



**EXAMINATION REPORT  
ON THE**

**SYSTEMS, POLICIES, PROCEDURES AND  
PRACTICES IN THE REGISTRATION AND  
LICENSING OF MOTOR VEHICLES AND  
ENFORCEMENT OF TRAFFIC LAWS**

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## **ABBREVIATIONS**

CG	Commissioner General
COC	Certificate of Clearance
GVIU	Government Vehicle Inspection Unit
KACC	Kenya Anti-Corruption Commission
KEBS	Kenya Bureau of Standards
KRA	Kenya Revenue Authority
MOT	Ministry of Transport
MVIU	Motor Vehicle Inspection Unit
PSV	Public Service Inspection
RTD	Road transport Department
RTS	Return to Sender
TLB	Transport Licensing Board
VAT	Value Added Tax

## EXECUTIVE SUMMARY

This Report contains findings and recommendations of the examination into the systems, policies, procedures and practices in the registration and licensing of motor vehicles and enforcement of traffic laws. The Ministry of Transport, Kenya Revenue Authority and the Department of Police were the key target institutions for the examination. In these organisations, the examination covered key departments whose mandates impact on registration, licensing and law enforcement. Thus, in the Ministry of Transport, the Motor Vehicle Inspection Unit (MVIU) and the Transport Licensing Board (TLB) were the key departments of interest while the Road Transport Department (RTD) was the main target in the Kenya Revenue Authority. The Traffic arm of the Department of Police was targeted due to its mandate of implementing traffic laws and regulations. The examination also covered other departments whose functions impact the licensing and registration of motor vehicles and Traffic Law enforcement. These are:

- Ministry of Finance
- Local Authorities and
- Department of Customs and Excise of the Kenya Revenue Authority

The Kenya Anti-Corruption Commission (KACC) Directorate of Research, Education, Policy and Preventive Services carried out the examination between April and May 2005. The purpose of the examination was to identify opportunities and avenues for corrupt practices in the systems, policies, procedures and practices in the examined departments and to make recommendations on how to seal the identified loopholes.

Findings arising from this examination reveal that there exists corrupt practices in all the departments examined. The opportunities for corruption exist in all aspects of work and are perpetuated by weaknesses in the existing systems and procedures.

This Report covers a wide range of findings and recommendations in the whole process of registration and licensing including clearance of imported vehicles, and inspection. It also provides findings and recommendations on the roles of the police and local authorities in the road transport sector. Furthermore, critical findings and recommendations on the supervision of driving schools, administration of driving tests as well as auctioning of motor vehicles by the Department of Police have been made. This is done with a view to highlighting integrity and operational issues that must be addressed with the aim of promoting good governance, sustaining transparency, accountability and integrity through systems of work, which offer no room for corrupt practices.

Some of the recommendations in this report take into cognisance recommendations brought to the attention of the team by various authorities and interested parties in the road sector.

The Report has raised pertinent issues on the role of the Judiciary in contributing to the enforcement of traffic laws. Critical issues have also been raised in relation to the attitude of the general public in regard to public transport. The Kenyan public fail to exert themselves by demanding their rights in public transport and support those who break the law.

Findings and recommendations are presented in four parts. Each part addresses specific issues in each of the Departments/organisations examined. At the end of the Report is a presentation on issues for further consideration in enhancing reforms in the public transport sector. The final part of the Report is a conclusion highlighting, inter alia, the importance of systematically implementing the recommendations contained in the Report.

KACC is mandated to secure the revision of methods of work and procedures that in the opinion of the Commission may be conducive to corrupt practices. In view of this, the Commission expects all the departments addressed in the Report to immediately embark on the implementation of the recommendations. This will include preparation of an implementation schedule to be submitted to KACC two weeks after the submission of the report for discussion and benchmarking. Based on the implementation schedule KACC will carry out continuous assessment and monitoring of the agreed targets.

## 1. INTRODUCTION

The motor vehicle industry contributes to revenue generation through registration and licensing of motor vehicles. Generation of adequate revenue to fund government programmes has been a critical challenge over the years. This is because the process of revenue collection has been marred by various malpractices, which cause significant losses. The malpractices appear to have permeated most of the operations within the road transport sector with negative consequences for revenue collection and road safety.

The Economic Survey 2005 suggests that during the year 2004, registration of new vehicles increased significantly. The newly registered matatus and minibuses rose by 54.3 percent to 4,405 units from 2,854 units in 2003. The number of newly registered coaches, buses, lorries, trucks and trailers also recorded sizeable rise during the year. In addition, the number of newly registered saloon cars increased by 30.1% from a previous decline of 7.8 % in 2003. Transport licensing also recorded remarkable increases (see table below). This therefore explains the increase in revenue from the Road Transport Department.

**Table 1: Number of Road licenses issued 2002 to 2004**

	<b>2002</b>	<b>2003</b>	<b>2004</b>
TLB Licenses			
PSV Matatus	29,403	32,257	36,757
PSV buses & tourist Vehicles	8,853	9,520	10,435
Freight Transport vehicles	25,845	35,595	46,260
<b>Total</b>	<b>64,101</b>	<b>77,372</b>	<b>93,452</b>
Driving Licenses			
Original	66,085	81,890	91,145
Duplicate	16,790	20,300	35,967
Foreign	2,014	2,144	1,623
<b>Total</b>	<b>84,889</b>	<b>104,334</b>	<b>128,735</b>

**Source: Economic Survey 2005**

During the year 2004 newly registered vehicles including buses, lorries saloons and other types of vehicles increased significantly. Additionally, the value of Output from road transport increased from Kshs 101.5 million in 2002 to Kshs 137.8 million in 2004. This is a clear manifestation of the increased level of economic activities in the road transport sub-sector and an indication of the increase in revenue generation.

The motor vehicle industry contributes significantly to the distribution of goods and labour force from one area to another. It is also a major support to other sectors like Tourism, Industry and Agriculture. The Safety Measures introduced in 2002 are imperative in the sustainability of the pool of labour force and the continuity of other sectors in the economy. Traffic deaths have reduced significantly in the last two years since the introduction of Safety measures.

The tremendous potential for revenue collection from the motor vehicle industry and its role as a facilitator of other sectors of the economy cannot be overstressed. Thus the industry needs to be well regulated to realise this potential. However more importantly is the need to ensure road safety and protection of all road users. Any losses in the revenue generation process will negatively impact on the economic development of the Country hence the need to check reported malpractices. An appropriate regulatory framework can be enhanced by corruption prevention mechanisms in all the institutions involved in the registration and licensing of motor vehicles as well as institutions charged with the responsibility of providing appropriate guidelines and standards; and enforcing the relevant legislation.

Different policies and statutory frameworks regulate the various institutions involved in the motor vehicle industry. The key mandates of these institutions with regard to motor vehicles are as follows:

**The Kenya Revenue Authority (KRA)** is established by the Kenya Revenue Act Authority Act (Cap 469 –Laws of Kenya). Part of its mandate is to collect import and excise duties on imported vehicles, collect Value Added Tax (VAT) on all vehicles, register and license all vehicles operating within the Kenyan boundaries. The Road Transport Department (RTD), which is headed by the Registrar of Motor Vehicles who also bears the title of Commissioner of Road Transport, carries out the duties of registration while collection of customs and excise duties is done by the Department of Customs and Excise. Collection of VAT is done by the Department of VAT.

In the last two years KRA has posted positive results in revenue collection increasing gradually from Kshs 122 billion in 1995 / 1996 to Ksh229 billion in the 2003/2004 financial year accounting for over 93% of the total Government revenue. Table 2 shows the revenue collection trends from the licensing and registration of motor vehicles.

**Table 2: Revenue Collection from Road Transport Department**

<b>Year</b>	<b>Actual (Kshs Million)</b>	<b>Target (Kshs Million)</b>
2001/02	1,327	1,366
2002/03	1,413	1,518
2003/04	2,160	1,599
2004/05	2,793	2,498

**Source: KRA Department of Research**

Revenue collection by the Road Transport Department (RTD) (for registration and licensing) increased from Kshs1.3 billion in 2001/02 to Kshs 2.79 billion in 2004/05. In addition the Departments of VAT and Customs and Excise collect significant amounts of revenue on purchase and importation of vehicles respectively.

In spite of the significant strides made by the department in revenue collection, the methods of work are prone to corrupt practices. The process of registration and licensing of motor vehicles is manual, cumbersome and very slow. This opens room for corruption as many reports of corrupt practices in this process have been made through various channels

Benchmarking of revenue targets for the Road Transport Department is mainly based on historical statistics. Given the losses incurred through corrupt practices, the targets do not fully capture the full revenue potential of the Department.

Over the years, **District Commissioners** were appointed agents of KRA to assist in carrying out licensing activities in areas where there were no KRA offices. The District treasuries carried out this activity. At the time of the examination, KRA was in the process of taking back these functions as part of its programme to improve efficiency in revenue collection. Further information coming from KRA indicates that the process is now complete.

