

## **Government Policies, Practices and Laws on Bribery and how they intersect with Matatu Operators Narratives in Kisii County, Kenya**

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**Abstract:** *Bribery has become a major problem to both businesses and the countries in which they operate and as a result it hampers the successful performance of such transactions. In addition to creating problems of smooth execution of such transactions, it also leaves the public in a dilemma as to whether to bribe or not considering the fact that bribery is an offence in Kenya. The main purpose of this study was to establish how government policies, practices and laws on bribery intersect with matatu operators narratives in Kisii County. Critical discourse analysis theory guided the study. The case study design was adopted. The target population was determined by the saturation method. The target population was all 36 registered matatu Sacco's operating from Kisii town matatu terminus as at 2015s. A sample was selected using simple random sampling technique and saturation was attained at 76. In-depth interviews, focus group discussions and observation methods were used to collect data. Data analysis involved developing a coding system based on themes covered. The study has clear policy implications as the study demonstrates that there is need for legal, judicial, legislative and Societal Reforms.*

**Key Words:** *Bribery, Government policies, Law, Matatu operators*

### **I. Introduction**

#### **1.1 Background of the Study**

The Kenyan government since independence has enacted laws and formulated policies in a bid to eradicate corruption or bribery but this has not yielded fruits. It is believed that without bribing the traffic police officers on the road, it is hard to

operate matatu business in Kenya. There is a complete disconnect in the policies and mental perception of the people especially when the matatu is carrying excess passengers, no passenger complains but instead ask for “sambaza” (an extension of the seat) to allow for excess passenger. They don't see it as wrong to sit on such. In the legal perspective, the giving of bribe has been “normalized” as it saves time and this will not

subject the driver or conductor to court cases. In the social perspective, it is believed that when you give a bribe to a police officer, you get acquainted to him and therefore it is not wrong to give. This disconnect has led to this study in trying to understand the enculturation of bribery in the matatu industry. This notion creates an evidence gap concerning matatu drivers and conductors who are the stakeholders in road safety but bribe their way out and do not follow the laid down rules which are famously known as Michuki rules.

The key policy implication for improving road safety in Kenya is seeking measures to ensure responsibility on the roads and thereby reforming the matatu industry which the end result will be addressing the root causes of corruption and bribery in the long run.

### 1.2 Statement of the Problem

The 'Matatu' industry is fast becoming the biggest corruption industry in Kenya. It has become a cash cow for traffic police officers even as it breeds criminal cartels that seek to control routes across the country (Standard newspaper Wed, January 11th 2012). As a result, Kenya has experienced a rise in road traffic accidents leading to the demise of thousands of Kenyans. Matatu owners and drivers often complain of police harassment and fraudulent charges. To avoid arrest, matatu crew often pays off the officers. The purpose of this research was to find out the existing, enacted and the government policies in the fight against bribery and or corruption on the Kenyan roads and how they intersect with the social meanings given to bribery by matatu operators in Kisii County.

### 1.3 Purpose of the Study

The main purpose of the study was to assess how the government policies, practices and laws on bribery intersect with matatu operator's narratives in Kisii County.

## II. Literature review

Drakard (2009) contends that bribery is a way of life in Africa; it is like a tick on a dog. Others argue that there are some places in Africa where the tick is bigger than the dog (TI, 2009). Bribery thus runs rampant in the world and that it has become a 'Darwinian business tool'. He goes on to explain why corruption happens at many different levels of bureaucracy in many countries in Africa and why it has become a way of life. According to him, Transparency International found out that in Africa, the informal sector amounts to more than 40 per cent of the economy in many countries, reaching

well over 50 percent in Nigeria and Tanzania. The lack of legal protection and the desire to dodge regulations makes the informal sector easy prey for extortion and the solicitation of bribes by corrupt officials. In May 2008, his study established that 90 percent of entrepreneurs in Burundi thought that paying bribes is standard practice. The main reasons according to Drakard (2009) were reduced tax payments, advancing a file in the tax service and avoiding fines. But other reasons include influencing an official to retrieve a "lost file" urgently needed for business or immigration purposes, and avoiding the harassment of police for invented traffic offences. This study concentrated on the reasons for corruption but failed to address the issue of the existence of legislation and their effectiveness.

