

TRAFFIC LEGISLATION GAPS AND DRIVERS OF CORRUPTION IN TRAFFIC MATTERS



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ACRONYMS AND ABBREVIATIONS

ACECA	Anti-Corruption and Economic Crimes Act
CCTV	Closed Circuit Television
EACC	Ethics and Anti-Corruption Commission
ICT	Information Communication Technology
KURA	Kenya Urban Roads Authority
NPS	National Police Service
NPSC	National Police Service Commission
NTAC	Notice to Attend Court
NTSA	National Transport Safety Authority
PSV	Public Service Vehicle
SACCO	Savings and Credit Cooperative
TI-KENYA	Transparency International Kenya



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EXECUTIVE SUMMARY

Background

The National Police Service, has featured in a number of reports as one of the public institutions where corruption is massive. For instance in the *East Africa Bribery Indices*, the institution has continued to rank as the most prone to bribery. Interestingly, citizens associate corruption in the police with traffic related matters, even though there are other documented avenues of corruption within the Service.

This report by TI-Kenya is a compilation of feedback received from key stakeholders in the transport sector including, but not limited to, the National Police Service, Nairobi Traffic Marshalls, long distance truck drivers and *Matatu* Owners Association. It focuses on audit of the key issues on traffic matters and offers an evaluation of key contributors of corruption in traffic matters.

The study, therefore, provides information on available laws, policies, and regulations that govern traffic related issues, in order to identify the existing gaps, possible causes of corruption in traffic matters, and provide recommendations on how the identified gaps can be addressed.

The study is organised in four chapters. Chapter 1 carries the conceptual background, objectives and scope of the study and attempts to contextualize the issue of corruption in traffic matters. Chapter 2 presents the methodology used in conducting the research while Chapter 3 provides an analysis of the findings on drivers of corruption in traffic matters. It is in Chapter 4 where suggestions on how to curb traffic corruption are given. The chapter also has the recommendations and conclusions.

Summary of the Methodology

This survey was carried out in Nairobi City County and neighbouring counties of Kiambu, Kajiado and Machakos. Some 246 respondents, selected through purposive sampling, were reached. The survey largely used a qualitative research process.

In conducting the study, both primary and secondary data was collected. Primary data was obtained through field visits and key informant interviews with various stakeholders in the transport sector while secondary data was collected through desk review of existing literature.

Summary of the Findings

a) Traffic laws/legal framework in traffic matters

In conducting the study, a desk review of legislation, regulations and policies in traffic matters was conducted. Among these was the Constitution of Kenya; The Public Officers Ethics Act, No. 4 of 2003; Kenya Bribery Act, 2016; Anti-Corruption and Economics Crimes Act, 2003¹; National Police Service Act; National Police Service Commission Act; The Kenya Traffic Act (Cap 403 Laws of Kenya); Transport Licensing Act (Cap 404 Laws of Kenya); and the NTSA regulations and fines for minor offences among others.

- Most of the respondents showed knowledge of Kenya traffic laws as well as the legal requirements to become a driver or a rider.
- Most of the respondents also indicated that the problem is not the laws but, rather their enforcement.
- There has been little training on traffic laws among the respondents by NTSA and NPS.

¹ Cap 65, Laws of Kenya



b) Judicial processes and relationship to corruption

The audit established various undertakings by the judiciary in handling traffic matters including development of guidelines for handling traffic matters especially minor offences so as to curb corruption in traffic matters.

- Despite efforts by the judiciary aimed at discouraging corruption in traffic matters, most participants, that is, 80% of the long distance drivers, 86% of the *matatu* drivers, 86% of *bodaboda* riders and 89% of taxi drivers, indicated that they prefer to resolve matters outside courts due to collusion at the courts.

According to the respondents, every stage of the judicial process provides an avenue for corruption. Some of the respondents claimed that registry clerks collude with the prosecutor while the prosecutor colludes with the magistrate in order to close a case.

In addition, *matatu* sector respondents indicated that traffic police reportedly have an ad hoc kangaroo court with arbitrary fines where drivers must pay if they don't compromise on the road.

c) Police reforms

- Many of the respondents were aware of police reforms aimed at reducing corruption in traffic matters. Though many believe that the police are useful in enforcing traffic laws and controlling traffic, a majority of the respondents still believe that the appointments to the traffic police department are not based on merit but on association with powerful people in the NPS, ethnicity, and illegal payments to senior officers leading to the appointment of unaccountable and corrupt officers in the traffic department.
- Most respondents believe that the police have a very high level of discretion in handling traffic offences especially in the inspection of vehicles, which was also cited as a ground for corruption in traffic matters.
- Many respondents were of the opinion that NTSA officers have reportedly been compromised by the police, many of whom were seconded to the department.
- Respondents also believed that there exists a duplication of roles between the traffic police and NTSA officers which leads to frequent power struggles for supremacy between the two. This has led to an increase in corruption as many of the respondents admit paying bribes to both agencies.

d) Corruption avenues in the traffic sector

Most of the respondents agree that corruption is very prevalent in traffic matters. They cite two ways in which it is perpetrated:

i. Payment of bribes: Where drivers give cash to traffic officers.

- Fifty five percent of the long distance drivers indicated that they had been asked to pay a bribe by the police while 20% were asked to pay for a bribe by traffic marshalls.
- Twenty five of the *matatu* SACCO respondents indicated that they had been asked to pay a bribe by the police while 34% mentioned traffic marshalls.
- Thirty six percent of *Bodaboda* riders indicated that they had been asked to pay a bribe by the police with another 21 % stating that they had been asked by traffic marshalls.
- Thirty three percent of the taxi drivers said that they had been asked to pay for a bribe by the police.

ii. **Corruption of authority:** Receiving free drinks, meals, and other gratuities from road transport service providers.

Further the audit established the following avenues for corruption in the transport sector as cited by a majority of the respondents:

- protection of illegal activities;
- undermining criminal prosecutions;
- avoiding court processes which they termed corrupt, costly and time consuming;
- ticket fixing;
- frame ups and pollution of evidence through additions;
- making favorable insurance claims;
- using vehicles belonging to traffic officers.

e) Lack of Public sensitization on traffic matters

- Most respondents did not agree that the NPS traffic division initiates road safety sensitisation to the members of public. All these scenarios indicate that some of the roles in the NPS traffic division are not appropriately discharged.
- Respondents from the media indicated that they do not have specific programmes that sensitise citizens on traffic laws. It was noted that media houses have an agenda setting role by keeping traffic corruption stories high in the in their channels to help fight traffic corruption. In so doing, they have adopted a gate keeping strategy to release information on traffic corruption to the masses. There is no information regarding publication of governance framework to help fight traffic corruption neither do they pressure the government to prosecute traffic corruption cases that have been reported.
- Most civil organisations do not have specific programmes that sensitise citizens on traffic laws and regulations especially on their rights as motorists, neither do they have advocacy strategies that held fight against traffic corruption.

In contrast, EACC were noted to have corruption related programmes and strategies in place. Some of these include: naming and shaming of corrupt traffic officers, promoting introduction of actual change (e.g. amended traffic laws), civil oversight of traffic police to promote transparency, intervening and alerting (e.g. threats to rights of motorists), and putting pressure on authorities to take appropriate action by raising awareness. Asked to name the five most prioritised sectors of advocacy in their house budget allocation, EACC listed the following albeit not in any specific order:

- i. Public relations and media advocacy;
- ii. Sensitisation to police officers and members of the public through forums;
- iii. Sting operations against corrupt police officers;
- iv. Multi-agency cooperation;
- v. Research, and;
- vi. Increase in EACC presence (setting up of regional offices).

f) Poor Road Transport Management

- Most respondents mention the police and the NTSA as the most common government agencies they interact with in traffic matters. All long distance truck drivers indicated that they interacted with the police as a government agency while 89% of matatu SACCO respondents mentioned NTSA followed by 84% who mentioned the police.



- Though most respondents agree that the police and NTSA have been useful in controlling traffic and enforcing traffic laws, a majority admit having been asked and have paid a bribe to both the traffic police and NTSA officers. For instance 55% of the long distance drivers indicated that they had been asked to pay a bribe by the police while 20% were asked to pay for a bribe by traffic marshalls.
- Most respondents admit that there are integrity initiatives put in place by their respective SACCOs in an attempt to curb corruption.
- All respondents (100%) agree that there is a code of conduct governing their respective sectors.
- Most respondents have quality control mechanisms e.g. tickets to elicit and collect feedback on their services.
- Seventy one percent of the respondents feel that there are too many regulations within the matatu industry that are impossible to fulfill, while 82% felt that the many regulations within the matatu industry make them vulnerable to harassment from traffic police .

Recommendations

From the audit findings the consultant recommends the following remedies to the drivers of corruption in traffic matters:

- Rigorous public sensitisation on traffic laws and rights of road users as well as court processes;
- Enforcement of traffic laws as well as judicial guidelines on bail and bond for minor offences;
- Inclusion of corruption training modules in all police and driver training modules;
- Increased use of technology in traffic matters as a means to detect and deter corruption;
- Integrity training among police officers.

