actors in the sector (Kanyama and Goran 2009); instead the sector is engaged on an ad hoc basis, and issues are discussed as they arise. This leaves no institutional memory for addressing future challenges, and avoids the difficult task of moving forward on basic policy and structural changes that might impinge on entrenched interests in this lucrative and critically important industry. As the sector reorganizes institutionally, the lines of responsibility must be much more clearly drawn and greater mechanisms of public accountability developed.

5 Concluding reflections

Propelled by massive urbanization, poor governance and the historical failure to invest in and plan for formal bus and train services (which are subject sometimes to direct sabotage), paratransit is currently the backbone of public transport in most of Sub-Saharan Africa. Over the years, however, concern over road congestion, crashes, violence, and the poor conditions of paratransit workers has grown alongside the recognition of the entrepreneurial energy, flexibility and importance of paratransit operations. The key challenge moving forward will be to introduce strategic policy and institutional changes that break up cartels and collusion without stifling the dynamism of the sector and its employment creation aspects.

In Kenya, transportation decision-making has been influenced by the way in which power and institutions operate, both formally and informally, with bus services shifting even in relation to elections. With the more recent move towards a democratic constitutional order, the government of Kenya appears to be responding to the real and growing public pressure to find solutions to the challenge of urban public transport. This in turn is affected by the large amounts of finance pouring into Africa for new transport projects and road expansion and rehabilitation, which offer new opportunities for improvements as well as for corruption and patronage, and also for continuing the status quo (Klopp 2012).[20]

Transportation projects overall constitute an increasing percentage of the national budget, with minimal oversight and engagement from key actors in the sector, particularly the paratransit operators who will play a key role in their success or failure. It is clear that many of these projects are moving ahead without adequate regulatory and institutional frameworks and public accountability. Indeed, an Integrated National Transport Policy that argues strongly for better regulation was approved by Cabinet in 2012. Little data is being systematically collected; nor are such data accessible.[21] Further, few interventions aim at addressing key institutional problems in paratransit, although this mode is unlikely to disappear in the near future. The focus tends to be on highway and road construction, without the same concern for public transport on these roads and without attending to important policy gaps. Recent reforms, for example, still contain a number of profound flaws: current legislation continues without clear lines of responsibility for route management; and the matters of cartels, the traffic police and conflicts of interest are inadequately dealt with, if at all.

In summary, a need persists to systematically address five key factors within the current system around paratransit:

- entrenched cartels with links to politicians, and civil servants who make money as a result of poor regulation and institutional weakness;
- institutional fragmentation in the transport sector, in all government levels and among operators, which enables this poor regulation and creates avoidance of responsibility for the system;
- the need for a drastic overhaul of the traffic police and implementation of the Public Officers Ethics Act (2009) within regulatory and enforcement bodies;
- the historical predominance of policy biases in favour of automobility, which leads to the neglect of paratransit in infrastructural development. A new, more democratic and environmentally friendly focus on public transport needs to be adopted; and
- poor collection of basic data by government and operators (related to the lack of interest by powerful parties in regulation and transparency), which might be addressed in part by the use of cell phone technology (Klopp *et al.* 2014).

Overall, these factors explain the lack of an inclusive, thoughtful and research-based policy dialogue on options for improving the paratransit system. Further, despite the numerous complaints from within the industry, neither civil society organizations nor government has sufficient information or a holistic understanding of their system in order to advocate for specific, targeted improvements and the related institutional changes. In order for policy and practices to shift, a stronger coalition armed with data and policy-driven reform strategies will need to emerge.