Onyango (2012:2) quoting Nye (1967:419) defines corruption as a behavior which deviates from the formal duties of a public role because of private regarding whether personal, close family or private clique and pecuniary or status gain; or violates rules against the exercise of certain types of private regarding influence." These include: "such behavior as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses)"

He goes on to explain that corruption which he refers to in Kiswahili as *ufisadi* (corruption) as one of the major issues blamed for the failure of widespread developmental projects in Kenya. The phenomenon is said to reside in the public sector and broods in high and low political offices of the government. His work was majorly on corruption in the Kenyan public sector in Migori district now Migori county. This study too concentrated on corruption in the public service but not the enacted laws to curb the same- therefore the necessity of this study.

Transparency International (2013) finds that more than one in every four people paid a bribe. This is based on a survey of 114,000 respondents in 107 countries. TI however does not give any meaning of bribery nor does it mention the causes of bribery that would have otherwise enabled us understand the drivers of this vice. This study therefore delves into this lacuna by examining the existing laws and further to show how this affects its prevention.

### III. Research methodology

#### 3.1 Research design

The study uses a case study design. A case study is an approach that focuses on gaining an in-depth understanding of a particular entity or event at a specific time (Willig, 2008). Case studies are not characterized by the methods used to collect and analyze data, but rather focuses on a particular unit of analysis; a “case”.

The study adopted a qualitative research methodology and the interpretivist/constructivist paradigm was used in the study. The interpretivist /constructivist approaches try to understand the world of human experience by giving suggestions that reality is socially constructed (Mertens, 2005). The interpretivist/constructivist researchers rely upon the views of the participants in the situation being studied. The qualitative methodology shares its philosophical foundation with the interpretive paradigm which supports the view that there are many truths and multiple realities. Therefore, Constructivist generates or develops a pattern of meanings through the language used. Additionally, the interpretive paradigm is associated more with methodological approaches that provide an opportunity for the voice, issues in their setup and practices of research participants to be heard (Cole, 2006). The interpretivist on the other hand also explores first and then develops theory.

#### 3.2 Target population

The target population was the 36 registered matatu Sacco's operating from and Kisii town bus terminus (NTSA, 2015). The data collection techniques depended on the research questions and the locality where research was to be conducted. Qualitative research is strengthened by the use of multiple sources of data which in the end result can be collected or generated through various techniques.

#### 3.3 Data collection techniques

The data collection was done after the sample was determined, selected and validated because data was collected through the samples. The data collected included the primary data from the respondents that were sampled out, selected and validated. This was done through various methods but an interview schedule prepared beforehand guided the answers to be elicited. Secondary data was also collected and the researcher used various books by different authors, journals, reports and statutes enacted by parliaments of Kenya, Britain,

and United States among others. The data collection methods included;

##### 3.3.1 In-depth Interviews

Interviews in qualitative researches are one of the most important sources of data (Jwan and Ongondo, 2011). The interview was used in collecting data from the respondents until saturation. An interview schedule makes it possible to elicit information necessary to achieve the intended purpose of the study. Such interviews involved a predetermined set of questions where answers are given and recorded in a highly standardized techniques of recording (Kothari, 2008:97).

##### 3.3.2 Observation Method

This is one of the key methods in qualitative research. It is usually emphasized by various scholars and authors that every qualitative research must involve some element of observation (Kothari, 2008, Ongondo, 2011). Observation means getting information or data by seeing the respondents in their natural setting as they carry out their day to day duties with a view of getting the insight about their duties (Cohen, 2007;305). Further it is said that the researcher collects the data in real life situations by looking at what takes place. A pilot study was done days before the initial data collection day so as to understand the exact location of the traffic police officers and what happens when the matatu driver has been signaled to a stop. The police also have to be on the lookout so that they are not caught picking and receiving bribes from conductors and drivers on the road.

##### 3.3.4 Focus Group Discussions (FGD)

A focus group is a form of group interview mainly used to inquire about people's perceptions, opinions, beliefs and attitudes towards a particular phenomenon. The interview form is called focus group because the participants are 'focused' on a given topic and are selected based on whether they have something to say about the topic. The method combines both elements of interviews and observation methods and involves a homogeneous group with a common interest (Jwan and Ongondo 2011, Casey and Krueger, 2000).

This method of data collection facilitates a discussion with a small group of respondents on specific topic. The group selected must be homogeneous such as a group of drivers, conductors and SACCO managers in the matatu industry.