1.1 Background

Corruption is said to be: “lack of integrity or honesty (especially susceptibility to bribery); use of a position of trust for dishonest gain”; being dishonest or fraudulent or abuse of power. TI defines corruption as, “the abuse of entrusted power for private gain”. According to the *Anti-corruption and Economic Crimes Act (ACECA)*, corruption in part means “an offence under any of the provisions of section 39 to 44, 46 and 47, bribery, fraud, embezzlement or misappropriation of public funds, abuse of office, breach of trust or an offence involving dishonesty, in connection with any tax, rate or impost levied under any Act or under any written law relating to the elections of persons to public office.” Corruption may be classified into several categories, namely; grand corruption, petty corruption and political corruption.

This study focuses on drivers of corruption within the NPS traffic department. It targets stakeholders such as motorists or passengers interacting with authorities such as traffic police officers, traffic marshalls, insurance companies, the judiciary and NTSA, among others, on a day to day basis.

1.2 Contextual Analysis

The Government of Kenya first initiated a police reforms agenda in 2002 following the appointment of a Task Force made up of state and non-state actors. Its report was not released to the public leading to loss of momentum. In 2007 – 2008, during and after post-election violence, the momentum to reform the police was rekindled. The Waki Commission was given a special mandate to investigate the state of security agencies and how they handled post-election violence.

The recommendations of the Commission became the basis for the process of police reforms in the country. In implementing the recommendations of the Commission, the Kenya National Dialogue and Reconciliation Framework recognized police reforms as one of the items to be undertaken. There was need for a comprehensive reform of the Kenya Police Force and Administration Police in terms of constitutional, legal, policy and institutional aspects. Consequently, a National Task Force on Police Reforms chaired by Hon. Justice (Rtd) Philip Ransley was appointed in 2009 to develop a roadmap for police reforms.

The taskforce reviewed the police structures and systems and recommended wide-ranging reforms to the police service, including the restructuring of the police services to create one National Police Service that brings both the Kenya National Police and Administration Police under the leadership of one Inspector-General; The National Police Service Commission to manage the employment and discipline of police officers; and The Independent Policing Oversight Authority to independently investigate serious complaints of police misconduct and recommend action. The Constitution of Kenya, promulgated in 2010, entrenched this new system, and new laws were passed to fully establish the three bodies listed above:

- The National Police Service Act 2011
- The National Police Service Commission Act 2011
- The Independent Policing Oversight Authority Act 2011

The mandate of the National Police Service Commission (NPSC) is to oversee the human resource aspects required to realise a professional, responsive and accountable National Police Service (NPS). This includes establishing professional standards for recruitment, promotions, transfers, discipline and vetting. Also required of the NPSC is to facilitate the provision of healthcare, housing, and other aspects of police welfare relevant to making the police service professional and accountable.



The National Police Service is provided for in *Articles 238, 239, 243, 244, and 247* of the Constitution and operationalized with the enactment of the National Police Service Act 2011. One of the provisions of the Act was the merger of the Kenya Police Force and Administration Police to form the National Police Service and the creation of the Office of the Inspector General with two deputies.

In addition to the NPSC and the NPS, in 2012, through an Act of parliament, the National Transport and Safety Authority (NTSA) was established. Through a Gazette notice by the Cabinet Secretary - (Kenya Gazette Supplement No. /52 (Acts No. 33), the Authority was given the mandate to carry out its responsibilities and in doing so, to work closely with the NPS traffic department, whose main functions include, enforcement of all laws, rules and regulations and initiating road safety sensitisation to the members of the public to make them aware of corrupt practices and remedies.

This relates to the NTSA mandate that seeks to harmonise the operations of the key road transport departments and help in effectively managing the road transport sub-sector in order to reduce corruption in the traffic sector

The judiciary is also a key player in traffic matters with the Chief Justice providing new guidelines on handling traffic matters and is on record stating that, “minor offenders should be given summons to appear in court rather than being forced to pay cash bail.” *Article 49(2)* of the Constitution provides that “A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.”²

Since the start of the reform process there has been a significant transformation in policing, including increasing the number of police officers in both services, increase in the number of stations, police vetting, bringing in new technology into policing, and new developments in local policing through community policing and *nyumba kumi* initiatives.

According to Kenya National Bureau of Statistics Economic Survey (2017) Government has continued to implement various institutional reforms to improve Governance. The reforms include vetting of police officers, installation of a national secure communication network and surveillance system for the NPS in Nairobi and Mombasa, the introduction of a ‘Roadmap Toolkit’ to guide the training of police officers and strategies to counter corruption in the police service. [Additionally, the National Police Service 2016 Annual crime report notes that the Police Service has put in place measures to curb internal corruption. These include sensitization of officers through weekly lectures on issues of integrity and code of ethics as well as the arrest of suspects.](#)

Despite some initial progress, the reform process still faces many challenges with corruption especially in traffic matters remaining a major obstacle to effective, accountable and professional policing. The number of crimes reported to the police increased by 6% from 72,490 in 2015 to 76,986 in 2016 with Kiambu, Meru and Nairobi recording the highest number of crimes. Traffic offences increased by 16% from 120 cases in 2015 to 139 cases in 2016. Offences involving police officers decreased by 19% from 71 cases in 2015 to 57 cases in 2016.³

The *World Internal Security and Police Index (2017)* ranked Kenya’s police service as the third worst in the world. Comparing to other African countries, Botswana was the best, Rwandan police was ranked as Africa’s second best followed by Algeria (58th), Senegal (68th) and Tunisia (72nd). Completing the top 10 for Africa were, Egypt, Burkina Faso, Ghana, South Africa and Mali respectively. The index aims to measure the ability of the security apparatus within a country to respond to internal security challenges, both now and in the future.⁴

Corruption in the traffic department has become a major concern for all stakeholders in Kenya.

Of dire concern in Kenya are the road carnage related incidences. According to a study conducted in two districts of Thika and Naivasha in 2012, Road Traffic Injuries (RTIs), weigh heavily on the socio-economic

2 kenyalaw.org/kl/fileadmin/pdfdownloads/Direction-on-Traffic-Cases.pdf

3 knbs.or.ke/download/economic-survey-2017/

4 http://insyde.org.mx/wp-content/uploads/WISPI-Report_EN_WEB_0.pdf



well-being of Kenyans from an individual to family and society levels (Bachani et al, 2012).⁵ The atrocity can be traced to compromise on observance of the stipulated laws by both the general public as well as the enforcement agency (National Police Service).

A study on road traffic injuries in Kenya in terms of magnitude, causes and status of intervention states that Kenya has one of the highest road fatality rates in Africa at 68 deaths per 10,000 registered vehicles. Furthermore, between 45-60% of admissions to surgical wards in public hospitals are as a result of road traffic injuries, (Mogaka et al, 2011).⁶

Various reports including IPOA (2003)⁷ and the Ransley (2009)⁸ indicate that corruption amongst junior and senior police officers has been rife and has had a debilitating impact on policing and on public trust. It flows from recruitment, promotion and training. According to IPOA baseline report 30% of respondents had experienced police malpractice, including assault/brutality, falsification of evidence, bribery and threat of imprisonment.

A general feeling by the public that police officers were above the law necessitated open police vetting to make sure that they account for their conduct while on duty as well as unexplained wealth accumulation. NPSC is on record as having been working at reforming the police service and in 2015, fired 63 senior police officers. In 2016, another 302 officers were fired by the Commission after failing the vetting process.⁹ This was termed as a clear demonstration of corruption in traffic department. The reasons for dismissing the traffic officers were unexplained financial transactions, including sending and receiving money from fellow police officers in the Traffic department, operating *matatu* businesses or receiving money from transporters and operators of towing services.

According to a study carried out in 2015 by Litunya and Osale titled '*Tackling Corruption in the Kenyan Judiciary and Police*' glaring points of police corruption include but not limited to misuse of authority, bribery or exchange of money or something of value between the police and the wrong doer, brutality, fake encounters, sexual harassment, custodial crimes and illicit use of weapons.¹⁰ A study by TI-Kenya, *The East African Bribery Index 2014 (Kenya Findings)*, indicated that bribery in the police sector had grown by 8% from 60% in 2013 to 68% in 2014.

There are media reports which show that the PSV sector is greatly affected by corruption through compromise. For example, on Saturday, January 28, 2017, Citizen TV aired the Ethics and Anti-Corruption Commission (EACC) detectives arresting four traffic police officers for allegedly extorting bribes from motorists.¹¹

The legitimacy and continued spending of tax payers' funds on traffic matters is judged by positive outcomes of activities by traffic police. For this to be realised, there is need to ensure rule of law is applied, and for integrity and accountability to be at the core of the operations of the police traffic department.

The applicable laws for this operationalization include Constitution of Kenya 2010, Traffic Acts, Judiciary Act, Ethics and Anti-Corruption Act and so on. These laws stipulate ethical standards expected by all officers in relevant public institutions. The entities are expected to pursue measures that entrench anti-corruption culture. The application of traffic related laws in Kenya has not been progressive largely due to uncoordinated efforts by players in respective law dockets, unfair use of discretion by police officers, and haphazard investigations leading to inadequate evidence.