**The Ministry of Transport** has the overall mandate to design appropriate policies and legislation to effectively guide the transport sector. One of the key functions of the Ministry in the process of registration and licensing of motor vehicles is inspection. Inspection of motor vehicles is done to ensure that vehicles operating on PSV Kenyan roads are in good mechanical condition and also comply with appropriate standards of body construction and roadworthiness. Inspection also guides the determination of the Advance Income Tax charged on all commercial vehicles based on the vehicle capacity.

The Ministry has developed a strategic plan (2004-2009) which aims, inter alia to improve transport safety particularly on the roads .The strategies provided in the implementation matrix of the draft plan include modernisation and expansion of the motor vehicle inspection centres as well as the review of the legal and regulatory framework to address road transport issues.

**The Transport Licensing Board (TLB)** is established by the Transport Licensing Act (Cap 404 Laws of Kenya), which confers upon the Minister for Transport wide powers to regulate the motor vehicle industry. The minister appoints the TLB as well as the Registrar of Motor vehicles. The mandate of the Board as stipulated in the Act is:

- Coordination and control of the means of transport through issuing of licences
- Allocation of routes and regulation of operations in the road transport sub sector

The Board has power to suspend vehicles that contravene the transport licensing regulations. Initially the Board was restricted to licensing of buses and commercial vehicles. However in 1999 this mandate was extended to all public transport including public transport vehicles commonly known as 'matatus'.

The Board works in collaboration with various agencies in implementing its mandate. Some of these agencies are

- The Kenya Revenue Authority,
- The Department of Police,
- The Motor Vehicle Inspection Unit,
- Local authorities,
- The Kenya Matatu Vehicles Owners Association
- The Kenya Matatu Welfare Association

The Board has encountered many challenges particularly in view of the tremendous growth of the matatu industry. These challenges include the growth of cartels and illegal groups, which perpetuate illegal control of matatu routes and collection of unauthorized fees. The general legal framework for guidance of the Board is also wanting. However, far-reaching reforms under way are expected to deal with the challenges.

**The Department of Police** is empowered to enforce the Traffic Act (Cap 403-Laws of Kenya) and other laws. Enforcement of the Traffic law is done mainly through the Traffic Formation of the Police. Previously, the traffic formation

was headed by the Traffic Commandant and traffic police officers reported directly to the Commandant. Currently, traffic police officers report to the Provincial Police Officers (PPO) through the Base Commanders and other Officers in Charge of stations. The Traffic Commandant is in charge of Driving Schools, driving tests and Government vehicle inspection units. He also maintains statistics on road accidents.

The Department of Police also carries out regular auctions of vehicles that are unclaimed. Most of these are stolen vehicles, which have been recovered but not claimed by the owners.

**The Kenya Bureau of Standards** is established under the Standards Act (Cap 486- Laws of Kenya). Some of its main functions are:

- To promote standardization in industry and commerce
- To provide for the testing of locally manufactured and imported commodities with a view to determining whether they comply with the provisions of the Standards Act or any other law dealing with standards of quality or description.

Pursuant to its mandate the Bureau has developed standards (KS 1515), for all motor vehicle operated within the country. The Standards (Amendment) Act 2004 enables the Bureau to, among other things, board any vehicle or vessel to inspect its quality, origin and assess its compliance with the stipulated standards. The Bureau is also empowered to destroy or re-export those goods that do not meet the local standards.

Implementation of standards continues to pose the biggest challenge to the Bureau especially in view of the launching of the East African Customs Union, which requires harmonisation of the standards set by the Member States.

**The National Environmental Management Authority (NEMA)** is established under the National Environmental Management and Co-ordination Act EMCA (1999). One of the key functions of the Authority as provided for under section 82 (a) and (b) of the EMCA is to regulate emissions by motor vehicles and other conveyances into the air. NEMA is also empowered to ensure that motor vehicles imported into the country are not in contravention of prescribed emission standards.

Pursuant to its mandate, the Standards and Enforcement Review Committee is in the process of developing appropriate regulations, standards, and guidelines required to regulate emissions and air pollution. NEMA has provided the development and gazetting of the same by 2006 in its strategic plan (2005-2010).

The standards are expected to cover; criteria and guidelines for air pollution control for both mobile and stationary sources, emission standards from various sources and air quality standards. The standards once implemented will go a long way in complementing the work of the Motor Vehicle Inspection Unit.

**The Ministry of Finance** is mandated to make all policies with regard to revenue collection and administration. The Ministry works closely with the Kenya Revenue Authority to determine the revenue targets for each year. Additionally, the Ministry provides guidelines for duty waivers on imported vehicles destined for the local market. The Minister for Finance has the sole mandate to approve duty waivers for customs and excise duties on imported goods including motor vehicles. To effectively carry out this mandate the Minister delegates various levels of waivers to certain Offices including the Commissioner of Customs and Excise.

**Local Authorities** have mandate under the Local Government Act (Cap 265-Laws of Kenya) to provide and manage transport facilities such as bus parks within their jurisdictions. As a service to the residents, Local Authorities are expected to ensure free flow of traffic and that passenger vehicles ply all areas so that residents are not constrained in their movements.

The **Judiciary** provides necessary support in the enforcement of the traffic law through the court system.

## 2. BACKGROUND

The Kenya-Anti Corruption Commission (KACC) is mandated to combat **and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion and development of efficient and transparent methods of work, which** leave no room for corruption. This examination was carried out in accordance with this mandate which is stipulated in the Anti Corruption and Economic Crimes Act 2003 Section 7 (1) (f) and (g). According to these provisions the Commission is empowered:

- At the request of any person, to advise and assist the person on ways in which the person may eliminate corrupt practices;
- To examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices **and to secure the revision of methods of work or procedures that in the opinion of the Commission, may be conducive to corrupt practices;**
- To advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such bodies that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt practices.

### 2.1. PROBLEM STATEMENT

Persistent reports and complaints by members of the public through the media and to the Kenya Anti-Corruption Commission (KACC) suggested various forms of corrupt practices in the process of registration and licensing of motor vehicles and in enforcement of the traffic laws. These reports indicated corruption was rife at Kenya Revenue Authority (KRA) Road Transport Department (RTD) Motor Vehicle Inspection Unit and also in the Department of Police. Some of the ways and methods in which corruption was reported to be perpetuated in these departments were as follows:

#### (a) Payment of Advance Income Tax

It is a requirement that before licensing commercial vehicles, an Advance Income Tax is paid. Middlemen in collusion with officers of KRA negotiate with the vehicle owner to pay less of the tax due without issuing a receipt and license these vehicles. The revenue clerks record false accounts, with the assistance of the KRA auditing staff and pocket the money collected.

- (b) Differentials in recording of amounts on the original and duplicate receipts

This is done through deliberately lowering of vehicles rating capacity where the actual amount recorded is lower than the amount paid for the road license. An official receipt is issued to unsuspecting owner reading the actual amount paid as per the vehicle's rating capacity, but thereafter the duplicate is fraudulently endorsed with the lowered rating capacity.

- (c) Soliciting for bribes

Corruption complaints indicated that officials solicit for bribes with the promise that they will facilitate quick provision of service such as processing of drivers' licenses or logbooks. This is sometimes done through the use of middlemen. In most cases those who fail to pay the bribes are so frustrated to the extent that it takes a very long time to process the licences or logbooks. In some cases, documents presented to the Registrar for processing of these instruments disappear.

- (d) Issuance of compliance certificates to non-roadworthy vehicles and vehicles which have not complied with local standards

Officers of the Motor Vehicle Inspection Unit demand money from motorists before issuing them with certificates of compliance. Corruption reports indicated that extortion is rife at the Motor Vehicle Inspection Unit, where officers make it very difficult to issue certificates of compliance and inspection stickers by listing very many defects for each vehicle. This is a deliberate move to compel vehicle owners to part with bribes and once they pay the bribes certificates are issued regardless of the condition of the vehicles.

- (e) Evasion of payment of Import Duties
- (f) Double or multiple registrations where two or more vehicles have the same vehicle registration number.
- (g) Issuing of drivers' licenses to unqualified drivers sometimes without undertaking appropriate testing
- (h) Delay in processing drivers' licenses and logbooks
- (i) Loss of logbooks processing documents

All these complaints suggested existence of weaknesses and loopholes in the processes applied in registration and licensing of motor vehicles. They were also a reflection of poor governance systems in the whole process of registration and licensing.

Accordingly, KACC found it necessary to assess the degree of accountability, integrity and transparency in the key functional areas in targeted institutions dealing with the registration and licensing of motor vehicles. These institutions include KRA (Roads Transport and Customs Departments); the Transport Licensing Board (TLB); the Motor Vehicle Inspection Unit (MVIU); Kenya Police Department; the Ministries of Transport and Finance; and Local Authorities. The purpose was to identify weaknesses, loopholes, avenues and opportunities that may be used for corrupt practices.