## IV. Results and Discussion

### The Government's Policies on Curbing Bribery in Kenya

This study reviewed the Kenyan government's legal framework, policies, practices and laws enacted to curb corruption and or bribery. Highlights the on the knowledge or awareness of the existence such laws, policies and practices is made. This study also investigates how the social meaning attached to bribery intersects with the relevant government policies, practices and laws.

Owiny (2009) quoted a definition by Jenkins W. (1978) in his work Policy Analysis; Apolitical and Organizational Perspectives as a set of interrelated decisions taken by apolitical actor or a group of actors concerning the selection of goals and the means of achieving them within a specified situation where these decisions should, in principle, be within power of these actors to achieve.

Despite this definitions, Owiny (2009) in his work quoted the then Minister for Justice, National Cohesion and Constitutional Affairs during the Kibaki regime admitting and acknowledging that there was no national anti-corruption policy document in Kenya guiding the fight against corruption and that his ministry was working towards the formulation of a National Anti-Corruption policy to mainstream the fight against corruption in the management of public affairs and resources and provide an enabling environment for operation of law enforcement agencies. Despite the absence of national anti-Corruption policy then, the government's fight against corruption was on but only on oral or unwritten policies which were inferred from various presidential speeches and statements. To date, there are a number of policies and legislations which have been enacted to curb corruption in Kenya. It is amazing that there are many policies and legislations in place to curb corruption but corruption still remains arguably the greatest challenge.

The various policies put in place in Kenya by the Kenyan governments all the years include;

#### i. E.A.C.C Strategic Plan 2013-2018

This is the second phase of the strategic development plan of anti-corruption policy paper which is anchored on the vision 2030 by the Kenyan government. The strategic plan was geared towards promoting social-economic and political development with a view of mitigating corruption by strengthening the policy and legal frameworks.

#### ii. EACC Policy Brief 2015

EACC Policy Brief was presented in 2015 in a bid to taming Corruption in Public Procurement. This policy briefly explains the importance of public procurement but it is yet to materialize

#### iii). Ministry of Transport's Integrated National Transport Policy 2009

This policy document was initiated by the former transport minister the late John Michuki vide session paper no 2 of 2012 These rules are commonly referred to as the "Michuki rules" which were passed vide legal notice no 161 of 2003 They are well known to all matatu drivers and conductors and are applied reservedly.

#### iv. Anti-Corruption Policy by Privatization Commission 2010

This policy was intended to be read together with other government legislations including the Anti-Corruption and Economic Crimes Act, 2003; Public Officer Ethics Act, 2003; Public Procurement and Disposal Act, 2005, the Government Financial Management Act, 2004 and the Performance Contracting. This policy applies to all the Commission members, Management, staff and all other stakeholders interacting with the Commission but not the matatu industry.

#### v. The Road Infrastructure Policies in Kenya

This is a working Paper by Kenya institute for public policy research and analysis (KIPPRA) authored by Wilson S.K. Wasike in 2001. KIPPRA is an autonomous body whose main mission is to conduct public policy research leading to policy advice. In this working paper, the author explains that a transport policy must create an incentive for quick and efficient response to needs, promotion of a conducive settlement with minimal external effects and reduction of poverty. This policy paper has not been made known to the matatu stakeholders including the drivers, conductors and Sacco managers in kisii town.

#### The Kenyan laws enacted to curb Bribery and or Corruption

Various subsidiary legislations were made in Kenya in 2003,2004 and 2006 respectively vide Legal Notices No. 161 , No. 83 and No. 65 to control people in public transport sector as part of the Integrated National Transport Policy (INTP) and the National Road Safety Action Plan (NRSAP) in order to restore order, reduce accidents, increase passenger safety, reduce

conflicts and safeguard private investment in the public transport sector as per the Traffic Act Cap 403. This saw various amendments being initiated into the existing laws which saw the introduction of seat belts, speed governors, budgets for conductors and drivers and defining of routes for all matatus (Chitere, 2004). The Kenyan laws enacted in a bid to mitigate or prevent bribery and or corruption are;

#### **i) The Bribery Act No. 47 of 2016**

The Bribery bill was tabled in the National Assembly in March, 2016 as an attempt by the government to show the political goodwill in the fight against bribery and corruption in the country which is sky rocketing. The bill was given assent by the president on 23rd December, 2016 and the commencement date was 13th January, 2017 the main purpose of the law as provided for in the preamble is to provide for the prevention, investigation and punishment of bribery, and for connected purposes.