5 Road Traffic Injuries in Kenya: The health burden and risk factors in two districts (2012)

6 Factors associated with severity of road traffic injuries, Thika, Kenya. By Osoro M.E cited in Odero.W, Garner, P and Zwi, A

7 IPOA ,2013 Baseline Survey on Policing Standards and Gaps in Kenya

8 Report of the National Task Force On Police Reforms

9 National Police Service Commission annual report 2016/2017

10 igi-integrity.com/Documents/AGM2015-Workshop%20on%20Judiciary&Police-Background.pdf

11 <https://citizentv.co.ke/news/traffic-cops-arrested-with-a-paper-bag-full-of-money-156092/>



1.3 Objectives of the Study

The objectives of the study were: -

- To review the available laws, policies, and regulations that govern traffic related matters to identify the existing gaps.
- To conduct interviews with key stakeholders in the transport sector including but not limited to the National Police Service, *Matatu* Owners Association and long distance truck drivers to incorporate their views
- To provide proposals including best practices on how the identified gaps could be addressed to inform advocacy initiatives.

1.4 Scope of the Work

The study focused on corruption and corrupt practices in the traffic sector on Kenyan roads. The main deliverables are detailed findings on drivers of corruption in traffic related issues and recommendations to guide various interventions. The study was carried out in Nairobi City County and also attempted to capture experiences of surrounding counties, namely; Kiambu, Machakos and Kajiado.

2

CHAPTER 2. METHODOLOGY

In conducting the study, both primary and secondary data was collected. Primary data was obtained through field visits/interviews and key informant interviews with key stakeholders in the public transport sector. Secondary data was collected via extensive desk review of laws, policies, regulations governing the transport sector and other relevant publications. The survey sought to explore the opinions and views of transport sector actors on the drivers of corruption in traffic matters. Respondents were drawn from Nairobi County.

The researcher managed to interview representatives from 44 *Matatu* SACCOs; independent long distance truck drivers; 3 insurance companies; NTSA head office; 5 taxi companies namely: Jatco, Jimcab, Kenatco, Pewin and Courtesy; 2 Civil Societies and independent Commissions who support anti-corruption initiatives; 1 media house; traffic marshalls from Nairobi City County; and *Bodaboda* riders.

The audit adopted a qualitative data collection method as it

Purposive and convenience sampling techniques were used to identify 246 respondents drawn from the NPS, media, *Matatu* SACCOs, drivers and driving schools as seen below:

The highest number of respondents, 31% was from the Nairobi City County traffic marshalls department. 17.9% were from the *Matatu* sector, closely followed by the traffic police (16%) and has been itemised in *Table 1* on target respondents by senator below.

Target Respondents	Respondents
NPS Traffic Divisions in Nairobi	40
<i>Matatu</i> Owners Association	2
<i>Matatu</i> SACCOs (Nairobi)	44
Long distance truck drivers	20
Insurance companies in Nairobi	3
NTSA Nairobi	19
Registered taxi companies in Nairobi	18
Civil Society Organizations	6
Media houses	2
Traffic Marshalls in Nairobi	77
<i>Bodaboda</i> riders in Nairobi	14
State law office – Nairobi	3
Total	

Table 1: Target respondents by sector

Source: Study 2017



Demographics

Respondents by age

Most of the respondents reached in the study were the youth making an aggregate total of 47% with their ages ranging from 25 to 34 years. In the case of traffic marshalls, this differed slightly as most of the respondents (34%) in that sector were aged between 40 and 44 years. Among the traffic police, the most common range was 30 to 34 years (40%). This mix in age groups is an indication of an energetic workforce coupled with years of work related experience. Below see *Table 2* on respondents by age for details.

Age	25-29	30-34	35-39	40-44	DNA
Bodaboda	57%	29%	7%	0%	7%
Civil Organisations	0%	33%	17%	17%	33%
Insurance	33%	33%	33%	0%	0%
Long distance driver	50%	30%	5%	0%	15%
Matatu SACCO	23%	25%	9%	16%	27%
Media	50%	50%	0%	0%	0%
NTSA	37%	37%	5%	16%	5%
State law office	100%	0%	0%	0%	0%
Taxi drivers	39%	22%	17%	0%	22%
Traffic marshalls	6%	10%	8%	34%	41%
Traffic police	8%	40%	3%	20%	30%

Table 2: Respondents by age

Source: Study 2017

Respondents by education levels

Comparing all the sectors, it emerged that the long distance drivers had the highest number of secondary school graduates (70%), followed by traffic police (65%). NTSA had the highest number of university graduates (89%) while among the *Bodaboda* riders, 36% had reportedly achieved primary level education, the highest tally of this category within all the sectors. It also goes to show that if positive change was to be effected in respect to stemming out corruption, then it may be easily realised through awareness creation as most of the respondents were noted to be schooled. Education has been shown to reduce illegal behaviour, decrease arrest rates, improve social cohesion, and increase civic responsibility (Oreopoulos & Salvanes, 2009). All of these outcomes suggest that education attainment should lead to less corruption participation.¹²

	Masters	Bachelors	Diploma	Certificate	Secondary education	Primary education
Bodaboda	0%	7%	14%	7%	36%	36%
Civil Organisations	33%	67%	0%	0%	0%	0%
Insurance	33%	33%	0%	33%	0%	0%
Long distance driver	0%	0%	5%	0%	70%	20%
Matatu SACCO	5%	16%	48%	9%	18%	2%
Media	0%	0%	0%	0%	0%	0%
NTSA	5%	84%	0%	0%	11%	0%
State law office	0%	100%	0%	0%	0%	0%
Taxi drivers	0%	11%	22%	33%	33%	0%
Traffic marshalls	0%	0%	30%	17%	49%	4%
Traffic police	3%	10%	15%	8%	65%	0%

Table 3: Highest level of education

Source: Study 2017

¹² Oreopoulos, Philip, and Kjell G. Salvanes. 2009. "How Large are Returns to Schooling? Hint: Money Isn't Everything." NBER Working Paper 15339.

Work experience in the various sectors was commonly found to be 1 to 10 years (over 50%). However, in the *matatu* sector, 43% indicated that they had served for a period ranging from 21 to 30 years. This shows that the respondents had enough experience and knowledge on corruption in traffic matters and therefore the information provided was reliable. In the transport sector, only *matatus* were found to have structured management bodies which came in the form of SACCOs.

The *Bodaboda* riders were noted to have established groups that are identified with the location where they await their prospective clients. These have group officials but only for the sake of order within the groups. The taxi drivers are governed by the companies in which they work and hence there is no common umbrella or SACCO for all taxi drivers. The long distance truck drivers were found to be totally independent of each other without any common umbrella body.

This indicates a gap between perception and reality on the ground. Umbrella bodies operate as unstructured briefcase mechanisms that largely address individual interest. Among the big hauling companies, there is a common understanding about the weight they carry from the point of interaction with clients



This section provides a review of the various legislations, policies and regulations in traffic matters in Kenya.

3.1 Legislation, Policies and Regulations relevant to Corruption in Kenya

A number of laws, policies, and regulations that govern anti-corruption matters in the public and private sectors.

▪ The Constitution of Kenya

Article 232 of the Constitution of Kenya provides the values and principles of Public Service. These include:

- high standards of professional ethics; efficient, effective and economic use of resources,
- responsive, prompt, effective, impartial and equitable provision of services;
- accountability for administrative actions;

Further, the Constitution of Kenya through Chapter Six on leadership and integrity requires State Officers to be guided in their day-to-day conduct by principles of leadership and integrity which, among other requirements, include being objective and impartial in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices; being selfless while rendering service solely on the public interest; demonstrating the commitment to the public interest through honesty in the execution of public duties and the declaration of any personal interest that may conflict with public duties and being accountable to the public for decisions and actions.

The chapter was operationalised with the enactment of The Leadership and Integrity Act, of 2012. The Act establishes procedures and mechanisms for the effective administration of Chapter Six of the Constitution as well as prescribing penalties for violators. Furthermore, the Act addresses personal behavioural issues of state officers like impartiality, bullying, and conduct of private affairs.

▪ The Public Officers Ethics Act, No. 4 of 2003

The Public Officers Ethics Act was enacted to advance the ethics and performance standards of public officers. Part (iii) of the Act provides for a general code of conduct and ethics to be observed by all public officers. In furtherance of the Act all public entities are expected to adopt the provisions of the code of conduct and customize them in the development of their respective codes of conduct and ethics.

The Act requires financial declarations from certain public officers; sets a general code of conduct and ethics; requires performance of duties-effectively and honestly, and maintenance of professionalism.

Further the Act provides for guidelines on conflicts of interest and requires public officers to avoid being in a position in which personal interests conflict with their official duties.



▪ **The Bribery Act, 2016**

The Bribery Act 2016 provides for the prevention, investigation and punishment of bribery in Kenya. The Act came into force on 13 January 2017. Though not expressly defined under the Act, the term bribery under Part II of the Act includes offering, promising or giving a financial or other advantage to another person, who knows or believes that the acceptance of the financial or other advantage would itself constitute the improper performance of the relevant function or activity.¹³

The Act provides for various penalties for an individual found guilty of offering, promising or giving financial or other advantage to another person; or intends to induce another person to perform improperly a relevant function or activity; or intends to reward another person for the improper performance of such a function including; imprisonment for up to ten years, a fine of up to five million shillings, a mandatory fine equal to five times the benefit acquired as a result of the bribery or of the loss incurred by another party as a result of the bribery where such benefit or loss is quantifiable.

The Act also provides under Section 18(7) that any person or company suspected to have benefitted from a bribe will have their properties seized. Such a person or entity may also be required to pay back the amount or value of any advantage received to the Government and will be barred from participating in any government tendering or procurement.