## **2.2. OBJECTIVES**

The overall objective of this examination was to offer appropriate advice on ways and means of promoting good governance and sustaining transparency, accountability and integrity through application of systems of work that offer no room for corrupt practices to the Departments involved in the process of registration and licensing of motor vehicles and enforcement of traffic laws. The specific objectives were:

- a) To identify weaknesses, avenues and loopholes for corrupt practices in the systems, policies, and procedures in the operations of the Department of Motor Vehicles, the Transport Licensing Board, the Motor Vehicle Inspection Unit and the Department of Police in relation to enforcement of traffic laws.
- b) To make recommendations on how to seal corruption loopholes in order to promote and sustain transparency, accountability and integrity in the process of registration and licensing of motor vehicles and in traffic laws enforcement.
- c) To secure the revision of methods and procedures of work that in the opinion of the Commission may be conducive to corrupt practices in the registration, licensing of motor vehicles and in enforcement of traffic laws and regulations.

## **2.3. TERMS OF REFERENCE**

The terms of reference for this exercise were:

- a) Studying the existing policies, guidelines, procedures and practices applied in the registration and licensing of motor vehicles.
- b) Analysing the adherence to policies, guidelines and procedures in the operations at the motor vehicles department

- c) Ascertaining the effectiveness of these systems in enhancing integrity in operations of the motor vehicle registration and licensing departments.
- d) Identifying and profiling areas of weaknesses, loopholes and avenues for corruption in the areas of revenue collection (such as customs duty and licensing), records management and service delivery in these departments.
- e) Assessing the appropriateness of records management practices at the department.
- f) Preparing a report of findings and making recommendations on how to seal identified corruption loopholes.

## **2.4. SCOPE**

The team examined the operations of the Roads Transport (RTD) and Customs Departments of Kenya Revenue Authority (KRA), the Transport Licensing Board (TLB) and the Motor Vehicle Inspection Unit (MVIU). The Team also examined the operations of the Ministries of Finance and Transport respectively, the Kenya Police, local authorities and the Kenya Bureau of Standards as far as their functions relate to licensing and registration of motor vehicles and the enforcement of traffic laws and road transport regulations. (See Appendix 1 for a list of areas visited).

In addition the team interviewed KRA customers, the Chairman of Matatu Welfare Association, fleet transporters, and members of the public.

## **2.5. METHODOLOGY**

In order to address the above Terms of Reference, the team applied the following methods:

- a) Formal and informal interviews
- b) Observations of
  - Surroundings
  - Physical facilities
- c) Spot checks to check compliance
- d) Examination and analysis of the following:
  - Policy documents.
  - Operational circulars and manuals.
  - Ministerial circulars and manuals.
  - Policy manuals & circulars
  - Management Reports
  - Rules and Regulation manuals

- Procurement Procedures and Regulations
- Treasury circulars
- Economic Survey 2005
- Accountable documents such as
  - Receipt books
  - Logbooks
  - Driver's licences
  - Payment Vouchers
- The Traffic Act (403 - Laws of Kenya)
- The Kenya Revenue Authority Act. (Cap 469- laws of Kenya)
- The Penal Code (Cap 63 - Laws of Kenya)
- The Societies Act (Cap 108 - Laws of Kenya)
- The Public Order Act (Cap 56 - Laws of Kenya)
- The Local Government Act (Cap 265 Laws of Kenya)
- The Anti Corruption and Economic Crimes Act, 2003
- The Public Officer Ethics Act, 2003
- The Transport Licensing Act (Cap 404- Laws of Kenya)
- The Standards Act (Cap 496 - Laws of Kenya)
- Relevant reports, legislation and materials from other jurisdictions
- Best practices guidelines downloaded from various websites

### **3. FINDINGS AND RECOMMENDATIONS**

#### **PART I**

##### **3.1. THE KENYA REVENUE AUTHORITY**

This part of the Report highlights corruption loopholes and recommendations in the process of clearing imported vehicles, registration and licensing by the Kenya Revenue Authority and District Treasuries. It is divided into 10 sections representing functional areas where corruption loopholes were identified. These are:

- General administrative and operational issues
- Clearance of imported vehicles
- Licensing and Registration
- District treasuries
- Procurement and supply of registration documents
- Issuance of number plates
- Control of seals and stamps
- Revenue collection and cash handling
- Records management
- Auction of vehicles by the Department of Customs and Excise

###### **3.1.1 General Administration and Operational Issues**

1. The Kenya Revenue Authority has set out revenue targets for all its departments. Each Department including RTD cascade the targets to various sections and stations. In order to meet the prescribed targets it was observed that insufficient attention is given to blatant violations of the law and irregularities in the process of registration and licensing of motor vehicles. For example, in most of the offices visited, it was observed that road license renewals are effected even where ownership has not been transferred in cases where ownership had changed.
2. The KRA officers sometimes rely on duplicate documents such as motor vehicle inspection reports for licensing without reference to original documents.

*The Commissioner General should ensure that targeting for revenue collection is not used as a tool for condoning malpractices. Appropriate*

*targeting should be done taking into consideration the differentials in revenue potential in different areas of operation. In addition, the Registrar of Motor Vehicles should enhance supervision to ensure that his officers apply all the appropriate procedures in the conduct of their duties and that where required original documents must be used to authenticate photocopies.*

3. Although KRA licensing officers recover forged documents in the processes of registration and licensing, they do not forward them to the relevant authorities for legal action.

The team noticed a number of forged motor vehicle inspection reports in KRA offices in respect of vehicles, which had already been registered and licensed.

*The Commissioner General should develop guidelines for registration and licensing of motor vehicles. These guidelines should provide officers with procedures for dealing with forged documents. The procedures should outline a standard method of dealing with the issue of registration and licensing and constantly update revenue officers on emerging issues in respect to forged documents and how to deal with them.*

4. Some officers in RTD do not hand over their functions when proceeding on leave. Instead they retain some files for their action. Clients are therefore not served until such officers return from leave. This was observed mainly in the Log Book Section. This raises doubts on the integrity of such officers.

*The Commissioner General should ensure that officers do not personalize some tasks and should delegate all aspects of their duties before proceeding on leave.*

5. Although the Road Transport Department issues TLB licenses for pickups on behalf of the Board, there is no feedback mechanism of informing the Board on the revenue collection from this activity.

*The Commissioner General KRA should ensure that reports on the issuance of TLB licenses by his officers are availed to the Board. This will help the Board to make informed decisions on targeting, planning and budgeting and to be accountable to the public.*

6. Some officers in the RTD field offices do not report to the officers In-Charge of the regions or stations. They report directly to the Registrar of Motor Vehicles.

*The Commissioner General should develop and document clear job descriptions for all officers to guide the operations of KRA in the field offices.*

7. The examination team observed that some of the supervisors in charge of revenue do not have any qualifications in accounting.

*The Commissioner General KRA should only post qualified accountants to supervise all matters of revenue collection in the field offices. This will minimize revenue losses, which occur when ignorant supervisors are short-changed by unscrupulous accountants.*

8. Auditing of RTD field offices is carried out irregularly and sometimes it takes a long time before field stations are audited.

*The Registrar of Motor Vehicles should ensure that the internal audit work plans take into account frequent audit visits to field offices to keep under check any malpractices that may occur leading to loss of revenue, as is actually the case.*

### **3.1.2 Clearance of Imported Vehicles**

1. Original documents used for clearance and registration of motor vehicles especially at the entry points are handled by clearance agents subsequent to their being officially lodged at the KRA offices. KRA officers allow the agents to move the documents from one signing officer to another in order to hasten the process of clearance. This can lead to loss, falsification of documents (e.g. by use of forged stamps) and extortion by agents and KRA officials.

*The Commissioner of Customs and Excise should ensure that once motor import clearance documents are lodged with the KRA, they are not returned to the agents until all the clearance procedures are concluded to prevent loss and forgeries. This will be achieved by allowing signing officers to strategically sit close to one another.*

2. Customs officials in collusion with importers and agents sometimes under-declare the capacity and age of motor vehicles in order to reduce the value of import duty. This further results in reduction of both the value added tax and the excise duty leading to substantial loss of revenue.

*The Commissioner of Customs and Excise should develop a system to guide duty assessment of vehicles such that where the value falls outside the designed range it is subjected to an investigation to validate its acceptability. In addition, officers found to be flouting procedures of assessment of duty should be subjected to appropriate disciplinary action.*

3. Once cleared from the port, vehicles on transit are either driven on road or transported on trailers to the exit points. The tracking system to ensure that these vehicles are not diverted to the local market is inadequate. In some instances, KRA officers travel by the transit vehicles when escorting them to the border points. This opens a loophole for corrupt practices and has resulted in some of the vehicles entering the local market. Indeed, the team learnt that in the past officers have been disciplined after the vehicles they were escorting failed to reach the exit points. This system perpetuates illegal registration, which largely depends on forged documentation.

