

## **ROAD TRANSPORT ACT 2013**

### **PREAMBLE**

Road transport in Kenya is characterised by many externalities such as accidents, pollution and congestion perpetuated by lack of a policy, a legal and a proper institutional framework. This has led to a poor road transport regulatory and management regime. The result has been the entrenchment of bad motoring attitude and a Matatu (Para Transit) culture cultivated by a corrupt regulatory and enforcement regiment.

Whereas the Government of Kenya (GoK) has invested to a large extent in road infrastructure it has failed to invest in road transport especially in Public Transport. Transport is the software that makes road infrastructure to operate efficiently.

Adoption by the 10<sup>th</sup> Parliament of the Integrated National Transport Policy (Sessional Paper No. 2 of 2012) is a big stride but failure by GoK to create relevant institutions, to develop transport plans, human capacity and adopt Intelligent Transport Systems (ITS) has, in addition, led to unsustainable road transport management regimes. It has also been the reason why so many studies done in the Ministry of Transport (MoT) have never been implemented.

The current 1954 Traffic (Amendment) Act Cap 403 that is full of contradictions and perhaps has unconstitutional sections due to so many amendments, is not skewed to manage modern transport trends. A critical analysis of the new Transport and Safety Authority Act 2012 that repealed the Transport Licensing Act Cap 404 does not seem to wholesomely address issues of an integrated modern transport system. This is why we need a new Act to be called Transport Act 2013.

### **Para Transit Transport**

Our bad road transport system in Kenya is typified by the Para Transit industry. It should be noted however that the Para Transit phenomenon is not exclusive to Kenya but to most developing countries where the government has taken little interest in investing in road transport and especially public transport.

Para Transits thrive in areas where the governments have invested little or nothing in the development and management of public transport. Instead it is the Private Sector that drives the industry. Para Transits are demand responsive. They operate on no schedules or timetables. They capitalize on lack of standards that make it difficult and expensive to police. They are often unpredictable both on fares chargeable and time management. This makes travelling very expensive if one considers the generalized costs of travel.

Being Private Sector driven Para Transits are profit driven. They rarely concentrate on proper service delivery. They have a very low level of service. They are not sensitive to social justice and social equity.

Except in rare cases, such as, in Kenya where Franchising Companies and Savings and Credit Co-operative Societies (SACCOs) are being developed, Para Transits are often owned by individuals hence the industry is riddled with many industry players.

The industry operation is believed to be 'informal' yet governments and local authorities often license them for purposes of collecting levies and fees. They thrive best where authorities do not use Intelligent Transport Systems (ITS) as there is normally no data regarding their operation. Where ITS technology is not in use, tracking trends and individual driver behavior is often difficult leading to impunity on roads. This limits government's ability to enforce compliance on tax and safety matters.

Para Transits do not meet the full cost of labor. Their employees are often not unionized; they are therefore casual employees, they have no sick offs, no leave, no PPEs, are uninsured, have no terminal benefits, they are untrained and are often a hopeless work force. We all know that training creates professionalism and improves attitude.

Para Transits thrive on illegalities. The more corners one cuts the more of a champion one is. The free entry into any road transport profession or operation creates a fertile ground for crooks to enter the industry leading to formation of cartels and gangsters that end up extorting money from transport operators. It is possible that these costs are eventually passed to the travelling public and other road users. Customer care is never a priority.

Whereas government appears to regulate the industry, regulatory regimes are weakened due to lack of professional human capacity in the MoT and a corrupt enforcement regime. This leads to unfair and wasteful competition. The unfair and wasteful competition is what leads to *'Matatu Mania'*.

Para Transits are characterised by a high degree of altruism. Though Para Transit business is not profitable, a lot of new players tend to be attracted due to the fact that there are no rules of entry and the capital outlay to start a business with a second hand minibus is low. The fact that there are no rules of entry means that a lot of investors who are in for the short haul or in to clean irregularly acquired money find it a safe haven. Lack of rules of entry also means that the industry attracts unprofessional investors.

Equipment used by Para Transit always totters towards low capacity carriers. The level of service keeps going down. We have seen the 14 Seat-Minibuses bring down the big buses and formal companies, such as; OTC, Kenya Bus and Akamba. Now minibuses are being kicked out by the Probox. The Proboxes are in some areas being kicked out by the Bicycle and Motor Cycle 'Taxis' (Boda Boda). In most African cities Para Transits carry 95% of motorised trips. They are also responsible for growth of the private car. What is needed therefor is a transport model that will manage their operations effectively and efficiently.