It has put in place methods to prevent bribery, with strict punishment (fines or imprisonment or both) for those failing to comply, The Act provides a more robust system for preventing bribery including obligations on individuals holding positions of authority in Kenyan companies or companies operating in Kenya to report instances of bribery and obligations on companies to put in place bribery prevention policies and measures.

▪ **Anti-Corruption and Economics Crimes Act, 2003**

The Anti-Corruption and Economic Crimes Act, 2003 provide a legal framework to guide the fight against corruption and economic crimes in Kenya. The Act provides for a number of strategies to be employed in the fight against corruption. These include: investigation, prosecution, prevention, education, and asset recovery.¹⁴

Though the Act provides for people's right to transparent accountable, efficient and responsive service delivery, it became effective before the new constitution and needs to be amended to conform to provisions of the Constitution of Kenya 2010.

▪ **National Police Service Act, 2011**

The National Police Service Act, 2011 which gives full effect to Article 243 of the Constitution, governs and provides for the role of the National Police Service in Kenya

Section 4(1)(a) of the NPS Act requires the Kenya Police Service to regulate and control traffic and keep order and prevent obstructions in public places. This has therefore has seen the establishment of the traffic department in the Kenya Police service.

▪ **National Police Service Commission Act, 2011**

This Act which came into force in 2011 provides for the role, functions and powers of the Commission as established under Article 246 of the constitution. Among the functions include;

- a. recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;
- b. To determine appropriate remuneration and benefits for members of the Service;
- c. To provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;

¹³ http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/BriberyAct_47of2016.pdf

¹⁴ http://info.mzalendo.com/media_root/file_archive/Report_on_Implementation_of_Chap_6.pdf



- d. To exercise disciplinary control over persons holding or acting in office in the Service;
- e. To ensure that the Service is efficient and effective;
- f. To investigate, monitor and evaluate the organization, administration and personnel practices of the Service;
- g. To approve training curricula and oversee their implementation;

▪ **The Traffic Act Cap.403**

The Traffic Act Cap.403 stipulates all the necessary requisites of traffic operations in the country. The Act covers registration of vehicles, licensing of vehicles, driving licences, driving and other offences relating to the use of vehicles on roads, regulation of traffic, designated parking places, accidents, offences by drivers of vehicles other than motor vehicles and other road users, miscellaneous provisions as to roads, public service vehicles and other general but related matters.

The Act was reviewed through the Traffic (Amendment) Act, 2012 to enhance the penalties for various traffic offences in order to deter commission of those offences and consequently minimise loss of lives on Kenyan roads through accidents.¹⁵ The Traffic (Amendment) Act 2012 emphasises on an aspect that breeds corruption in regard to payment of fines while the subsequent amendments address issues around speed limits, traffic signs and obstruction on the roads. This makes the Traffic (Amendment) Act, 2012 progressive in deterring corruption in the traffic department.

The Act creates various traffic offences and applicable penalties. However, it does not provide for fixed or statutory fines. Needless to say, it provides a maximum amount and thus the applicable fine is left to the particular magistrate's discretion. As a result of the exercise of this discretion, the amount of fines or penalties payable vary from one incident to the next, leading to uncertainty and development of perceptions among the public of unfairness and "elasticity of justice".¹⁶

Section 55(1) of the Traffic Act states that no vehicle shall be used on a road unless such vehicle and all parts and equipment thereof, including lights and tyres comply with the requirements of the Act and such parts and equipment shall at all times be maintained in such a condition that the driving of the vehicle is not likely to be a danger to other users of the road or to persons travelling in the vehicle. However, most of the respondents believe that there are many unroadworthy vehicles within the city providing an avenue for corruption.

Further Section 55 of the Act is not clear on what constitutes an unroadworthy vehicle on the roads hence giving the police huge powers of determination and is a possible ground for corruption.¹⁷

▪ **National Transport and Safety Authority Act , 2012**

The National Transport and Safety Authority Act,2012 established the National Transport and Safety Authority (NTSA) with the mandate to administer the Traffic Act , Cap 403. This includes to:

- a. advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety;
- b. implement policies relating to road transport and safety;
- c. plan, manage and regulate the road transport system in accordance with the provisions of this Act;
- d. ensure the provision of safe, reliable and efficient road transport services;

The act also gives NTSA the authority to:

- a. register and license motor vehicles;
- b. conduct motor vehicle inspections and certification;
- c. regulate public service vehicles;

¹⁵ Kenya Traffic (Amendment) Act, 2012

¹⁶ <http://ntsa.go.ke/2015/acts/supportinstantfines.pdf>

¹⁷ unep.or.jp/ietc/GPWM/data/T2/IS_6_P_PolicyAndRegulations_Nairobi.pdf



- d. advise the Government on national policy with regard to road transport system;
- e. develop and implement road safety strategies;
- f. facilitate the education of the members of the public on road safety;
- g. conduct research and audits on road safety;
- h. compile inspection reports relating to traffic accidents;

The Act also effectively repeals the Transport Licensing Act (Cap. 404).

NTSA has stridently and consistently advocated for amendments to the Traffic Act to provide for an instant fine system, a view that is shared by the Judiciary and National Police.¹⁸ Further the NTSA has released a list of minor traffic offences in Kenya (Per the Kenya Traffic Act) and the fines they attract, provided notice to attend court forms to its officers and announced plans to install a gadget that back-tracks speeds for up to 72 hours.

Legal Requirements to Become A Licensed Public Service Vehicle Driver/Rider

The audit found that most of the respondents had some idea of the legal requirements in the country for one to become a driver or a rider.

According to *Matatu* SACCOs, the most common legal requirements for someone to become a licensed Public Service Vehicle (PSV) was a valid drivers' licence (27%) a certificate of good conduct (25%) and be 18 years and above (11%). On the other hand, 71% of *bodaboda* riders stated that one needed a drivers' licence so as to be licensed as a public motorcycle transport operator, while 7% said that riding gear was a legal requirement.

Half of the long distance truck drivers indicated that one must have a driving licence with 15% noting that one needed a Class BCE driving license. Finally, 38% of taxi drivers noted that one needed a driving license while 17% noted that one needed a PSV badge and 11% noted that one needed 4 years' experience. Other requirements are as tabulated in Table 4 below.

Public Service Vehicle (PSV) driver	Percent
Valid driver's licence	27%
Certificate of good conduct	25%
Be 18 years and above	11%
Experience	9%
Class "A endorsement on the Drivers Licence	7%
Identity card	7%
Training	7%
PSV Badge from NTSA	5%
Did not answer	2%
Motorcycle rider	
Driving license	71%
Gear	7%
Experience	7%
Above 18 years of age	7%
Did not answer	7%
Long distance driver	
Driver's License	50%
ART MV –Stamp	15%
BCE Driving Licence	15%
Experience(5years)	10%

18 <http://ntsa.go.ke/2015/acts/supportinstantfines.pdf>



Good conduct	5%
Correct eyesight	5%
Taxi Drivers	
Driver's Licence	38%
PSV Badge	17%
4 years' experience	11%
Above 18 years	11%
Must be a Kenyan Citizen	11%
Certificate of Good Conduct	6%
Basic Education	6%

Table 4: Legal requirements to become licensed PSV driver/rider

Source: Study 2017

Judicial Processes and Relationship to Corruption

The judiciary is also a key player in traffic matters. It has in the past been accused of perpetrating corruption in traffic matters. During a surprise visit to the Kibera Law Courts, the former Chief Justice Willy Mutunga, unearthed a massive corruption scam in the Traffic Court whereby unscrupulous officials mint millions of shillings from traffic offenders.¹⁹ The impromptu investigation revealed that in cases involving minor traffic offences there were numerous instances of bribery, parallel receipting for fines, case backlogs and delays in the court process. This has resulted in the Government constantly losing out on revenue that rightfully belongs to it.

Further, due to the high frequency of minor traffic offences, courts expend a lot of time and resources prosecuting minor offences. Similarly, a lot of time is also wasted by offenders and the police who have to appear before court. It is not uncommon for an offender to spend an entire morning at the Law Courts only to be slapped with a fine of just Sh500 for a minor offence. The end result is the wastage of valuable time for all parties involved which could be better deployed in more productive national development endeavors.²⁰

The other major inconvenience to offenders is the public stigma and public embarrassment attached to a court appearance for a minor offence. This and a litany of other inconveniences, is a major motivation for the quest for quick fix solutions such as issuing bribes to avoid an arrest and the subsequent court process. The collection and administration of fines is another area which raises concerns. The process is entirely manual which leads to revenue leakage through the existence of parallel receipting, among other challenges.

As a result, the judiciary in consultation with the NTSA and police rolled out guidelines for handling minor offences in traffic matters.

In addition, as a measure to curb corruption by cartels operating in its precincts the judiciary rolled out digital fine/bail payment mechanisms through *Mpesa* and *KCB Mtaani*²¹, the nearest KCB Branch or any other bank as advised by respective Court Station.

Further the guidelines provide that Traffic police officers can only arrest offenders and/or detain offending vehicles in serious offences such as causing death by dangerous driving, driving under the influence of alcohol and driving a vehicle without insurance.²²

19 <http://ntsa.go.ke/2015/acts/supportinstantfines.pdf>

20 <http://ntsa.go.ke/2015/acts/supportinstantfines.pdf>

21 Mpesa is a Mobile money service operated by Safaricom PLC while KCB Mtaani is an agent banking service operated by Kenya Commercial Bank

22 kenyalaw.org/kl/fileadmin/pdfdownloads/Direction-on-Traffic-Cases.pdf



Level of Compliance to Joint NPS and Judiciary Court Reforms

This section sought to establish the level to which the joint NPS and Judiciary 2015 proposed reforms have been implemented.