The Certificate of Clearance (COC) issued by Customs Department upon payment of duties is prone to forgery and is sometimes issued to Vehicles on transit. Weaknesses in the Customs Department are transferred to the Roads Transport Department, which undertakes the registration and licensing of such vehicles.

*The Commissioner General should ensure that once imported transit vehicles are released from the Port, information is electronically communicated to officers at the border points. The Monitoring Unit should also be strengthened for effective monitoring of transit goods. After the expiry period by which vehicles on transit are supposed to have crossed the exit points, the Commissioner General in collaboration with the Commissioner of Police should immediately launch investigations on vehicles not accounted for after which cash bonds should be forfeited by the KRA. The Kenya Anti-Corruption Commission on its part will ensure that those found to have committed offences under the Anti-Corruption and Economic Crimes Act are promptly punished.*

4. Due to the porous nature of the Kenyan borders, certain types of vehicles like tippers and tractors used for farming in Kitale area are easily smuggled into the Country without paying duties.

*The Commissioner General in collaboration with the Commissioner of Police should intensify patrols at the border points in order to deal with the problem of smuggling of motor vehicles.*

5. There is no method of ensuring that vehicles, which do not comply with clearance requirements at the border point, do not enter the country. Some of the customs warehouses are not secured and are accessible to members of the public without any form of detection.

*The Commissioner General should properly secure all the customs warehouses to stamp out collusion between his officers, importers and dealers when releasing such vehicles from the warehouses.*

### 3.1.3 Licensing and Registration

1. The procedures and guidelines for carrying out all the operations of the Road Transport Department with regard to registration and licensing are not sufficiently documented for reference. In essence, officers work without sufficient guidance. This creates opportunities for negotiations with clients whenever there is a slight dispute. These opportunities may be used for corrupt practices.

*The Registrar of Motor Vehicles should develop and document appropriate and detailed guidelines for use by the officers in carrying out their specific duties in the process of licensing and registration. These guidelines must aim at minimising abuse of discretion.*

2. There are many documents required for registration and licensing of motor vehicles. These documents are issued from different offices thus creating delay. This encourages brokers some of whom work in cahoots with KRA officers and extort from members of the public. It further opens opportunity for corrupt practices with promises for speeding up the process.

*Most of the documents required for registration and licensing of motor vehicles are KRA documents. The Commissioner General should merge the documents in a move towards a one-stop shop to reduce the time taken to process the documents. The Commissioner General should also centralise the signing of relevant documents to hasten the process of registration. This is in accordance with the recommendation under finding one of the section dealing with clearance of imported vehicles.*

3. There exists a very large market for forged documents such as drivers' licenses, TLB stickers, road licenses and others. The examination team was informed that illegal documents in the parallel market are more than the legally acquired documents. In one case, a company had a fleet of 60 vehicles with forged TLB stickers. The supposed sources of these forged stickers include KRA offices, brokers, contracted printers by KRA and retired employees of the Government Printer among others. This in essence leads to massive loss of government revenue. The team took note of the fact that in the past some KRA officers have been prosecuted in connection with supplying forged documents.

Some of the RTD licensing officers cannot differentiate a forged document from a genuine one. In most cases, the ability to differentiate depended on the officer's experience on the job and interaction with the signing authority. This implies that many forged documents are being processed through the KRA offices thus aggravating the loss of

revenue and corrupt practices in registration and licensing of motor vehicles.

*The Commissioner General KRA should take note of the considerable loss of revenue occasioned by use of forged documents and provide for adequate and appropriate security features for motor vehicles licenses and registration*

*The Registrar of Motor Vehicles should adequately and periodically familiarize his officers with the security features and authorized signatures on all registration and licensing documents to enable them to promptly identify forged documents.*

4. The Audit and Inspection Units of RTD lack the capacity to effectively carry out inspections to verify the validity of the various motor vehicle licenses in use.

*The Registrar of Motor vehicles should enhance the capacity and fully equip the Units to effectively discharge their duties. Close working relationship with the Department of Police will also be crucial in identifying the sources of forged documents.*

There is minimal interaction between the Road Transport Department and the Customs Department. This causes delays in the verification of documents for registration and licensing. This opens loopholes for forgeries leading to loss of revenue, as officers are at times unable to verify the authenticity of such documents. It was observed that the Roads Transport Department was in the process of computerizing its offices. As at 15<sup>th</sup> December 2005, the examination team upon inquiry was informed that the exercise was 80% complete.

*The Commissioner General KRA should fast track automation and integration of the KRA departments to enhance easy access to relevant documentation between departments. This will reduce bureaucracy, ease verification, and ensure that necessary information is transmitted on-line.*

5. The practice of mailing registration documents such as driver's licenses and logbooks from the KRA head office to applicants causes inefficiency as many of these documents are returned to the head office as Return to Sender (RTS). By the end of 2004, there were approximately 20,000 RTS driver's licenses at the mailing section. The team was also informed that approximately 30% of mailed logbooks are returned to KRA. Although KRA attributes the delay to inaccurate addresses, it reveals a great deal of inefficiency in the process. The delays occasioned in the mailing process lead to

acquisition of forged documents and may also be used for extortion by the KRA officers.



Driver's licenses returned to a KRA office after mailing. This was common in all KRA offices visited

*The Commissioner General should review this policy to allow for the mailing of the documents to the point of application for collection by the applicant. This will reduce the cost of mailing, improve customer service and reduce the opportunity for forgery.*

6. The Roads Transport Department has no documented guidelines outlining the conditions and financial limits for granting waivers on back-licensing and penalties where a motorist fails to renew a road license for a period of time. This is left to the discretion of the Registrar of Motor Vehicles.

*The Commissioner General should develop guidelines stipulating the conditions and financial limits for granting waivers on back-licensing and penalties for non-compliance.*

7. The system of processing of logbooks and drivers' licenses is manual and centralised at the headquarters. It is also lengthy and cumbersome as too many officers handwrite the documents. This contributes to delays and opens up opportunities for corruption and

involvement of brokers. Additionally, the logbooks and drivers' licenses do not have adequate security features making them extremely prone to forgeries.

*The Commissioner General should fast track the introduction of "smart card" driver's license and introduce computer-generated logbooks with numeric and alphanumeric features and sufficient security features.*

8. The process of verification of documents used for transfers and duplicate logbooks and drivers' licenses is unreliable due to poor record keeping and the existence of forged documents. The police abstract, which is used as a key supporting document for issuance of duplicate log books where the original is lost, is easily obtainable. A photocopy is acceptable but is susceptible to forgeries. This is also a loophole that may be exploited by the KRA officials in collusion with clients for issuance of duplicate logbooks and transfers for stolen vehicles.

Sometimes individuals who have no driver's license obtain police abstracts on the pretext that they have lost their licenses. These abstracts are then used in place of drivers' licences.

*The Commissioner of Police should facilitate the process of making the police abstract an accountable document, which should be serialised with adequate security features. Further, this document should only be issued by Police officers and only the original should be acceptable. At any rate, under no circumstances should an abstract be accepted as a substitute for a driver's license.*

9. There are many cases where people purchase motor vehicles and fail to effect registration of change of ownership. This is attributed to a number of reasons, which include ignorance, the long and cumbersome process of transfer, possession of illegally acquired vehicles with forged logbooks among other reasons. KRA officials continue to renew road licenses for these vehicles thus flouting KRA's own requirement that ownership must be transferred within 14 days. This results in loss of revenue and a loophole where bribes may be paid at the time of renewing the road licenses. It is a process that can also be infiltrated and exploited by criminals.

*The Registrar of Motor Vehicles should comply with his requirement and ensure that transfers are regularized before issuance of road license renewals. Additionally, the Registrar should enhance public awareness on the importance and benefits of transferring ownership within the stipulated time.*

*This will enable KRA to capture additional revenue and protect vehicle owners especially in cases of insurance claims.*

10. The officer in charge of driver's licensing has the discretion to determine and issue urgent licenses. However the exercise of such discretion is not guided by documented guidelines and therefore it is open to abuse.

*The Registrar of Motor Vehicles should formulate appropriate guidelines detailing conditions for issuance of urgent drivers' licences as a check to the exercise of discretion in this process.*

11. There is unlimited flow and access of clients and brokers into the offices of RTD in an attempt to hasten the processing of drivers licences and log books especially at the Times Tower and Mombasa offices. This opens room for direct interactions with KRA officials and may lead to bribery by clients and brokers.

*The Registrar of Motor Vehicles should make provisions for fully equipped customer care desks at the ground floor of Times Tower and other offices to serve the members of the public more effectively and to minimize flow of clients and contact between RTD officers and the public*

#### **3.1.4 KRA Licensing Agent: District Treasuries**

1. The Kenya Revenue Authority has phased out issuance of motor vehicle licenses by District Treasuries. However, this process has been carried out largely without official notification or proper documentation and reconciliation of previous revenue collections and banking. Some of the District Treasuries continue to retain licences and receipt books particularly those filled up.