Due to government ineffectiveness in regulating managing and enforcing laws, Para Transits have been responsible for the collapse of most formal public transport operations, buses and rail, in developing countries. This has been due to the fact that they thrive on a 'State Subsidy' which formal operators do not enjoy. The 'State Subsidy' is due to the fact that Para Transits get away with illegalities and that they do not internalise their externalities.

Whereas we know that Para Transits are here to stay, we also know that Para Transits breed externalities such as accidents, pollution, congestion, corruption, gangsterism, etc. These costs are too expensive to the economy and they therefore must be addressed. The answer to this whoever does not certainly lie in hefty fines and penalties but in transport reforms that seek to address all the above issues.

### **Transport Reforms**

A bad transport system is typified by unpredictability in terms of travel costs (tariffs/operation cost) and journey time (value of time). It is also typified by increasing externalities costs.

In Kenya our most visible and worrying externality is the uncontrollable rate of accidents. Accident fatalities are well over 3,000 making Kenya rank among 10 countries in the world with the highest accident record. This however does not reflect the true cost to the economy as congestion, pollution, corruption and cartelism costs are not included. These trends call for urgent reforms to ensure that our transport system is transformed to a modern one that matches aspirations in Vision 2030.

### **Transport Policy Framework**

To be able to create meaningful reforms that will transform the transport industry, the 10<sup>th</sup> Parliament has passed the Integrated National Transport Policy as stipulated in the Sessional Paper Number 2 of 2012. In this Paper, written under the watch of Hon John Michuki in 2004 after serious consultations with stakeholders nationally and internationally one finds the bed rock of transforming transportation in Kenya since the policy encompasses both local and international best practice.

There is always a tendency of Kenyans to refer nostalgically to Legal Notice No 161 of 2003 commonly known as Michuki Rules. These rules were later set aside by courts as having been illegally constituted. No one should therefore refer us back to them. If Hon Michuki had remained as Minister for Transport eight years down the line, he would perhaps have implemented his Integrated National Transport Policy rather than go back to enforce the rules. In fact one wonders whether the enforcement was done by Hon Michuki, the Public or Hon Murungaru who was the then Minister in Charge of the Traffic Police.

In my view transport rules enforcement will best be done if or when an enforcement agency such as Metropolitan Police or Transport Police is contained within the MoT.

The answers to the chaotic transport system largely lie in this Sessional Paper that attempts to put in place a policy framework. It is important to note that enactment of this policy should have superseded enactment of the Traffic (Amendment) Act 2012 and Transport and Safety Authority Act 2012.

It is this Policy that will guide the enactment of necessary legislations to transform the industry.

### **Transport Legal Framework**

A good policy will always create a good legislative framework. Good legislations will in turn create good institutions that will regulate and manage transport at National and County levels well.

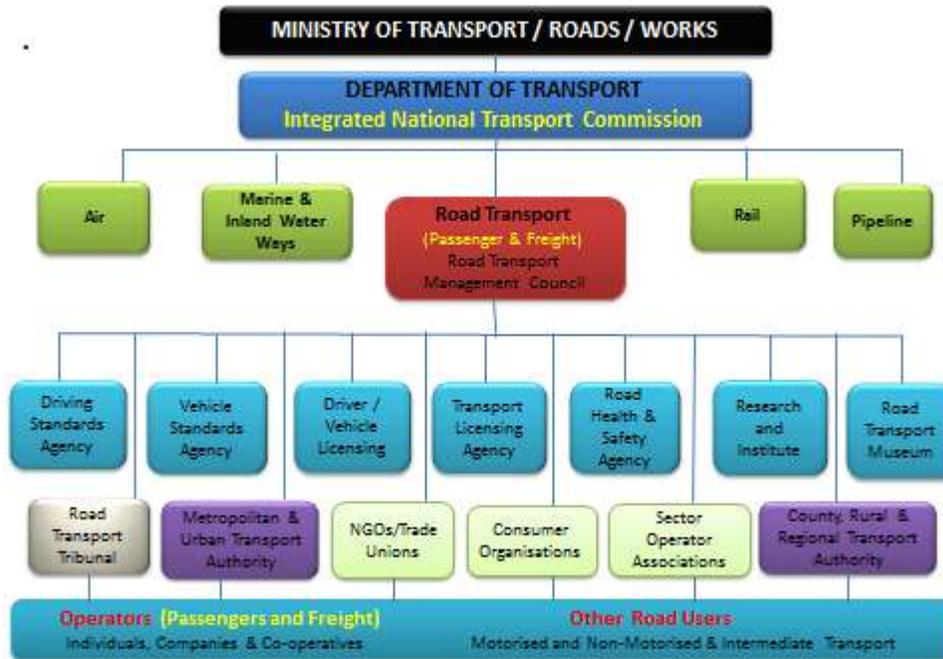
The centre piece legislation required is a Road Transport Act 2013. Such an Act is necessary to repeal the current 1954 Traffic (Amendment) Act 2012 that is archaic, is so mutilated, is full of contradictions and is yet to be aligned to the Constitution.