1. Judicial Guidelines on Handling Traffic Matters

a) No traffic offender shall be held by police for offences punishable by a fine only or by imprisonment for a term not exceeding six months.

The audit established that traffic offenders for offences punishable by a fine or imprisonment for a period not exceeding six months are still held in police custody. This is according to a majority of respondents in response to the statement that traffic offenders punishable by imprisonment for less than six months are not held by police.

As detailed in Table 5 below, 45% of long distance drivers, 36% of *matatu* operators, 64% of *Bodaboda* riders and 33% of the taxi drivers disagreed with the statement.

Transport sector	Agree	Disagree
Long distance drivers	20.0%	45%
Matatus	27.0%	36%
Bodaboda	7%	64%
Taxi drivers	28%	33%

Table 5: Traffic offenders punishable by imprisonment not exceeding 6 months are not held by police

Source: Study 2017

b) No accused persons in traffic cases will be locked up in cells without first being granted time, place and adequate facilities to pay fines or bail.

There were more taxi drivers and long distance truck drivers (50% respectively) who agreed that traffic offenders are released on reasonable bail pending trial than those who disagreed. 55% of *matatu* operators and 50% of *Bodaboda* riders disagreed to the statement. This goes to show that most respondents in this category regard the bail offered in the courts as more hefty and unreasonable than it ought to be.

c) Traffic courts shall process payment of traffic fines in open court. Release on reasonable bail or bond conditions pending charge or trial, for all other traffic offenders, shall be fast-tracked.

More long distance drivers agreed (35%) than those who disagreed (30%) that traffic offenders are granted adequate facilitation to pay fines before they are locked in the cells. The same scenario was found with taxi drivers with 44% agreeing and 38.9% disagreeing with the statement. As shown in Table 6 below, more *matatu* drivers (46%) and majority (64%) of the *Bodaboda* riders disagreed with the said statement. Selective justice may seem to apply in respect to the industry owing to the fact that both *matatu* and *bodaboda* operators always have cash as the business dictates and, consequently are more susceptible to offering cash bribes for freedom.

Upon asking the respondents whether traffic offences are processed in open courts, more *matatu* operators (55%) and taxi drivers (56%) agreed that traffic fines are processed in open courts than those who disagreed. The rest of the respondents disagreed to this statement which would indicate that the process is applied selectively. This indicates that approximately 45% of traffic offenders who attend court are presented with an opportunity to practice corruption.



Transport sector	Agree	Disagree
Long distance drivers	35%	30%
Taxi drivers	44%	39%
Matatus	43%	46%
Bodaboda	21%	64%

Table 6: Facilitation to pay fines

Source: Study 2017

d) A suspected offender shall be issued with Court Summons or a Notification to Attend Court (NTAC) on a convenient date within seven days. The Notice shall clearly indicate the charges, the court and the time to take plea.

More long distance drivers (45%) and more taxi operators (44%) tend to agree than disagree that there is a clear procedure for traffic offenders to attend court summons at a convenient date. Apparently, more (48%) *matatu* operators and more (43%) of *bodaboda* riders disagreed compared to those who agreed to the statement as shown in Table 7 below. This would appear to suggest that the nature of business dictates whether one is given a convenient date or not. Eliciting a negative response from *matatus* and *bodabodas* insinuates that a gap is created for alternative 'justice'.

Transport Sector	Agree	Disagree
Long distance drivers	45%	30%
Matatus	39%	48%
Bodaboda	21%	43%
Taxi drivers	44%	33%

Table 7: Traffic offenders attending court summons

Source: Study 2017

e) The offender must attend court on the date and time indicated in the NTAC to take plea. Before plea is taken, the Magistrate shall ensure that any cash bail collected by the Police from the suspect/accused is availed in Court. The offender must remit to court the maximum amount payable for the offence(s) cited if he or she opts to plead guilty in writing upon issuance of the NTAC.

Asked about the cash bail, 48% of the respondents agreed that cash bail collected from accused traffic offenders is availed in court while 20%, as shown in Table 8 below, agreed that this was the same case with whether offenders are facilitated to remit fines if they opt to plead guilty, with an aggregate 48% agreeing to the statement while an aggregate 20% disagreed.

More respondents also agreed (Aggregate. 35%) against an aggregate 29% who disagreed that Notification to Attend Court (NTAC) on a convenient date within seven days clearly indicating the charges, the court and the time to take plea are availed to suspected offenders. This indicates that the judiciary is carrying out its duties as expected in this regard.

Transport Sector	Long distance drivers		Matatus		Bodaboda		Taxi drivers	
	Agree	Disagree	Agree	Disagree	Agree	Disagree	Agree	Disagree
Cash bail	55%	10%	64%	14%	29%	21%	44%	33%
Remit fine	30%	15%	59%	23%	57%	7%	44%	33%
NTAC	25%	35%	43%	30%	21%	29%	50%	22%

Table 8: Judicial action on cash bail, remitting of fines & NTAC

Source: Study 2017

2. Settling Traffic Matters in Court

Despite efforts by the judiciary aimed at discouraging corruption in traffic matters, most participants i.e. 80% of the long distance drivers; 86% of the *matatu* drivers, 86% of *bodaboda* riders and (89%) of taxi drivers indicated that they prefer to resolve matters outside court as shown in Table 9 below,

Transport Sector	Bribing by drivers to get away with offences has become a way of life	Resolve outside court
Long distance drivers	80%	
<i>Matatus</i>	86%	
<i>Bodaboda</i>		86%
Taxi drivers		89%

Table9: Bribery vs. option to go to court

Source: Study 2017

The research team visited Milimani law courts in June 2018 in Nairobi and followed proceedings in several traffic cases.

Most of the accused traffic offenders were provided with a Notice to Attend Court (NTAC) with the exception of one offender who claimed to have been arrested at Kasarani and taken to Kasarani police station without being issued with the Notice to Attend Court in its proper format. Instead it was written on an A4 sheet of paper because there weren't sufficient forms at the Police Station. This confirmed that offenders with offences punishable by a fine or less than six months imprisonment are not held in police custody.

The research team witnessed a lot of delays and time wasting which led to complaints among the accused offenders. This was evidenced through:

- Delay in starting the cases: Though the cases were scheduled and published to start at 9.00am, they started at 11.00am. This is despite the fact that most of the offenders arrived very early
- After paying the fines as directed, the accused offenders were held in court until the magistrate signed their release orders. Some of the offenders staying had to wait until 5pm for their release orders.

The research team noted many discussions taking place and informal relationships being developed between the police, offenders and their relatives with some offenders being released before the magistrate entered the court room.

The court room has displayed both notices on how traffic fines are to be paid as well as guidelines on handling traffic matters.

The offences witnessed included lack of insurance especially among *bodaboda* riders, overcrowding/excess passengers, failure to obey traffic signs, obstruction and drunk driving.

The research teams also noticed that all offenders charged with minor offences agreed to committing the offences as charged and opted to pay the fines.

The offenders were facilitated and availed means through which to pay their fines. This was done inside the court room either through cash payments or M-Pesa. Upon payment, they were issued with receipts but held pending issuance of the release order signed by the magistrate.

Reasons for settling traffic offences out of court

Most of the respondents also advanced the following reasons for choosing to handle traffic offences out of court:

- According to the respondents, every stage of the judicial process has a window for corruption and one may exit from the filed case anytime. The researchers were told that the registry clerks collude with the prosecutor while the prosecutor also colludes with the magistrate in order to close a case.



The respondents bribe judiciary staff in order to hasten the proceedings. They bribe Office of The Director Of public prosecutions (ODPP) staff in order to have their cases withdrawn.

- Most of the respondents consider court processes to be expensive and time consuming.
- In addition, matatu sector respondents indicated that traffic police have an ad hoc kangaroo court with arbitrary fines where drivers must pay if they don't compromise on the road.

3.2 Police Reforms Process

Article 246 (3) of the Constitution of Kenya gives the NPSC the mandate to: recruit and appoint persons to hold or act in office in the police service, confirm appointments and determine promotions and transfers within the National Police Service. The NPSC is also mandated to observe due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service.

Therefore, the NPSC is responsible for deployment of officers of the NPS based on merit and qualifications. It is also responsible for disciplinary actions against police officers found to have violated the law. For purposes of this study, the audit sought to explore what influences appointment, deployment and promotion of police officers in the traffic division.

Most respondents were of the opinion that it is influenced by a couple of reasons such as relevant qualifications and past experience, merit and past excellent performances and paying money illegally to officers in charge of postings so that you can be deployed. Association with powerful people in NPS was the most frequently mentioned mode of influence closely followed by ethnicity. Political connections with an officer that influences posting, having family members or relatives at NPS, and sexual relationships with posting officers were other reasons given in relation to influencing appointments in the traffic police division.

This aspect of recruitment and career path was more inclined towards law enforcement respondents. These included the traffic marshalls, NTSA officers and traffic police officers. Many cited having been recruited through qualifications and experience. However, certain postings were said to be influenced by association with powerful staff, political connections or influence by a relative. As shown in Table 10 below, 1% of traffic marshalls indicated that posting was influenced by a relative, 5% of NTSA officers mentioned associations with NTSA powerful staff and political connections that influence postings and having relatives at NTSA and 8% traffic officers mentioned associations with powerful people in NPS.