*The Commissioner General should ensure that the handing over process is comprehensively and accurately documented with receipt books well accounted for before concluding the exercise. This will ensure accountability.*

2. The phasing out of licensing by the District Treasuries presents a challenge to some motorists who have to travel for long distances to the nearest KRA offices. Some motorists do not get the required licenses and consequently fall prey to corrupt Police officers.

*The Commissioner General KRA should explore the possibility of operating scheduled mobile licensing units in order to reach the public.*

### **3.1.5 Procurement and Supply of Licensing and Registration Documents**

1. It was observed that the forged TLB stickers were serialized using the same series as the genuine stickers issued by KRA. Furthermore the forged stickers were in the market at least a month before the genuine ones. This was an indication that there was leakage of the TLB serial numbers to the parallel market, which pointed to collusion between the KRA officials in procurement and supplies, the printing firm and the parallel market.

*The Commissioner General should urgently investigate this matter further with a view to punishing errant officers who may be involved in this racket and recover lost revenue attributed to forged licenses. Additionally, the Commissioner General should institute a mechanism for maintenance of confidentiality in the KRA procurement system. KACC on its part will intensify its investigations with a view to bringing suspected offenders to book.*

2. It was observed that a sizable number of bound licensing documents had missing licenses yet the Roads Department was using them without any recourse to the printers to establish why the licenses were missing and where the missing ones were being directed to. This finding was not limited to licensing documents. The team found a Certificate of Clearance booklet, which was misprinted and reflected different serial numbers for the original, duplicate and triplicate receipts.

*The Commissioner General should immediately stop issuance of all documents with missing licences. In addition, the Kenya Revenue Authority should not accept any delivery of licensing documents that do not meet the specification and the printing firm should be held liable for all missing licences and all misprinted registration documents.*

3. There is no proper method of accounting for logbooks issued to licensing officers.

*The Registrar General should develop a system of ensuring that licensing officers account for the logbooks issued to them and enhance the supervision by the head of logbooks section.*

### 3.1.6 Issuance of Number Plates

1. There exists a market for forged number plates. This is partly occasioned by delay in issuance of number plates by KRA. However, some motorists preferring plastic number plates replace the official numbers plates with the plastic ones.

Some vehicle dealers move number plates from one vehicle to another and then apply for duplicate number plates. Some of the plates are fixed on stolen and unregistered vehicles. This may explain the occurrence of multiple registrations. (In fact during the examination, two vehicles having similar number plates were found in Kisumu town).



Old Number plates lying in a KRA office – the applicants of such plates may be using others bought from the parallel market

*The Commissioner General KRA should as an initial step utilize the Transport Licensing Board enforcement team to weed out all illegal number plates currently in use and to carry out public sensitisation on the law requiring that all vehicles operate only on official number plates. The Commissioner should also ensure that number plates are issued immediately upon registration of a*

vehicle. Further, the Commissioner General should investigate the frequency of application for duplicate plates by car dealers and the public in general and take the appropriate action to address any malpractices in this process.

2. Number plates from written off vehicles could be used on stolen vehicles.

*The Commissioner General should liaise with the Commissioner of Insurance and Association of Kenya Insurers to facilitate surrender of number plates from written-off vehicles to KRA. This will assist KRA update their records as part of records management.*

3. In spite of the current circular restricting authorization of security number plates to the Head of the Public service, some Permanent Secretaries continue to make requests, which are processed without reference to the Head of the Public Service.

*The Commissioner General should ensure that his officers adhere to the requirements of the circular and should not process security plates without the authorisation from the office of the Head of Public Service. Appropriate disciplinary action should be taken against any officer who flouts this regulation.*

### **3.1.7 Control of KRA Seal and Stamps**

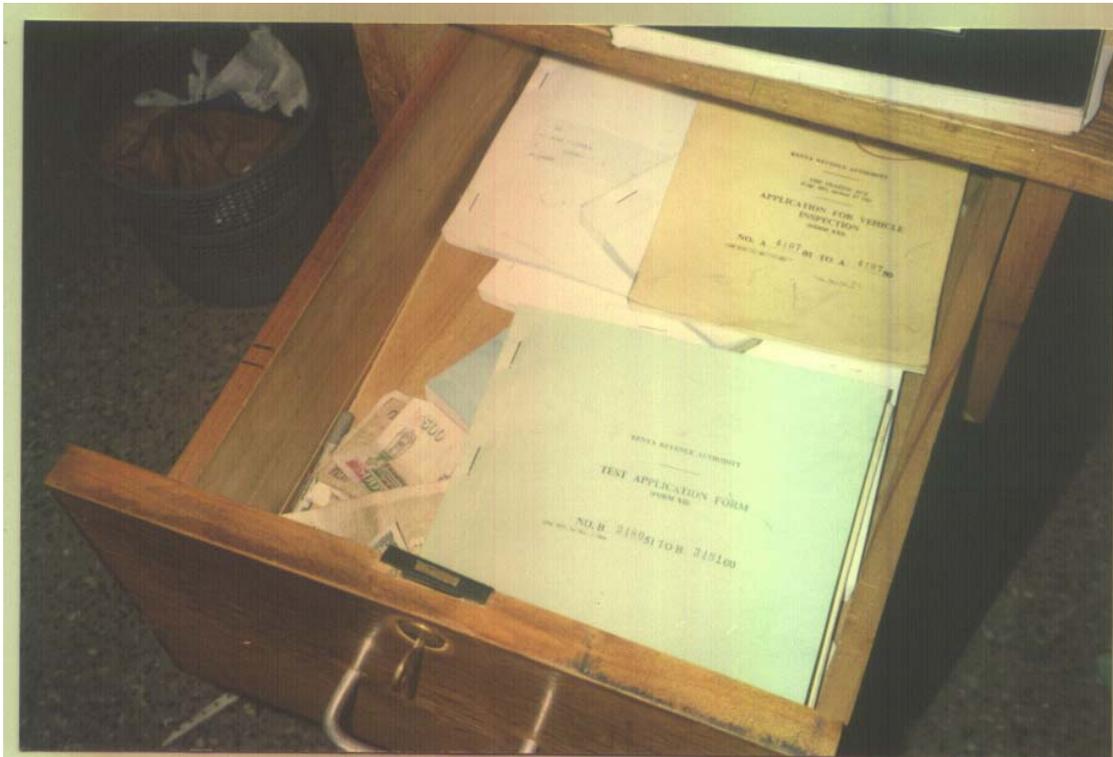
1. There is no control in handling of the RTD seal, used for sealing drivers' licenses and logbooks. The sealing room is open and easily accessible to members of staff without any restriction. Besides, there is no mechanism in place of verifying that all the documents brought in for sealing are authentic.

*The Registrar of Motor Vehicles should institute an appropriate mechanism for controlling access to the sealing room. The seal should be secured in a safe and the responsibility for handling it should be assigned to a senior officer.*

### 3.1.8 Revenue Collection

1. All offices of the Roads Department visited do not have cash boxes. Cash collected is kept in cartons; drawers and cabinets, which are easily accessible. In the case of TLB licensing sessions, cash is stuffed in envelopes and cashiers pockets. This creates opportunities for misappropriation, losses and outright theft.

*The Registrar of Motor vehicles should appropriately equip all RTD offices with safes and cash boxes to ensure safe custody of cash revenue. The Chairman TLB should ensure that the licensing teams are provided with cash boxes and ample security during the licensing sessions.*



Money kept in a drawer with old receipt books

2. Cash reconciliation during the TLB licensing sessions is usually done away from the collection points long after licensing is done. This creates a loophole in that any losses might not be easily detected before banking is done.

*The Chairman and the Chief Executive Officer TLB should ensure that cash collected during the licensing sessions is balanced at the collection point and kept in a safe. All the cash collected in the morning hours should be banked on the same day while the collections for the afternoon should be banked the following day.*

3. In some offices, one officer collects, reconciles and banks cash without supervision from the station managers. This is against the principle of separation of duties in accounting. Any errors and irregularities cannot be detected.

*The Commissioner General should make it mandatory for all station officers to report to the station managers for close supervision. Where there is only one revenue officer handling RTD matters, the Station manager should oversee revenue collection, reconciliation and banking.*

### 3.1.9 Records Management

1. Some of the motor vehicle registration records maintained by the RTD are not updated to reflect changes such as transfer of ownership. This implies that the on-going capture of information from available records for computerization will be inaccurate and unreliable. In addition, the microfilm backup is unreliable as the films produced are too blurred to reflect any information.

*Accurate and reliable database is critical to the success of the on-going computerization process being undertaken by the RTD. The Registrar of Motor Vehicles should ensure that existing records are updated and thereafter that all records maintained are accurate. This should be done in collaboration with records management experts particularly from the National Archives.*

*The Commissioner General should procure appropriate modern equipment for microfilming and reconstruction of motor vehicle registration information and install appropriate security safeguards and guidelines for accessing the information.*

2. Storage and maintenance of records at the RTD registries is poor. Some files have missing folios others could have been deliberately plucked out of the files to conceal information. Some folios are strewn on the registry floor.