The newly enacted Transport and Safety Authority is probably more skewed to Public Service Vehicle Licensing rather than address road transport reforms as a whole.

### **Transport Institutional Framework**

To demonstrate why we need Road Transport Act 2013 please look at the institutions as illustrated in the diagram below.

**Proposed structure for sustainable reforms in the transport sector:-**



**MINISTRY OF TRANSPORT, ROADS AND PUBLIC WORKS**

In line with the Constitution, it is obvious that current ministries will be collapsed to be about twenty two. In the inevitable event that this is done, the current Transport, Roads and Works ministries could be joined to form one ministry to be called (hypothetical) Ministry of Transport and Transport Infrastructure. This could be headed by a Principal Secretary (Permanent Secretary).

**DEPARTMENT OF TRANSPORT**

This large ministry will certainly host a Department of Transport to be headed by perhaps a Secretary. The department could be responsible for the proper operation of Passenger and Freight transport. It is not clear whether the ministry will be responsible for Meteorological Services.

**Integrated Transport Commission**

Transport modes in Kenya are uncoordinated. The purpose of this Commission is to ensure that Air, Marine and In-Land Water Ways, Road, Rail and Pipeline transport modes are integrated. The Commission could ensure a coordinated approach to implementation of a National, Regional and International Transport Master Plans.

This could be the key policy formulating body in the ministry on matters of transportation.

This body could be chaired by Transport Professional from the Public who could be hired competitively. The Ministry Secretary could be the Commission’s Secretary. Among other members could be the Heads of Air, Marine and In-Land Water Ways, Road, Rail and Pipeline Transport Sections. The Commission could also have space for other ministries and industry players.

## **ROAD TRANSPORT SECTION**

The Roads Transport Section could coordinate, regulate and manage national transport bodies. Using the Road Transport Act 2013, the section could be headed by, say, a Deputy Secretary. The following bodies could be managed under him/her.

### **Road Transport Management Council**

The Section could create a Road Transport Management Council that could harmonise functions of all bodies under the Section. The Council could comprise of heads of agencies, authorities and tribunals that are listed below. It could, in addition, have space for other ministries and industry players.

### **County Transport Management Committees**

The Section could also establish County Transport Management Committees in every County to run and coordinate the affairs of the Department of Transport.

Such Committees could be chaired by the Governor or his appointee. The County Commissioner or his professional appointee could be its Secretary.

The Committee could have space for other ministries and industry players at County level.

### **Semi-Autonomous Agencies**

These semi-autonomous agencies could be created by the Road Transport Act 2013 to provide first level transport regulation. It should be noted that most of the proposed agencies already exist. What is needed is to recast them. If made semi-autonomous the agencies could attract their own funding. The agencies if put under direct control of the ministry, instead of the current state of affairs where they are scattered in other ministries; the agencies could assist in better implementation or execution of transport policies.

### **National Transport Institutions**

Road Transport Act 2013 could create a National Transport Laboratory, Transport Institute and a Transport Museum. The first two could be Private Sector driven or anchored in existing institutions.

Note also that if legislated; institutions, such as, the National Youth Service (NYS) could produce disciplined lower cadre staff (drivers, mechanics, welders, auto electricians, panel beaters, painters, etc.) in the transport industry. On the other hand Private Sector could be encouraged to perform such functions under Public Private Partnerships (PPPs)

### **Transport Management Authorities**

Two authorities could be created to manage (not regulate) transport in Urban and Rural areas. The authorities could be established by an Act of Parliament.

They could operate on principles such as the ones that created Private Water and Sewerage Companies.