Sector	Mode of Influence	%age
Traffic Marshalls	Influence by a relative	1%
NTSA Officers	Associations with NTSA powerful staff, Political connections that influence postings & Having relatives at NTSA	5%
Traffic Officers	Associations with powerful people in NPS	8%

Table 10: Mode of influence on postings

Source: Study 2017

Most of the respondents believed that the NPSC has not been effective in handling cases of indiscipline among traffic police officers.

Looking at some of the practices in the NPS traffic division, respondents concur that reporting another officer for corruption contradicts their culture, reporting another officer for breaking rules is a cause of shame for the reporting officer and overwhelmingly that senior and junior officials collude to collect a daily target from motorists. Asked how widespread corruption is in the traffic division in Kenya, most of the respondents were of the opinion that it is completely widespread.

There were mixed feelings on whether the police use official vehicles for personal errands, with 52% indicating that police use official vehicles for personal errands. Of these 7% indicated that this was very prevalent while 45% thought it was limited.



3.3 Corruption Avenues in the Traffic Sector

a) Corruption spread and bribery prevalence

The audit established that corruption in traffic matters is completely widespread. This is according to a majority of respondents as itemised in Table 11 below.

Transport sector	Corruption spread	Bribery prevalence
Long distance drivers	100%	100%
<i>Matatus</i>	84%	80%
<i>Bodaboda</i>	79%	79%
Taxi drivers	78%	78%

Table 11: Corruption spread and bribery prevalence

Source: Study 2017

According to the respondents, there are two types of corruption in the transport sector. These are corruption of authority and payment of bribes to traffic officials as detailed below.

▪ Corruption of authority

Most respondents in the long distance and the *matatu* sector felt that corruption of authority which includes receiving free drinks, meals, and other gratuities from road transport service providers was prevalent than those who did not. See Table 12 below for details.

Rate/Transport sector	Prevalent	Limited
Long distance drivers	40%	25%
<i>Matatus</i>	36%	30%
<i>Bodaboda</i>	7%	21%
Taxi drivers	28%	39%

Table 12: Corruption of authority

Source: Study 2017

▪ Payment of bribes

Several respondents indicated that as they dealt with government agencies, they were asked to pay bribes. Of these, 55% of the long distance drivers indicated that they had been asked to pay a bribe by the police. 20% were asked to pay for a bribe by traffic marshalls, 34% of the *matatu* SACCO respondents indicated that they had been asked to pay for a bribe by traffic marshalls while 25% mentioned the police. 35.71% indicated that they had been asked to pay a bribe by the police with another 21.43% stating that they had been asked by traffic marshalls. 33% of the taxi drivers said that they had been asked to pay for a bribe by the police. See Table 13 below for details.

Sector	Police	Court / Judiciary staff	NTSA	Traffic Marshalls	ODPP	Prison
Long distance truck drivers	55%	10%	15%	20%	10%	10%
<i>Matatu</i> SACCOs	25%	11%	14%	34%	2%	7%
<i>Bodaboda</i>	36%			21%		
Taxi drivers	33%		11%	6%		

Table 13: Payment of bribes

Source: Study 2017

b) Ways of paying bribes

A look at ways of acquiring money by traffic police from vehicles in the road transport shows that the most



common way is by placing the money inside the driving licenses as reported by an aggregate 56%. As shown in Table 14 below, there is also a tendency of calling the driver outside and “negotiating” with them (49%). These practices confirm the existence of bribery in the public traffic sector.

Ways of acquiring money from vehicles	Long distance drivers	Matatus	Taxi drivers	NTSA	Traffic officers	Aggregate %age
Placing the money inside the driving license or touts PSV	60%	77%	78%	32%	35%	56%
Calling the driver/tout	50%	86%	67%	16%	25%	49%

Table 14: Acquiring money by traffic police from vehicles

Source: Study 2017

c) Reasons for bribing government agencies

- Protection of illegal activity

Most of the respondents agree that they pay traffic officials in order to be protected from illegal activities. Among the activities cited include overloading, wrong transport routes and drunk driving.

Most of the respondents, mainly drivers as evidenced by 70% of long distance drivers, 41% of *matatu* sector operators and 64% of *bodaboda* riders, believe that there is a high prevalence of these illegal activities on the roads hence an avenue for corrupt officials to collect bribes. On the contrary, officials charged with curbing the errant habit were of the opinion that the practice is limited as mentioned by 50% of NTSA staff, 51% traffic marshalls and 41% of the traffic officers as shown in Table 15 below.

Rate/Transport sector	Prevalent	Limited
Long distance drivers	70%	10%
Matatus	41%	32%
Bodaboda	64%	14%
NTSA	17%	50%
Traffic marshalls	-	51%
Traffic officers	9%	41%

Table 15: Protection of illegal activity

Source: Study 2017

- Undermining criminal prosecutions

Many respondents indicated that they bribe traffic officials in order to undermine criminal prosecutions by withholding evidence or failing to appear at judicial hearings. This was reportedly prevalent across the board in respect to transporters. However, most traffic marshalls (51%) were of the opinion that it is limited with 27% stating that it was non-existent. 34% of the traffic officers said it was limited while majority (66%) indicated that it was non-existent as shown in Table 16 below. Proponents of the law were noted to have a contrasting view in regard to undermining criminal prosecutions by withholding evidence or failing to appear at judicial hearings as opposed to the expected adherents.

Rate/Transport sector	Prevalent	Limited	Non-existence
Long distance drivers	75%	15%	5%
Matatus	43%	23%	11%
Bodaboda	57%	14%	7%
NTSA	9%	27%	64%
Traffic marshalls	-	51%	29%
Traffic officers	-	34%	66%

Table 16: Undermining criminal prosecutions

Source: Study 2017

▪ Ticket fixing

Cancelling traffic tickets as a favour to the friends and family of other police officers was prevalent as reported by 70% of long distance drivers and 50% of *matatu* operators. Majority (55%) of NTSA staff said that ticket fixing was non-existent with 50% of the taxi drivers stating that it was limited. Most (48%) traffic marshalls indicated that it was limited while majority (66%) of the traffic officers stated that the practice was non-existent as shown in Table 17 below.

Rate/Transport sector	Prevalent	Limited	Non-existence
Long distance drivers	70%	5%	5%
Matatus	50%	9%	14%
NTSA	-	46%	55%
Taxi drivers	39%	50%	-
Traffic marshalls	1%	48%	29%
Traffic officers	3%	31%	66%

Table 17: Ticket fixing by police officers

Source: Study 2017

▪ Frame-up and adding evidence

Existence of the frame-up and adding to evidence in a reported case (e.g. over speeding) was seen as prevalent by most respondents in the transport sector. This was however either limited or mainly non-existent from the authorities point of view as seen in Table 18 below.

Rate/Transport sector	Prevalent	Limited	Non-existence
Long distance drivers	70%	5%	10%
Matatus	55%	14%	5%
Bodaboda	29%	29%	7%
NTSA	18%	27%	55%
Traffic marshalls	1%	48%	29%
Traffic officers	3%	28%	69%

Table18: Existence of frame-up & adding evidence

▪ Insurance claims

There were more respondents who disagreed that police officers objectively investigate accidents and this provides an avenue for corruption for insurance purposes.

Rating the level of fraud in the Kenyan PSV Insurance sub-sector saw respondents tend towards high and very high. Several agencies are involved in perpetrating PSV insurance fraud in one way or the other. Police officers were said to perpetrate it to a high extent. Insurance investigators range from moderate to high in regard to perpetration while the judiciary staff was moderate. Advocates were also rated moderate while drivers and car owners oscillated between moderate and high.

Some of the major ways in which traffic police contribute to corruption and fraud in the PSV insurance sub-sector were said to be:

- Colluding with PSV owners
- Not maintaining the law related to PSV sector as required and that majority of traffic police officers own PSV vehicles;
- The PSV insurance sector rarely, if ever, holds meetings with the traffic police division to discuss emerging issues and challenges in PSV insurance claims and management;



- There have been attempts to use modern technology to take photographs and transmit insurance details by traffic police (e.g. when there is an accident) but there is no clear form or procedure that traffic police officers use to submit details to insurance companies when there is need to do so. Reviewing some traffic division responsibilities saw a tendency to agree to the issue that fraudulent reports of when and where traffic accidents occur leads to corruption in traffic division. Respondents strongly agree that false claims on who caused a traffic accident lead to corruption in traffic. There is a borderline between agreeing and disagreeing whether recording wrong insurance policy number leads to corruption in traffic.
- Compromising of accident witness may be a corrupt practice but may not lead to traffic corruption according to the respondents.
- Extreme opinions of strongly agree and strongly disagree were noted in respect to fraudulent claims of the damaged vehicle details leading to corruption in the traffic division while more tend to agree to excessive risks, and capital adequacy leading to corruption in the traffic division.
- There were divergent views in regard to multiple players in the PSV insurance sub sector encouraging corruption with some strongly agreeing and others strongly disagreeing.

The audit further established attempts by the Kenya Association of Insurers together with the NPS to amend the police abstract for insurance claims. This is to ensure that the loopholes experienced in insurance claims and which have contributed to corruption in traffic matters are addressed. This has, however, not been implemented though discussions on the same continue.