A



B

A – B Motor vehicle registration and licensing documents in some RTD offices

There is unchecked access to the microfilm storage cabinets, which may lead to loss of documents. The examination team found the film storage cabinets open, and films exposed to light. In addition the microfilm backup is unreliable as the films are blurred.

*The Registrar of Motor Vehicles should ensure that only designated officers have access to the record areas and that a file movement register accompanies movement of files for accountability.*

3. The condition of the RTD registry at Times Tower is not conducive for storage of records. The moisture condition leads to destruction of documents over time. Besides, officers cannot work from the registry, as it is unsuitable for human habitation. This weakens supervision.

*The Registrar of Motor Vehicles should designate a suitable registry for vehicle registration documents. The registry officers should operate from the registry for enhancement of supervision and efficient service delivery.*

4. The RTD registries have not been installed with safety equipment for use in case of emergencies. Besides the microfilm records, which act as the backup, are not secured and are maintained in the same building. Thus the security of these records is not guaranteed.

*The Registrar of Motor Vehicles should as a matter of urgency install smoke detectors and fire extinguishers for the security of records. Fire drills should be carried out regularly to ensure that these equipments are always in good condition. Records should be maintained in fireproof binders and/or cabinets. In addition the Commissioner should move backup records outside the Times Tower for guaranteed safety, as is the practice the world over.*

5. The personnel in charge of the registry and records areas do not have training in records management. At the time of the examination, the officer in charge of the registry was an officer trained in Procurement and Warehouse Management.

*The Commissioner General should ensure that officers deployed in records areas are adequately trained in all aspects of records management, which include archival training, ICT and microfilming.*

6. The RTD registry process is manual and this makes referencing and information retrieval difficult as it is based on experience and familiarity. Some documents are kept in gunny bags and cartons without any form of labelling. This creates delays in licensing and registration of motor vehicles as only officers who are familiar with the registry can do retrievals.



A



B

A – B Records maintenance in some of the KRA registries visited

*The Commissioner General should work with the Director of National Archives to develop an appropriate records management system.*

7. The Road Transport Department has not developed a records retention and disposal policy. Files of written off vehicles are stored together with active files in the same racks. This poses a risk where information in the dormant files could be used to regularize transactions of illegally acquired vehicles.

*The Commissioner General should seek the assistance of the Director of National Archives to appraise all records in order to compile a retention and disposal schedule. There is need to develop a records retention and disposal policy in accordance with existing government regulations.*

8. The Roads Transport Department does not have a documented records management policy. This has resulted in lack of regulations and guidelines for records management. For example the microfilm records are under the Logbook section; not within the records section.

*The Commissioner General should develop a comprehensive policy on records management, which includes systems for creation, storage, maintenance, retrieval and disposal and ensure that all registration records are centrally managed.*

#### **3.1.10 Auction of Motor Vehicles by Customs Department**

1. Information relayed to the team suggested that the KRA auctioning process of bonded vehicles is flawed as the auctioneer colludes with bidders to rig bids.

*The Commissioner of Customs should investigate this matter further in order to seal all malpractices and streamline the auction process for bonded vehicles. KACC on its part will ensure that those found to have committed offences under the Anti-Corruption and Economic Crimes Act, are promptly punished.*

## PART II

### 3.2. MINISTRY OF TRANSPORT

This section presents findings and recommendations on policy and legal weaknesses in the motor vehicle industry. It also highlights corruption loopholes in the procedures and practices applied in motor vehicle inspection.

#### 3.2.1. Policy and Legal Issues

1. Currently there is no operational transport policy and the Ministry of Transport does not have a strategic plan. However, the Ministry in consultation with other stakeholders has drafted an integrated policy document, which has not yet been adopted. A draft strategic plan has also been prepared.

*The Permanent Secretary should fast track the completion of the draft transport policy and offer a realistic implementation plan. This implementation plan should be anchored in the strategic plan, and subsequent work plans of the Ministry.*

2. The Transport Licensing Act empowers the Minister for Transport to make regulations regarding suspension orders, this has not been done and each case is considered on its own merit by the TLB. This discretion could easily be abused.

*The Minister for Transport should formulate appropriate regulations to provide the TLB with formal guidance on suspensions and penalties for violation of suspension orders. This will remove the element of unchecked discretion.*

3. The Transport Licensing Act has conferred executive powers on the Transport Licensing Board (TLB) as outlined in section 7 of the Act. These powers should be exercised by a Secretariat of the Board.

*The Permanent Secretary Ministry of Transport and the chairman of TLB should invoke the authority conferred by the Transport Licensing Act 5.3(13) to enhance the capacity of the Board Secretariat in terms of staff, equipment and adequate budgetary allocations to enable it to carry out executive duties*

*so that the Board members may concentrate on policy and other regulatory duties.*

4. The Transport Licensing Act does not take into cognisance the contemporary issues of the transport industry such as 'Boda Boda' and 'Tuk Tuk' transportation.

*The Permanent Secretary Ministry of Transport in conjunction with the Attorney General should initiate the process of reviewing the Act to address emerging issues in the transport industry.*

5. The availability of forged TLB licences in the market could partly be attributed to the minimal role of the Ministry of Transport and the Transport Licensing Board in the procurement process of the licenses.

*The Commissioner General, KRA should ensure that the Ministry of Transport and the TLB participate in the procurement process in accordance with the provisions of the first schedule of the Legal Notice No. 51 of the Exchequer and Audit Act Regulations.*

6. The Registrar of Motor Vehicles holds two offices created by two statutes, the KRA Act and the Traffic Act, which creates a "crossed line" reporting system. Administratively the RTD falls under KRA, but the Ministry of Transport provides guidance on policy issues to the department.

*The Permanent Secretary Ministry of Transport and the Commissioner General KRA should liaise with the Attorney General to harmonize the two statutes*

7. Currently all TLB licenses expire at the end of the calendar year. This creates congestion and rush for renewals at the end of the year. In the process, some brokers and some KRA officials demand bribes from clients promising to fast track issuance of the licenses.

*The Permanent Secretary Ministry of Transport and the Commissioner General KRA should design TLB licences with expiry dates staggered throughout the year to facilitate renewals as and when licenses expire. This will enhance efficiency in the licensing process and reduce corrupt practices.*

8. The Traffic Act currently prescribes maximum fines for traffic offences. It was noted that where courts are imposing deterrent sentences traffic offences such as touting are minimal.

*The Permanent Secretary Ministry of Transport should liaise with the Attorney General to review the current Traffic Act with a view to gazetting deterrent minimum sentences for traffic offences rather than the current maximum fines as has been done for traffic offences related to overloading by cargo transporters.*

### **3.2.2. Inspection of Motor Vehicles**

1. Although the Kenya Bureau of Standards (KEBS) has developed standards for motor vehicles inspection, which should be applied in the process of motor vehicle inspection, the Motor Vehicle inspection unit does not utilize the standards. No guidelines and checklists have been developed for use in carrying out inspections. In essence the exercise is left to the discretion of inspectors thereby creating an opening for corrupt practices. In some instances, vehicles that have not complied with the requirements of Traffic Amendment Rules, 2003 especially on safety belts and speed governors are indiscriminately issued with the inspection report.

*The Permanent Secretary Ministry of Transport should develop and document appropriate and detailed guidelines in accordance with the approved KEBS standards for use by the officers in carrying out their specific duties in the process of inspecting vehicles for compliance. This will be used for reference and will prevent the exercise of any form of discretion.*

2. Most of the Centres visited do not have the capacity to carry out comprehensive inspections. All the centres visited either have obsolete equipment or do not have any equipment at all. Inspection is manual, discretionary and is open to manipulation for purposes of extortion. The examination team observed that in most centres, inspected vehicles are issued with a list of various defects and issued with inspection reports on the same day even where it is not practically possible to repair all the listed defects on the same day. Some of the centres do not retain a copy of the listed defects for references during re-inspection.

*The Permanent Secretary Ministry of Transport should work out modalities for privatising the inspection function of the Ministry borrowing from experiences of other countries such as South Africa (refer to Section 4 of this Report). In the short-run, the Permanent Secretary should make provision for adequate*

*budgetary allocations to revamp targeted inspection centres with the necessary equipment and personnel to improve on service delivery.*

3. Motor Vehicle Inspection field officers are not supervised at the regional level. The officers' In-Charge of various centres report directly to the Director MVIU. In addition each Inspector carries out inspection independently and has the discretion of issuing inspection reports. This opens a loophole for negotiations and endorsement of vehicles without counterchecking by the officer in-charge

*The Permanent Secretary Ministry of Transport should develop a clear and appropriate reporting structure and assign job descriptions. The Director MVIU should ensure that the field officers comply with the regulation whereby the supervisor is expected to countersign and verify inspection reports before issuance.*

4. The team observed that there is generally low morale within the inspection units. This could be due to poor working conditions necessitated by lack of protective clothing, insurance and inadequate remuneration. This could result in officers being compromised while on duty.