The Authorities' key functions could be:-

- Centralised Cashless E-Ticketing
- Traffic Management
- Public Transport Infrastructure Management

- Route Network Planning and Tendering

## **NATIONAL REGULATORY BODIES**

### **Driving Standards Agency**

- Inspect, license and supervise Private Sector involvement in training, instruction and examination of all categories of drivers
  - Register, regulate and supervise Driving Schools
  - Prepare the necessary Driving Schools' Curriculum
  - Ensure all drivers are medically fit to train to be drivers
  - Train license and supervise Driving Instructors
  - Train, license and supervise Driving Examiners
  - Examine foreigners seeking to drive in Kenya
  - Carry supervise driver re-examinations
  - Keep, maintain and analyze data related to Driving Schools, Driving Instructors and Driving Examiners
- ❖ *This function is currently performed by Police, under a Ministry of Transport delegated authority, yet it is not a Police Service core function.*
  - ❖ *Note that there is already a curriculum that has been validated by stakeholders and is waiting implementation.*

### **Vehicle Standards Agency**

- License, supervise and regulate Private Sector to operate Motor Inspection Centers to enable annual inspection of all vehicle types in Kenya
  - Inspect, type approve and certify all vehicles entering Kenya
  - Regulate vehicle emissions so as to reduce Pollution
  - Carry out random vehicle inspections with a view of improving Vehicle Standards
  - License, supervise and regulate Motor Vehicle Assemblers and Body Builders
  - License and inspect Motor Garages
  - Keep, maintain and analyze data related to Motor Vehicle Inspection
- ❖ *There is a grey area as to who is required to regulate this function between Director of Motor Vehicle Inspection, Ministry of Works and Kenya Bureau of Standards.*
  - ❖ *Currently this function is carried out by the Director of Motor Vehicle Inspection. This function is under Police Department.*
  - ❖ *Note the MoT has been given an offer on setting up of National Motor Vehicle Inspection Centers.*

### **Driver and Vehicle Licensing Agency**

- Register, license and keep records of all driver categories
  - Register, license and keep records all road transport vehicles
  - Register and license foreigners seeking to drive in Kenya
  - The Section could be responsible for the introduction of Intelligent Transport Systems (ITS), for example, the Electronic Driving License
  - Ensure all vehicles operating on Kenyan roads are insured against Third Party Risk
  - Keep, maintain and analyze data related to driver licensing and vehicle registration and licensing
- ❖ *This is the function currently being done by the Registrar of Motor Vehicles but was controlled by Kenya Revenue Authority*

- ❖ *Tendering for electronic driving licenses has always hit a snag yet answers to good driver behavior lies in the electronic driving license.*

### **Transport Licensing Agency**

- License and regulate Passengers transport business
  - License and regulate Freight, Logistics and Supply Chain transport business
  - License and regulate transport operators by setting rules of entry into transport business
  - Keep and maintain and analyze data related to transportation business
  - Promote a fast, safe, comfortable, affordable and sustainable transport system
  - Regulate all public, commercial, school, courier and tourist transport vehicles
  - Ensure the coordination of freight transport, logistics and supply chain is done well
  - Regulate road transport business operations to remove cartels, wasteful and unfair competition
  - Regulate road transport operations for the benefit of the consumers
  - Register association that will encourage self-regulation within the transport industry
  - Protect labor rights of Staff in transport industry, for example, driving time regulations
  - License transportation of dangerous and hazardous goods
- ❖ *This will replace the Transport Licensing Board which was anchored in Kenya Revenue Authority offices.*
  - ❖ *TLB was the only executing arm of MoT.*
  - ❖ *The Agency should draw a lot of its powers from the Disability Discrimination Act, anti-trust offices, such as, Office of Fair Trading (OFT) and the Monopolies and Mergers Commission.*

### **Road Health and Safety Agency**

- Generate policies and legislation related to road health and safety matters
  - Ensure vehicles are repaired in safe and health compliant garages or environment
  - Ensure all goods carried are transported and stored in a safe manner
  - Ensure hazardous products such as oils and gases are transported in a safe manner
  - Manage, coordinate and regulate road transport safety issues
  - Develop road safety curriculum for primary schools
  - Create awareness and sensitize public on all safety issues
  - Collect, keep, maintain and analyze data related to road traffic accidents
  - Produce and implement all Road Safety Action Plans
  - Audit all road transport infrastructure and road furniture in relation to road safety
  - To identify black spots and ensure corrective measures are taken by responsible agencies.
  - Approve usage of accident prevention gadgets such as Alco-blow, drug testing equipment, speed cameras, speed radars etc.
- ❖ *This will replace the National Road Safety Council which is managed and controlled by Ministry of Transport.*
  - ❖ *This could be done together with IRUP*
  - ❖ *There are lots of funds available from institutions such as the World Bank who have been reluctant to pass it through MoT.*
  - ❖ *According to the UN Decade of Action for Road Safety 2011 -2020, every country is required to have a lead road safety agency and to reduce road crashes by 50% by 2020.*