#### **ii. The Traffic Act cap 403**

The traffic act cap 403 is an act of parliament to consolidate the law relating to traffic on the roads, the act was enacted in 1954 with various amendments of the act being made and the latest being 1st July, 2013. This act was intended to regulate traffic on the roads and among other conduct inspection of vehicles and issue certificates of inspection. This duty has since been taken over by the NTSA

#### **iii. The National Transport and Safety Authority (NTSA)**

The main purpose of enacting the NTSA act was to harmonize the operations of the road transport departments and help in effectively managing the road transport sub-sector by minimizing loss of lives through road traffic accidents. The vision of NTSA is to ensure Sustainable and Safe Road Transport System with Zero crashes in Kenya among others (section 4, NTSA, www.ntsago.ke).

This objective is yet to be realized because it has proved to be a cash cow where the matatu operators negotiate their way out by bribing the officer attached to NTSA to avoid rigorous scrutiny of their matatus for fear of failure to meet the standards and criteria for issuance of a license as provided for under section 30. This section states among other things that under subsection 1 that; it shall be a condition of every license to be issued under this Act

#### **iv. County Transport and Safety Committees (C. T. S. Cs)**

This is virtually a branch of the NTSA which is established under section 21 of the NTSA Act in the spirit of devolution by taking the services to the people. The CTSC is therefore established in each county which shall consist of shall have a composition as provided for under subsection 1 and with the function as provided for under section 22 to) Oversee the management and regulation of the road transport system by the Authority at the county level; Prepare and submit to the Authority such audit reports as the Authority may require on the safety, reliability and efficiency of the road transport system within the county among others. This development has seen many stake holders holding that the committee is overstepping its mandate and are themselves going to designated areas on the road to solicit for bribes.

#### **v. The Police Act cap 84**

This is an act Parliament which provides for the functions, organization and discipline of the Kenya Police Force and Kenya Police Reserve. Section 9 of the act provides that no police officer other than a Reserve police officer shall engage himself in any trade, business or employment, or take part in any commercial or agricultural undertaking, outside the scope of his duties as an officer of the Force, except with the authority of the Commissioner. Most if not all police officers have businesses in Kenya and majority if not all operate matatu business and all the matatus owned by police officers do not have the minimum requirements. No insurance stickers and no NTSA licenses as required by NTSA Act. But no action is taken on them and according to the police act section 40 (1) It shall not be lawful for any police officer to be or to become a member of (a) any trade union, or anybody or association affiliated to a trade union; or (b) anybody or association the objects or one of the objects of which is to control or influence conditions of employment in any trade or profession; or no police officer should be in conflict of his duties. These police officer own matatu contrary to this provision as the police commissioner has not taken any step regarding this.

#### **vi. National Police Service Commission Act no. 30 of 2011**

This is an Act of Parliament to make further provisions for the functions and powers of the National Police Service Commission as established by Article 243 of the Constitution. Section 10 of the act spells out the functions of the Commission

in addition to the provisions of the constitution under article 246 which provides that the commission shall among other things shall Keep under review all matters relating to standards or qualifications required of members of the Service and Approve applications for engagement by police officers in trade and other businesses, in accordance with the law relating to matters of leadership and integrity under Article 80 of the Constitution. These powers could have been used to safe the image of the force by investigating and or conducting a public inquiry to see what can be done to meet the standard as provided for under section 12 which among other things requires the commission to (section 12(b)) prevent corruption and promote and practice transparency and accountability. This should apply to both the members of the force and the members of the commission as well.

**vii. The Director of Public Prosecutions Act No. 2 of 2013**

This is an act of Parliament to giving effect to Articles 157 and 158 of the Kenyan Constitution and for connected Purposes. Section 5 subsection (1) Pursuant to Article 157 of the Constitution the Director of public prosecution shall;(a) Have power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction(b)Exercise State powers of prosecution and may; This act confirms that it is an independent office which means that it can function independently but for the power given to it under this section, it can require the inspector general to investigate any information and in this research the information regarding corrupt traffic police officer. This is yet to be done.