Notes

1 In many cases the owners are politicians, bureaucrats or police officers.
2 Currently, more investments are being made in public transport in Sub-Saharan Africa but often in a poorly coordinated manner and it is not yet clear how the paratransit system will fit into these new plans.
3 Anderson (1987) also notes this dynamic in her classic study of Jamaica.
4 Head running refers to when a driver of a vehicle, normally an unscheduled vehicle like a minibus, attempts to take passengers waiting for a bus or minibus operating on a fixed schedule, or 'headway' (time between two vehicles operating on a single route). The offending vehicle goes ahead of the scheduled vehicle, arriving at the stop to take passengers before their scheduled headway.
5 *Matatus* are small and medium capacity minibuses of different quality with different maintenance levels and ownership.
6 In 1999 some *matatu* owners suggested that to access any given route they must agree to pay as much as 150,000 shillings, more than $2,000, to the cartels (Santoro 1999). Presumably it is much more today.
7 KANU was at that time led by Daniel Arap Moi, who succeeded Kenyatta in 1978.
8 See also Widner (1993) and Khayesi (1999, 2002) on the *matatu* industry in opposition politics during the fight for multi-partyism.
9 Mungiki (which means 'multitude' in Kikuyu) is a complex movement in Kenya largely composed of the youth. The movement takes different forms ranging from religious, ethnic, political, vigilante to violent organization. In the paratransit industry, the group has been used to extort money from operators, with punitive measures for those who fail to comply with its demands.
10 Nyayo Bus Service Corporation was a parastatal providing public transport operated by the National Youth Service. It had two official goals of creating employment for youth trainees and phasing out the paratransit mode.
11 See www.bus-planet.com/bus/bus-africa/Kenya/NYS-NBS/frame.html. This is yet another example of how donors contribute resources to a project that looks technical but, in fact, is mired in politics.
12 See www.kenyabus.net/history.php
13 The former KBS CEO argues that these owners were involved in the KBS and acted to deliberately undermine it in order to start their own business (personal communication with one of the authors July 2011). The late George Thuo who was the original owner of Citi Hoppa was a former managing director for KBS and also a government chief whip and as such, a close associate of President Kibaki when he started Citi Hoppa.
14 In 2010 the government required all Public Service Vehicle owners to join organized groups such as SACCOs or companies in order to be registered.
15 Legal Notice No. 161 of 2003, Legal Notice No. 161 of 2004, Legal Notice No. 83 of 2004, Legal Notice No. 97 of 2004 and Legal Notice No. 65 of 2005.
16 The minister also declared a war against Mungiki, which was known for its extrajudicial killings if operators/informal business people failed to pay for 'protection fees' (among other reasons). This helped trigger an investigation by Philp Alston, the UN special rapporteur on extrajudicial, summary or arbitrary executions, which found evidence of widespread killings by the police. The latter occurred either out of police frustration to get evidence for charging Mungiki or simply because shoot to kill is an acceptable mode of operating in the force, leading to wide-scale human rights abuses. This violent situation on both sides is made more complicated by the fact that some police work with Mungiki creates a highly complex and often violent situation with the public caught in the crossfire. This further increases the sense of oppression within the *matatu* sector.
17 One senior traffic police officer was found to be depositing Ksh. 300,000 ($US 3,520) a day during a crackdown on *matatus* (Munene 2013). Such payments are likely to add up to substantial sums.

18 Much like the agreement he probably made with some Mungiki groups in the 2002 election that in exchange for votes he would ensure access to lucrative routes (Musambayi 2005).
19 The Task Force makes clear that the current rules provide too much discretion in enforcing conflict of interests within the police and recommend that 'all police officers should be obliged to declare their businesses interests to the Inspector General and Commandant General respectively as part of a process of assessing the extent of the problem, and be allowed a reasonable period to divest from businesses that conflict with their policing work' (Republic of Kenya 2009: 78).
20 These new transport infrastructure projects include ongoing improvement of the rail system, expansion of roads, consideration of a Bus Rapid Transit (BRT) system, a mass rapid transit feasibility study, and a Japanese International Cooperation Agency-funded Master Plan for Nairobi along with a new and important attempt at coordination.
21 The Digital Matatu project recently collected route and stop information for Nairobi's *matatus* and has made this open access. See www.digitalmatatus.com. This is the exception rather than the rule. See Klopp *et al.* 2014, and Chapter 12 in this volume.

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