*The Permanent Secretary Ministry of Transport should make it a priority to improve the working conditions of inspectors, which should include provision of protective clothing, and insurance for the inspectors who carry out road tests. The officer's scheme of service should be enhanced in line with the public sector reforms.*

5. It was observed that some vehicles driven to inspection centres do not have valid licenses and insurance cover. This contravenes Section 17 of the Traffic Act Cap 403, which requires that all vehicles on the road should have valid licences and insurance cover.

*The Permanent Secretary Ministry of Transport should introduce a requirement that before inspection, inspectors verify the validity of all licenses and insurance covers. Vehicles without licences should be towed to the inspection centres to avoid legal complexities that could arise in the event of accidents. In addition, there is need to sensitise motorists on the importance and benefits of licensing and insurance.*

6. In some of the Motor Vehicle inspection centres, all inspection reports booklets were stamped and sealed in advance. Accountable documents are sometimes left in the open and in easily accessible places. This opens a loophole where officers may corruptly issue

reports before vehicles are inspected. In addition, the seal is easily accessible to all inspectors at any given time.

*The Permanent Secretary Ministry of Transport in coordination with the Director of MVIU should ensure that the seal is secured and only handled by the inspector in-charge of the station for accountability. The sealing and stamping of documents should only be done at the point of issuing.*

7. At the time of the examination, procurement of stickers for MVIU was being done by Department of Police. Since the expiry date is printed on the stickers there is too much wastage as the stickers are not available on demand and some expire before issuance. Motorists are also inconvenienced, as they have to display photocopies of inspection reports on the windscreen. A photocopy inspection report can easily be forged. In some cases pick-ups are issued with the stickers, which are designated for lorries. This opens a loophole in which one could easily collude with inspectors to use the stickers on vehicles that have not been inspected.

*The Permanent Secretary Ministry of Transport should ensure that motor vehicle inspection stickers are budgeted for under his Ministry to ensure timely procurement. The design of the stickers should be changed to leave a space for filling in the expiry date to avoid the current wastage. Accurate statistics should be maintained to facilitate an informed procurement process.*

8. Most of the motorists interviewed at the Motor Vehicle Inspection Centres informed the team that they were usually required to pay a bribe of Kshs 2000.00 for each vehicle before issuance of inspection reports. Failure to bribe would lead to the inspectors listing too many defaults on the vehicles as a way of extortion.

*The Permanent Secretary Ministry of Transport should further investigate the practice of bribery and extortion by inspectors and other staff working at the Motor Vehicle Inspection Units and mete out appropriate discipline on those found to engage in the vices. The Kenya Anti-Corruption Commission on its part will intensify its investigation with a view to bringing the suspected offenders to book.*

## PART III

### 3.3. THE DEPARTMENT OF POLICE

This Section deals with enforcement of traffic laws and relevant regulations and highlights various corrupt practices in the process on enforcement of traffic laws by the Police Department. Recommendations have also been made for improvement of the road transport sector.

#### 3.3.1. **Ownership of Public Service Vehicles by Police Officers**

1. Some Police officers own and operate public service vehicles in their areas of jurisdiction in violation of Regulation 40 Chapter 20 of the Force Standing Orders which states that “no police officer, unless they are Special Police Officers, may engage in any commercial, agricultural or business undertaking without the consent and authority of the Commissioner of Police.”

Many of the officers have interests in the public transport (Matatu) sector, without the consent and authority of the Commissioner of Police. There is consequently no uniform application and enforcement of traffic laws, especially where there is a violation of the law by vehicles owned by law enforcement officers, their colleagues, or superiors.

*The Commissioner of Police should enforce the provisions in the Force Standing Orders in cognisance of the safety of Kenyans in general and addressing the repercussions embedded in this type of conflict of interest. Thus in enforcing the Orders, the Commissioner should be guided by the wisdom that there is no way law and order can be restored and maintained in the transport sector for as long as Police officers continue to own public transport vehicles or have other interests therein.*

*The Commissioner should also develop appropriate instruments for declaration of interests by officers upon transfer to different stations. This declaration should include the interests of spouses and family members. The Commissioner should further institute disciplinary action against officers who are flouting the provisions of the Orders.*

### 3.3.2. **Suspension of Vehicles**

1. The Transport Licensing Board (TLB) has no system in place to ensure that vehicles suspended for non-compliance with transport and licensing regulations do not continue operating before suspension orders are lifted. Information on suspended vehicles is relayed to the police who have the responsibility of enforcing the orders. However suspended vehicles continue operating.

*The Commissioner of Police should take necessary disciplinary action against Police Officers who allow suspended vehicles to operate. In addition the Chairman TLB should revoke PSV licences for both the vehicles and motorists involved.*

*The Minister for Transport in collaboration with the Attorney General should initiate the review of the Transport Licensing Act with a view to allow for forfeiture of vehicles, which are repeatedly operated in contravention of suspension orders. This will serve to reduce any corrupt practices between motorists and Police Officers.*

### 3.3.3. **Route Allocation**

1. Although Public Service Vehicles (PSV) have been assigned specific routes in which to operate in order to enhance efficiency in the public transport industry, this is not always adhered to as some routes are considered to be more lucrative than others. The responsibility to enforce compliance lies with the Police and the respective Local Authorities

The TLB has no clearly defined policy outlining the guidelines and rationale for route allocation.

*The Commissioner of Police and the Permanent Secretary Ministry of Local Government should collaborate to enforce conformity to routes assigned by Public Service Vehicles.*

*The Transport Licensing Board should develop a policy on route allocation and collaborate with respective Local authorities in route allocation.*

2. Corrupt practices and inefficiency have undermined enforcement of TLB regulations giving rise to regular compliance inspections by the TLB and other agencies.

*The Commissioner of Police and the Permanent Secretary Ministry of Transport and the Registrar of Motor Vehicles should intensify inspections to enhance compliance of the TLB regulations and create awareness to operators on the importance of these regulations and other traffic laws.*

### 3.3.4. Traffic Police

1. There is widespread existence of forged licenses and registration documents. The responsibility of detecting forged licensing and registration documents lies with the traffic Police who are not adequately trained on the features to look for in authenticating documents. This has resulted in a thriving parallel market for forged documents, which leads to loss of government revenue and poses considerable dangers to the public in terms of highway vehicle thefts (carjacking).

*The Commissioner of Police and the Commissioner General KRA should ensure that:*

- a) *A course on detection of forged documents and document procurement procedures is incorporated into the traffic police training curriculum.*
  - b) *KRA constantly liaises with the traffic police when new features are introduced on registration and licensing documents and thereafter conduct regular refresher courses undertaken to keep abreast with the changes.*
  - c) *Provision of appropriate and adequate equipment such as ultra violet torches for detection of forged licences.*
2. Sometimes police officers are constrained in enforcement of traffic rules due to intimidation by senior police officers, politicians and influential personalities.

*The Commissioner of Police should investigate this allegation further and support his officers against intimidation in the performance of the traffic duties.*

3. In one instance, the team observed that a report recorded in the Occurrence Book (OB) was used as a cover up for a traffic offence. In this case, the KACC examination team joined traffic officers at the Kerugoya-Karatina road on 12<sup>th</sup> April 2005 and a motorist was arrested for driving without a driver's license or a police abstract. The traffic officers informed the offender that he had committed an offence and would be charged at the Kerugoya Police Station. The team visited the Kerugoya police station on 14<sup>th</sup> April 2005 to establish the status of the case. Apparently, the motorist was released without any charge on the pretext that he had produced an abstract from the Central Police Station, Nairobi. This information was recorded in the OB. The team concluded that the record was basically aimed at misleading the examination team in order to curtail follow up of the case.

*The Commissioner of Police should investigate this action further and institute disciplinary action against the officer(s) concerned. KACC on its part will investigate this action further and ensure that the offenders are punished in accordance with the Anti-Corruption and Economic Crimes Act.*

4. The traffic department does not have adequate equipment to effectively enforce the Traffic Act effectively. Equipment required includes patrol vehicles, speed guns, Alco meters, among others. In some cases, the officers are forced to hike lifts from public service vehicles, which they are supposed to inspect, and effect arrests where offences are committed. This opens room for negotiation and possible corrupt practices. Where no concrete evidence is provided such as over-speeding, motorists tend to offer bribes to avoid being charged.

*The Commissioner of Police should prioritise acquisition and use of appropriate equipment for traffic checks to carry out checks scientifically to avoid uncalled for negotiations with motorists.*

5. Matatu owners and police officers take advantage of the ignorance and complacency of the members of the public to flout rules. In some instances, there is lack of public support and passengers tend to support motorists even when there is clear violation of the law. In these circumstances, the integrity of the police in exercising the immense power given to them is sometimes compromised hence the many reported cases of bribery.