▪ Vehicles belonging to traffic officers

Long distance trucks are reportedly owned by police officers and therefore their drivers feel protected. However, 30% disagree with this statement. A total of 50% of the respondents indicated that there is an arrangement for monthly protection fee to be remitted to the police with 10% refuting the same. It was reported by a majority 65% that police officers are usually co-opted as silent owners of vehicles in the long distance transport industry with 10% disagreeing to this statement.

In addition some of the *matatus* are owned by police officers and therefore feel protected (80%); there is an arrangement for monthly protection fee to be remitted to the police (68%); police officers are usually co-opted as silent owners of vehicles in the *matatu* sector (64%); bribing by *matatus* to get away with offences has become a way of life (86%); cartels in the *matatu* sector encourage corruption (89%),

3.4 Road Transport Management

a) Government agency interaction

All (100%) long distance truck drivers indicated that they interacted with the police as a government agency. 89% of *matatu* SACCO respondents mentioned NTSA followed by 84% who mentioned the police. 86% of the *bodaboda* respondents indicated having interacted with the police while 71% mentioned traffic marshalls. 78% of the taxi drivers indicated that they had interacted with the police with another 39% indicating traffic marshalls as shown in Table 19 below.

Source	Police	Court / judiciary staff	NTSA	Traffic Marshalls from NCC	ODPP	Prison
Long distance truck drivers	100%					
<i>Matatu</i> SACCOs	84%	39%	89%	68%	16%	20%
<i>Bodaboda</i>	86%	21%	43%	71%		
Taxi drivers	78%	17%	6%	39%	6%	

Table 19: Government agency interaction

Source: Study 2017

b) Most difficult agency

- According to the long distance truck drivers, most (30%) found the police the most difficult government agency to deal with;
- Twenty one percent of *Matatu* SACCOs also indicated the police as the most difficult government agency to deal with;
- *Bodaboda* operators indicated that the most difficult agency to deal with were the traffic marshalls 92.9% followed by the police at 14%;
- The taxi drivers indicated that it was NTSA (28%) followed by traffic marshalls and ODPP at 22% respectively. As shown in Table 20 below.

Sector	Police	Court / Judiciary staff	NTSA	Traffic Marshalls	ODPP	Prison
Long distance truck drivers	30%	5%	25%	5%	10%	10%
Matatu SACCOs	21%	14%	18%	14%	11%	7%
Bodaboda	14%	7%	7%	93%		
Taxi drivers	17%	17%	28%	22%	22%	11%

Table 20: Most difficult agency

Source: Study 2017

c) Road maintenance and infrastructure

All respondents agreed that infrastructural challenges like poor city planning, signage and non-functional traffic light systems present an open window for corruption. This, they believed, is because they have led to congestion and lack of designated parking space. Consequently, this has forced drivers to break traffic laws such as picking or setting down passengers in a place that is not authorised as a bus stop or terminal.

d) Recruitment approach of PSV drivers

Although a desk review audit established that there is a human resource manual for the *matatu* industry²³, the respondents in field interviews reveal that a majority of *matatu* drivers (60%) are recruited and engaged on daily contracts, 16% were on a commission with a daily target, 14% were on a monthly salary and 10% are engaged on an hourly basis defined by morning and afternoon sessions.

Most (50%) of the taxi drivers indicated that drivers are recruited on a monthly salary in the taxi transport sector. 33% said that they are paid on commission with a daily target. *Bodaboda* riders are engaged in various ways, including on an hourly basis, daily contract and commission with a daily target all reported by 7% respectively. Majority of the long distance drivers (95%) indicated that long distance drivers' recruitment terms are a monthly salary. The other 5% said that they are engaged on a daily contract. See Table 21 below for more details.

Public Service Vehicles drivers tend to drive recklessly as their income and job security is dependent upon daily passenger loads yielding the daily profit mark set by the vehicle owners. To accomplish this, they break traffic laws, weave in and out of traffic, cut off other vehicles and use sidewalks to bypass traffic jams, putting pedestrians at risk and speed when possible.²⁴ In regard to whether recruitment methods encouraged impunity, respondents indicated that lack of proper rules and regulations, a need to meet daily targets and illegal possession of a driver's license, bribery and nepotism as some of the issues arising from the different methods of recruitment applied.

23 Operations/Human Resources Manual For Matatu Saccos/Companies

24 Centre for Sustainable Urban Development – Earth Institute (2009)



Taxi drivers		Bodaboda	
Monthly salary	50%	Hourly basis (morning & afternoon sessions)	7%
Commission with a daily target	33%	Daily contract	7%
Did not answer	1.7%	Commission with a daily target	7%
		Did not answer	79%

Matatu SACCOs		Long distance drivers	
Daily contract	60%	Daily contract	5%
Hourly basis (morning & afternoon sessions)	10%	Monthly salary	95%
Monthly salary	14%		
Commission with a daily target	16%		

Table 21: Recruitment approach of PSV drivers

Source: Study 2017

e) Code of Conduct

All respondents agreed to the existence of a code of conduct that dictates their behavior on the roads. For instance, the *bodaboda* riders association has a code of conduct that governs how they conduct themselves as public service providers. The *matatu* SACCO also have codes of conduct and so are the long distance drivers who indicated that 80% of them belong to an association which is a collaboration of various players such as the police and all other authorities involved on the road. They have mechanisms in place to handle various issues, including indiscipline.

Further asked to rate the effectiveness of their respective code of conducts, the respondents as shown in Table 22 below, responded as follows: 38.9% of the taxi drivers indicated that they rate the code of conduct that governs their behaviour at the workplace as effective. 77% in the *matatu* sector state likewise while 65% of the long distance drivers said that it was very effective.

Sector	Very effective	Effective	Not effective
Taxi drivers	28%	39%	11%
Matatu SACCOs	14%	77%	7%
Long distance truck drivers	65%	15%	

Table 22: Effectiveness of the code of conduct

Source: Study 2017

f) Training

When the question on the trainings they have undertaken as a measure to ensure efficiency on the roads was posed, taxi drivers indicated that the most common trainings that they attend were customer care and defensive driving as reported by 20% respectively. Defensive driving training was said to have been carried out by a defensive driving agency, the traffic department and NTSA while customer care training was conducted in-house. Among the long distance truck drivers, 15% stated that they have benefitted from training on the Traffic Act and other laws and safety regulations that govern the transport sector respectively. They, however, did not indicate who had conducted the trainings.

In the *matatu* sector, training is carried out by various SACCOs for their own staff. Those who had attended road safety training were 17.5% while those who mentioned rules and regulations training were 15%. 64% of the *bodaboda* riders stated that they were trained on the *bodaboda* road laws and public service transport issues in general as shown in Table 23 below. The said trainings are carried out on an annual basis. Some of the training bodies mentioned were Kenya Urban Roads Authority (KURA), NTSA and the traffic police department.

Sector	Training attended	%age	Facilitator
Taxi drivers	Defensive Driving	20%	Traffic department, NTSA, Defensive Driving Agency& in-house
	Customer Care	20%	
Long distance truck drivers	Safety	15%	Not indicated
	Traffic laws	15%	
Matatu	Road safety	18%	Own SACCO
	Rules and regulations	15%	
Bodaboda	Bodaboda road laws and public service transport issues in general	64%	KURA (Kenya Urban Roads Authority)
			NTSA
			Traffic Police

Table 23: Most common trainings attended & facilitators

Source: Study 2017

g) Frequency of sensitisation training

Most taxi drivers (33%) said that they attend sensitisation trainings on the Traffic Act and other laws/regulations that regulate public service transport services annually. Asked how often, 11% said that they do so on a quarterly basis and 33% over one year while 6% said that they do it semi-annually. As shown in Table 24 below, most *matatu* SACCOs (37%) indicated that they undertake sensitisation and training of their SACCO members on the Traffic Act and other laws/regulations that regulate the *matatu* sector annually. 21% do so on a quarterly basis, 11% semi-annually and 9% monthly. 14% do it intermittently in periods exceeding one year. 20% of the long distance truck drivers indicated that they hold the trainings annually while 5% said they were held either monthly, semi-annually or over one year respectively. Other topics that were mentioned by all respondents included customer care, proper care and first aid, road safety, good behaviour or discipline as well as financial empowerment and public relationship.

Sector	Monthly	Quarterly	Semi annually	Annually	Over one year
Taxi drivers	-	11%	6%	33%	11%
Matatu SACCOs	9%	21%	11%	39%	14%
Long distance truck drivers	5%	-	5%	20%	5%

Table 24: Frequency of sensitisation training

Source: Study 2017

h) Initiatives to help curb corruption

The audit established that SACCOs have put in place integrity initiatives to help curb corruption in the *matatu* sector. In addition Management SACCOs have mechanisms for expelling *matatus* that consistently break traffic rules from SACCOs as mentioned. *Bodaboda* riders advise on the importance of following traffic laws and instilling good moral values by emphasising on doing the right thing. Long distance truck drivers' initiatives include: vehicle being compliant, through training to embrace culture of integrity, correct tonnage for every lorry, sound mechanical checks and not to give bribes to traffic police.