## **NATIONAL TRANSPORT INSTITUTIONS**

### **Transport Research Laboratory and Training Institute**

- Create capacity in management of both passenger and freight transport

- Promote and supervise transport studies and vocational training
  - Coordinate research on transport issues and assist in production of regional, national and county road transport plans
  - Conduct transport research, such as, National Travel Survey and the Value of Time
  - Store all road transport statistics and data and disseminate it to stake holders
  - Create and supervise a Road Transport Institute that could produce transport professionals
  - Develop manage a shared databases, such as, the Traffic Information Management System
  - This section could be affiliated to a University, KIPPRA or IDS etc.
  - Create and license transport professionals or bodies through Institutes such the Chartered Institute of Transport and Logistics
- ❖ *Note that whereas we have Bandari College for Marine Transport, Railways Training Institute for Rail Transport, East African School of Aviation and Petroleum Institute of East Africa for Pipeline; we have no Training Institute for Road Transport.*
  - ❖ *The institute could produce professionals in freight forwarding and warehousing, transport financing, fleet management, transport planning, transport management, transport and land use, transport logistics and supply chain, public transport operations, research and statistics in transport, transport economics, human resource management in transport, security in transport, etc.*

### **Transport Museum**

- Safeguard the history and artifacts arising out Road Transport
- ❖ *This could be attached to the Railway Museum for the time being*

### **TRANSPORT MANAGEMENT AUTHORITIES**

These will be the urban and metropolitan area transport management authority and county, rural and regional transport management authority. They will be transport management authorities that will deal with both public and private transport operations. The authorities will be responsible for the promotion of non-motorised transport (*NMT*)

#### **Urban / Metropolitan Area Transport Management Authorities**

- Prepare and implement urban and metropolitan transport master plans
  - Produce urban and metropolitan area by-laws
  - Carry out surveys and census and keep urban and metropolitan transport statistic
  - Manage transport matters in urban and metropolitan areas in regard to route network planning, traffic management, real time passenger information, management of operator contracts and tenders, centralized cashless ticketing and public transport infrastructure management
  - Promote a sustainable and equitable mass public transport system that facilitates a 24-hour economy in line with Vision 2030
  - Contract, tender, franchise, concession and monitor public transport provision standards
  - License, supervise and manage freight transport, logistics and supply chain
  - License management and regulate motor vehicle and boda bodataxis
  - Promote non-motorized transport in urban and metropolitan areas
- ❖ *This transport management authorities could provide second level transport regulation and management.*

#### **County, Rural and Regional Transport Management Authority**

- Prepare and implement county transport master plans
- Produce county area by-laws

- Carry out surveys and census and keep County transport statistic
  - Coordinate and liaise with county governments in regard to inter-county and intra-county transport matter
  - Manage transport matters in counties in regard to route networks, traffic management, management operator's contracts, passenger information and public transport infrastructure management
  - Deal with Regional and International road transport corridor issues
  - Promote rural transport non- motorized and intermediate transport
  - License and management of taxis and boda boda
  - Promote inter county passenger transport services
  - License, supervise and manage freight transport, logistics and supply chain
- ❖ *This transport management authorities could provide second level transport regulation and management.*

### **Conflict Resolution Mechanism**

- Under the Department there could be a Road Transport Tribunal to resolve conflicts before moving to the court of law.
  - The Tribunal could assist decongest courts of law
  - The Tribunal could, for example, be chaired by a legal expert but could have one member from the industry and another from MoT
- ❖ *This will replace the current Transport Licensing Tribunal but with expanded powers to resolve conflicts in the whole transport department.*

### **Sector Operator Associations**

- These are passenger and freight industry associations that could form the second line of regulation and management of transport.
  - Sector associations could be registered by MoT and recognised and assigned roles by the Road Transport Act 2013
  - The sector associations such as Matatu Owners Association, Matatu Welfare Association, Motorist Association, Kenya Transport Association, Kenya International Freight Forwarders Association, etc.
  - Since third party insurance is mandatory by transport law it could be important to protect the rights of the insured. The issue of structured insurance claims compensation could not only protect the insured but the insurer and the accident victims. The role of Association of Kenya Insurers (AKI) could be re-examined in relation to supporting the accident prevention activities.
- ❖ *Operator Associations could provide second level transport self-regulation and management*