**viii. The Office of the Attorney General Act no. 49 of 2012**

This is an Act of Parliament to making a further provision for the functions and powers to the office of the Attorney General of Kenya by providing for the discharge of duties and the exercise of powers of the Attorney-General in the republic of Kenya. This act was passed in parliament in 2012 in line with Article 156 of the Constitution with the responsibility among others to Advising Government Ministries, Departments, Constitutional Commissions and State Corporations on legislative and other legal matters among others. This is an independent office through which all public prosecution are conducted with cooperation from the office of inspector general of police. This office has taken a low

profile in matters legislation or advice the government in legislation to curb bribery or corruption which is a challenge by almost all regimes. This office should have taken a cue in asking IPOA and the independent commission on ways to mitigate corruption not only in the police service but in other departments as well. The office is criticized for failure to prosecute the big fish since 2003.

**ix. The Public Officer Ethics Act 2003 cap 183 (POEA)**

This is an act of Parliament advancing the ethics of public officers by providing for a Code of Conduct and Ethics for public officers. The preamble to the act provides for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers and to provide for connected purposes. This act should be applicable to police officers of all ranks in order to mitigate bribery and or corruption in the police force.

**x. The Ethics and Anti-Corruption Commission (EACC)**

This is an act of Parliament to provide for the prevention, investigation and punishment of corruption, economic crime and related offences and for matters incidental thereto and connected therewith. This law was enacted in 2003 but has seen so many amendments with the aim of making it relevant. The latest one being Act No. 18 of 2014 these amendments have affected its clear mandate which only gives it power to appoint special magistrates to try the offences under this act but section 2 of this act has defined corruption as including (a) An offence under any of the provisions of sections 39 Bribing agents, 44 Bid rigging, 46 Abuse of office and 47 dealing with suspect property. The act further defines corruption to include Bribery, Fraud, Abuse of office and an offence involving dishonesty amongst others. This definition given to corruption in this act gives the commission a wide mandate to investigate and prosecute any person involved in bribery or dishonesty. But the commission is yet to go for the “small fish” let alone the “big fish”.

**xi. The Kenya Constitution 2010**

The Kenyan constitution is the supreme law which in chapter one provides for the sovereignty of the people and supremacy of the constitution. The Kenyan constitution under article 2(1) states that this constitution is the supreme law of the republic and binds all the state organs and all persons. The constitution further provides for the establishment

of the various organs, government agencies, commissions and the protection of the fundamental rights and freedoms of the citizens. The constitution guarantees and further strengthens freedom of the media (article 33) and access to information (article 35). The constitution further provides that if there is any law which is inconsistent with this constitution, the constitution shall prevail and the other law shall be void. Therefore, all laws shall derive their force and validity from it. The Kenyan constitution is an important legal instrument in the fight against corruption and or bribery as it established the various organs of the government and also the constitutional commissions which also guarantees their independence but the heads of this commissions have not realized this or do not want to take the protection of the constitution and undertake the fight against corruption or bribery

#### **V. Conclusions and Recommendation**

Kenya has more than enough laws which have been enacted in a bid to curb and or prevent bribery, but strict enforcement and adherence of these laws is weak due to the fact that in the matatu industry, the drivers, conductors and Sacco managers flout the traffic rules and the traffic police officers take bribes in total disregard of the existing laws. These laws according to the findings of this study only make things worse as the traffic police officers use them as a bargaining tool for soliciting more bribes. As rightfully stated earlier, the fight against bribery and corruption in the police department or in the matatu industry has been more often than not been a trial and error thing as the tactics used and willingness to bribe always make it impossible to detect and finally prevent the vice. The efforts made by the government in preventing bribery are commendable but it is not enough. . With the legal and institutional frameworks put in place by the Kenyan government, the job is never done unless the citizens are involved in the fight against it, Implementation of the Constitution to the letter,

Legislative Reform, Supervision of the Government Initiatives, Policy and other Reform, Partnership with C.S.O and the media , Judicial Reforms, Societal Reform, Promoting Anti-Corruption Culture in the Industry, Strict Adherence to the laid down Rules, Rewarding the whistleblowers , Discipline and Punishment of Corrupt Individuals/Officers, Encourage Reporting of Bribery on the Kenyan Roads, Set Official Policies and Enforce Them and Decentralization of the National Integrity Academy.

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