Further 80% long haul drivers belong to an association with the Truckers Association of Kenya cited as the main one. The association is a collaboration of various players such as the police and all other authorities involved on the road. They have mechanisms in place to handle various issues.

i) Quality control

In respect to quality control, 25% of the long distance truck drivers indicated that they have a mechanism to solicit feedback, such as using stickers with numbers to call if carelessly driven. 87% of the *matatu* respondents were of a similar opinion while 84% said that they inform the person giving feedback of specific action taken within a reasonable time. As shown in Table 27 below, 78% said that they provided notification that the feedback received was being addressed and 67% said that they have a mechanism to solicit feedback. Other details are as tabulated below.



Source	Mechanism to solicit feedback e.g. using stickers with numbers to call if carelessly driven	Notification that the feedback received is being addressed	Inform the person giving feedback of specific action taken within a reasonable time.	Modify unsafe driving behaviour before accident occurs with help of training
Long distance truck drivers	25%	15%	15%	15%
Matatu SACCOs	89%	82%	84%	75%
Taxi drivers	78%	78%	67%	61%

Table 25: Quality control mechanisms

Source: Study 2017

3.5 Public Sensitization

- Most respondents did not agree that the traffic division initiates road safety sensitisation to the members of public. All these scenarios indicate that some of the roles in the NPS traffic division are not amicably discharged.
- Respondents from the media indicated that they do not have specific programmes that sensitise citizens on traffic laws. It was noted that media houses have an agenda setting role by keeping traffic corruption stories high in the news to help fight traffic corruption. In so doing, they have adopted a gate keeping strategy to release information on traffic corruption to the masses. There, however, is no information regarding publication of governance framework to help fight traffic corruption neither do they pressure the government to prosecute traffic corruption cases that have been reported.
- Most civil organisations do not have specific programmes that sensitise citizens on traffic laws and regulations especially on their rights as motorists neither do they have advocacy strategies that help fight traffic corruption.

This was, however, not the case at EACC who were noted to have such programmes and strategies in place. Some of these include naming and shaming of corrupt traffic officers, promoting introduction of actual change such as amended traffic laws, civil oversight of traffic police to promote transparency, intervening and alerting for example threats to rights of motorists and the most common being, pressurising authorities to take appropriate action by raising awareness. Asked to name the 5 most prioritised sectors of advocacy in their house budget allocation, EACC listed the following, albeit not in any specific order;

- i. Public relations and media advocacy
- ii. Sensitisation to both police officers and members of the public through forums
- iii. Sting operations against corrupt police officers
- iv. Multi-agency cooperation
- v. Research, and;
- vi. Increase in EACC presence (setting up of regional offices)

4

CHAPTER 4: SUGGESTIONS TO CURB CORRUPTION BY RESPONDENTS

Qualitative data collected from the respondents suggested the following as some of the measures that can be taken to fight corruption in the traffic sector:-

- ✓ Better remuneration / Increasing salaries for the traffic officers;
- ✓ Provision of risk and house allowances to traffic officers;
- ✓ Merit based recruitment;
- ✓ Traffic police culture re-engineering;
- ✓ Public sensitisation on zero tolerance on corruption acts;
- ✓ Digitisation of traffic offences;
- ✓ Regular reshuffling of the officers;
- ✓ Installing anonymous corruption reporting mechanisms;
- ✓ Encouraging counter-corruption policy implementation;
- ✓ Setting up a disciplinary committee to deal with corrupt practices promptly;
- ✓ Encourage counter-corruption policy implementation;
- ✓ NTSA department should be abolished;
- ✓ Both parties engaging in corruption should be held accountable;
- ✓ Close multi-agency coordination;
- ✓ Instant fines on the roads;
- ✓ Introduce cashless payment systems;
- ✓ Provision of sufficient working tools;
- ✓ Capacity building;
- ✓ Installation of CCTV cameras on roads.

4.1 Identified traffic regulation gaps and proposed solutions

	Problem	Solution
1	Traffic police exercise their discretion in arresting suspected offenders e.g. defective or un road-worthy vehicles	On matters where expert opinion is mandatory in evidence, police should only arrest in the presence of such expert; e.g. motor vehicle examiner.
2	The discretion as to the amount of cash bail to be deposited at the police station lies with the police. They normally ask for high amounts to intimidate an offender to bribe.	Cash bail should be to the bare minimum. If the offender absconds, related SACCO should be held responsible.
3	Traffic offenders for minor offences be given notice to attend court instead of being arrested. The traffic police are opposed to this and have failed to implement the directive.	This directive should be enforced and made into a law or regulation.



4	High cash bails	The courts in fighting corruption can issue smaller amounts of cash bail. The SACCO can then sign an undertaking that if the offender absconds, they will be held responsible.
5	Traffic cases take too long to finalize	A legal provision to dictate how long a traffic case would stay in court.
6	Traffic police fail to attend court to give evidence.	If a police officer fails to appear to prosecute his/her case, the case should be dismissed with costs.
7	The county government traffic marshalls are corrupt and lack transparency	Capacity building of traffic marshalls on topical issues should be undertaken periodically
8	Traffic police officers stop and board PSVs in the pretext that they are checking/inspecting for offences.	Traffic police officers deployed in the CBD should only control the flow of traffic.
9	There are too many regulations within the PSV sector.	The rules and regulations in the sector either in law, a by-law or a regulation should be harmonized
10	Poor city planning leading to congestion and lack of designated parking space presenting an open window for corruption	The county Government should provide a holding ground where <i>matatus</i> will be parked while waiting in turn to pick passengers.
11	Inadequate training on corruption	Police training curricula to include corruption modules
12	Section 55 of the traffic act does not clearly define what constitutes a defective motor vehicle; this has left a window of corruption.	This section should define what factors make a vehicle defective to warrant an arrest

Conclusions

The study captures views of various actors in the transport sector on the drivers of corruption in traffic. From the findings, the level of traffic corruption is high and widespread. Majority of respondents indicated that they pay bribes to save time, reduce the amount of fines and high levels of injustice in the courts. For the law enforcement officers, corruption is fuelled by ignorance, poor remuneration and institutionalized corruption culture.

In respect to the first objective, which was to review the available laws, policies, and regulations that govern traffic related matters to identify the existing gaps, the audit established that there are sufficient laws aimed at curbing corruption in traffic matters. Most of the respondents were of the opinion that it is not the law that is the problem but rather the enforcement and implementation of the laws.

In line with the second objective, which was to conduct interviews with key stakeholders in the transport sector including but not limited to the National Police Service, *Matatu* owners association and long distance truck drivers to incorporate their views, the report captures opinions of 246 respondents selected through purposive and convenience sampling.

Further in line with the third objective, the report attempts to provide proposals including best practices on how the identified gaps can be addressed to inform advocacy initiatives.

As a general conclusion, if there is to be a reduction in the levels of corruption in traffic matters there needs to be a complete culture shift among all Kenyans to adopt a culture that respects the rule of law and selflessness. This can only be achieved through rigorous sensitization and campaigns on anti-corruption, laws and rights.

Recommendations

From the observations, the following recommendations are made:

- 1) **Driving schools are considered to be the entry point to traffic sector operations. The driving school model should be re-thought and the following is recommended: -**
 - a) Install smart technology in all driving schools;
 - b) Create a database with instructors credentials for a recruitment pool;
 - c) Develop a standardised training manual with integrity and corruption modules;
 - d) Create a multi-agency examiners panel which includes a psychologist for IQ testing;
 - e) Ensure a computerised driving testing.
- 2) **Rigorous public sensitisation on traffic laws and rights of road users as well as court processes;**
- 3) **Enforcement of traffic laws as well as judicial guidelines on bail and bond for minor offences;**
- 4) **Inclusion of corruption training modules in all police and driver training modules;**
- 5) **Increased use of technology in traffic matters as a means to detect and deter corruption;**
- 6) **Integrity training among police officers;**
- 7) **Formation of a promotion and deployment board for traffic police officers to avoid overstaying in one station;**



- 8) **Traffic lights should be replaced with intelligent traffic systems to avoid manual coordination at junctions as it opens a window for corruption;**
- 9) **Make it mandatory for every traffic division to open a citizens' enquiry file to handle complaints about traffic police officers;**
- 10) **Identify and support good ambassadors from among well performing traffic officers;**
- 11) **Continuous retraining of traffic officers;**
- 12) **A clear framework for multi-agency coordination and stakeholder engagement. Multiagency coordination of the sector is recommended as follows:-**
 - a) Driving schools including curriculum, content delivery and testing;
 - b) Traffic Police;
 - c) National Transport and Safety Authority;
 - d) Judiciary;
 - e) Insurance companies.
- 13) **Traffic marshalls should be well trained, well equipped and have a clear mandate. They should play a complementary role to the traffic police**
- 14) **Adoption of ICT by all sector players. This would include:**
 - f) Driving school instruction. South Korea has adopted this and it has solved the traffic corruption;
 - g) National Transport and Safety Authority databases to allow interoperability;
 - h) Judiciary;
 - i) Matatu Owners Association payment system;
 - j) Traffic Police Department;
 - k) Payment of fines through a cashless payment system.
- 15) **Judiciary ought to release daily traffic offence returns through their website so as to ease tracking down of repeat offenders for blacklisting.**
- 16) **Sensitisation and awareness creation on the negative impact of corruption should be given pre-eminence in a structured manner, targeting all players in the traffic sector and general public.**
- 17) **Fines for traffic offences should be revised downwards in order to avoid compromise between the offenders and the law enforcers. However, unethical behavior should attract big fines.**



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