### **Non-Governmental Organisations (NGOs)**

- There are no NGOs that operate in Road Transport Sector. It could be helpful to ensure that NGOs are encouraged to assist sensitise operators and staff in the Road Transport Sector.
- There are NGOs such Association for Safe International Road Travel (ASIRT Kenya), National Road Safety Trust and Safe Way, Right Way that require a formal legal mechanism with which they can collaborate with the government.

### **Trade Unionism**

- A recent International Labour Organisation (ILO) research cast a very dark cloud over the state of affairs of employment terms for staff in the Transport industry in Kenya.
- Whereas Trade Unionism is domiciled in the Ministry of Labour, it should be in co-operated or inferred to in the Road Transport Act 2013.
- Where we have Long Distance Truck Drivers Union representing Truck drivers, Transport and Allied Workers Union has not been able to recruit members in the PSV industry. It should be noted that because the industry is lethargic to Unions they decide to operate informally. Presence of Unions could assist weed out predators in form of Cartels, such as, Mungiki, Siafu, etc. and Associations, such as, Matatu Drivers and Conductors Association (MADCOA) from the industry
  - ❖ The purpose of bringing trade unionism is to assist improve employment terms for employees in the Road Transport Sector.

### **Consumer Organisations**

- Transport in Kenya is at cross roads because consumers have no frame work by which to take operators and workers to task.
- The Road Transport Act 2013 needs to recognise their role in creating the checks and balances in transport service provision.
- The Associations could have powers to file cases on behalf of the Public in the Tribunal.
- There could be need to recognise roles resident associations such as KARA, Commuter Associations such Commuter Welfare Association, Association for the Physically Disabled of Kenya (APDK)
  - ❖ *The Constitution grants the disabled person rights to access public transport*

### **Traffic Laws Enforcement Mechanism**

Traffic Law enforcement has been left to Police alone. This is not correct since many bodies need to be involved.

- Road Transport Police - The Traffic Police need to be rebranded to create a Transport Police at National Level.
- Metropolitan Police - Urban areas could have the Metropolitan Police that will replace Council Askaris
- Traffic Wardens - Could be used to enforce parking and manage traffic in urban centres
- Ministry of Labour – Should inspect and ensure labour laws are adhered to in Transport Industry
- Ministry of Co-operatives – If Saccos are going to be used to mop
- Courts – There is need to decongest courts. There should be a move towards decriminalising minor traffic offences.
  - ❖ Just like the Railway Police perhaps we need a Police Service that has it command domiciled in MoT

### **Companies and Savings and Credit Co-operative Societies (SACCOs)**

- The law should establish the role of an operator using the Franchising Model. An operator must be issued with an operator's licence. To be issued with an operator's licence a Sacco or a company must meet specific conditions or thresholds.
- Companies and Sacco could be used to mop up individual operators in favour of large professionally run operators. Every individual vehicle owner could by law be required to operate under an operator.

- Rules for one to qualify to be an operator could be enacted. The rule could empower operators to shape the industry. Operators could be the ones to be allowed to tender for routes.

**CONCLUSION**

From the afore going, it is evident that bad transport in Kenya and developing countries is perpetuated by the lack of government involvement in creating a policy, a legal and an institutional framework that can deter or manage the growth of the Para Transitsand the private car but promote an integrated mass public transport system.

To create a world class transport system a country cannot rely only on police and courts to enforce hash penalties but in a coordinated reform of all regulatory mechanism.

After many years of no investment in transport at the expense of road transport infrastructure, it is now time for Kenya and governments in developing countries to invest in transport.

What is needed in Kenya is a whole some approach to transport reforms and not a piece meal approach. Hash penalties alone are not panacea to reforming the transport industry.

We need to enact a modern transport legislation that uses ITS and promotes social justice and equity in line with the Vision 2030 and the Constitution. This can best be done by repealing the current Traffic (Amendment) Act 2012 and replace it with a carefully drafted Transport Act 2013. To assist develop ideas in this justification; a consultant’s service could be necessary. These are only but thought that need debating but I believe the form a good basis for transport reforms in developing countries.

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