*The Permanent Secretary Ministry of Transport and the Commissioner of Police should work together with the Matatu Vehicle Owners Association and Matatu Vehicle Welfare Association and intensify public awareness on traffic rules and seek public support in enforcement of these rules.*

6. The police department has financial constraints, which hinder prosecution of traffic offences and thereby there is no deterrence for potential offenders. There are problems as basic as facilitation of witnesses to appear in court. In some cases witnesses are expected to use their own resources. This may make it easy for them to abscond and for the offenders to buy them out.

*The Permanent Secretary Provincial Administration and Internal Security should increase budgetary allocation to the Police to enable capacity building in the traffic department in terms of equipment, prosecution and training. The multiplier effect resulting from efficiency in enforcement of traffic laws will*

*result in increased revenue collection. Increase in budgetary allocation can be achieved through lobbying the Permanent Secretary Ministry of Finance to include the capacity building for Traffic Department as a core programme.*

7. There is misunderstanding between the traffic police and Local authorities as regards their roles and responsibilities in enforcement of traffic regulations within the bus parks especially on touting which is illegal.

*The Permanent Secretary Ministry of Local Government should institutionalise transport committees in all Councils, which should hold frequent consultative meetings with the Police, Provincial Administration, matatu owners and other stakeholders. The Commissioner of Police should ensure that traffic laws are enforced expediently regardless of where traffic crimes have been committed.*

8. Vehicles netted for violation of traffic rules during inspections and crackdowns are detained at the nearest police station. Sometimes detained vehicles are released from Police custody without any charges after the vehicle owners bribe the Police Officers.

*The Commissioner of Police should institute further investigations into this issue and take appropriate disciplinary measures. He should further ensure that once detained vehicle owners must be charged and comply with traffic regulations before being released. KACC on its part will investigate this action further and ensure that the offenders are punished in accordance with the Anti-Corruption and Economic Crimes Act.*

9. Some traffic police officers stay in one station for too long thereby becoming familiar with motorists and leading to complacency and laxity in the enforcement of traffic regulations.

*The Commissioner of Police should ensure that officers do not exceed the three-year limit in one station and encourage inter-provincial transfers of all officers.*

10. The procedures and guidelines of carrying out traffic enforcement duties are not documented for subsequent reference. In essence traffic enforcement is left to the discretion of the traffic officers. In exercise of the unchecked discretion opportunities for corruption loopholes are created and indeed perpetuated.

*The Commissioner of Police should provide documented guidelines to guide the traffic police officers in the performance of their duties and enhance supervision.*

11. The recent restructuring of the Traffic Police department whereby Traffic officers now report to the Officers In-charge of stations unlike the earlier scenario where they reported to the Traffic Commandant in Nairobi is commendable. However, the position of the Base Commander creates conflict with that of the Officer in-charge of the Station as pertains to supervision and assignment of duties to traffic officers. Some of the Base Commanders are senior in rank than the Officer In-charge of the Station.

*The Commissioner of Police should phase out the position of the Base Commander so that all officers report and are supervised by the officers in-charge of Stations.*

#### **3.3.5. Supervision of Driving Schools and Administration of Driving Tests**

1. Driving schools are supervised by the Traffic Commandant who is also In-charge of driving tests Examiners. The testing examiners therefore carry out the supervision on behalf of the Traffic Commandant. This is done without a checklist detailing the procedures for undertaking the supervision. The team was informed that proprietors of driving schools pay bribes to the testing officers to ignore the poor and unroadworthy condition of their vehicles. It was noted that most of the vehicles particularly lorries were old, dilapidated, and often had mechanical problems.

*The Commissioner of Police should move the supervision of driving schools from the Traffic Commandant who sits in Nairobi to the officers in charge of the localities where the schools operate from for closer supervision. In addition the Commissioner should develop criteria for inspection and supervision of the schools to guide the Officers in the inspection and supervision duties. The criteria should include insurance cover for instructors and trainees as well as appropriate conditions and standards for training vehicles.*

*The Commissioner should further investigate bribery reports and take disciplinary measures against officers engaged in the scam. KACC on its part will intensify investigations with a view to bringing offenders to book.*

2. Most of the trainees interviewed informed the team that they pay extra money above the training fee to driving schools, which is given to the examiners so that they may ensure passing the driving tests. This has far reaching implications on the issue of competence of drivers on Kenyan roads whose officers are also responsible for examination of trainees.

*The Commissioner of Police should investigate this practice further and institute disciplinary action on all the Officers involved. KACC on its part will intensify investigations with a view to bringing offenders to book. In addition, KACC will continue to mount sensitisation on the members of public on the evils of corruption and to seek their support in reporting corruption cases for action.*

3. The testing centres are not equipped with appropriate facilities and equipment for carrying out comprehensive driving tests such as eye sight testers, driving boards and signs charts. Some of the available facilities are obsolete and in very poor condition.

*The Commissioner of Police should prioritise equipping testing centres so that they may carry out their work effectively. Most of the equipment required is relatively inexpensive and will not claim a substantial budget.*

4. Administration of driving tests is done in the presence of only one police examiner at any given time. This is done without a checklist hence the unchecked discretion on the areas to examine the trainee. There is no benchmark basis on which to determine failure or pass. The team also noticed that driving test examiners are not under the supervision of the Provincial Police Officers (PPO). They report directly to the Traffic Commandant who is based in Nairobi.

*The Permanent Secretary Ministry of Transport should incorporate in the Transport Policy an appropriate curriculum for driving trainees, which will also form the basis for testing. Trainees should be required to undertake a written test in addition to the driving test. The driving test should also include basic areas that the trainee must pass before being issued with a license. As recommended earlier, the Commissioner of Police should enhance close supervision of his officers bringing the examiners under the supervision of Officers In-charge of the area in which the testing centre is located.*

### 3.3.6. Auctions of Motor Vehicles by Police

1. The examination team found that unclaimed vehicles at Police Stations, which could have been used for crimes are auctioned by the Department of Police. This is however done without clear stipulated procedures. Furthermore there is no set reserve price to ensure competitiveness. The decision on the value of the vehicle is left to the hired auctioneer. This creates an opportunity where bids may be rigged leading to sale of the vehicles at very low prices to favoured bidders. The team was informed that most of the vehicles auctioned at the police yards are purchased by police officers. This therefore casts aspersions on the integrity of police officers.

*The Head of Public Service should move the duties of auctioning vehicles and other items recovered by Police Officer to an independent department for accountability. The regulations and procedures guiding the auction process should be well documented and a professional motor vehicle valuer should be engaged to set the value of the vehicle before auctions are carried out.*

## PART IV

### 3.4. LOCAL AUTHORITIES

This Section deals with findings on the role of local authorities in the management of bus parks and the menace of Touting. The Section also discusses the implications of the role of local authorities on the problem of cartels in the road transport sector.

#### 3.4.1. Management of Bus Parks and Re-Emergence of Cartels

1. Officers and members of public interviewed in the course of the examination confirmed the existence of cartels in the public transport sector. The problem is related to an emerging scenario where a large number of transporters form organisations and acquire parking space from local authorities to the exclusion of other transporters who are not members of the organisation. This enables them to levy fees, which a local authority would levy if it were to provide transport services. In some of the areas visited, companies, associations, agencies and cooperative societies are promoting touting and practising route management. The team obtained information to the effect that some Councillors in these towns have interests in the companies. This creates conflict of interest thus making it difficult for the Councils to pass appropriate resolutions on management of routes and bus parks.
  - In Kisumu, the Kisumu Transport Company manages the bus parks. Matatu operators pay the Company between 15 to 20 percent of their daily collection to avoid harassment.
  - In Nakuru there is a company managing a bus park under more or less the same arrangements. At the time of the examination an attempt by the Council to reclaim management of the bus park from the company had been challenged in court and a temporary injunction issued in support of the company.

*The Permanent Secretary Ministry of Local Government in liaison with the Commissioner of Police should re-claim management of all bus parks and ensure that the Traffic laws and regulations are strictly adhered to. The Matatu Welfare Association and the Matatu Vehicle Owners should mount a sustained campaign to educate their members on issues pertaining to traffic rules and regulations and resist extortion by cartels.*

*The Minister for Local Government should also investigate allegations of conflict of interest by Councillors and institute appropriate discipline where necessary. The Minister should initiate a process of developing an appropriate code of ethics for Councillors and other Council staff in accordance with the Public Officer Ethics Act.*

2. The issue of cartels is exacerbated by the fact that the law does not directly address the problem. However, several pieces of legislation contain provisions that can be used to deal with cartels and vigilante groups in the matatu industry. These include the Penal Code, the Public Order Act, the Societies Act, and the Local Government Act and By-laws made there under. The main problem with regard to enforcement of the provisions contained in these statutes is corruption. Law enforcement agents, councillors and officers of Local Authorities have been known to collude with these cartels in the hope of enriching themselves at the expense of their obligations to the public. Furthermore this issue poses a threat to the development of the public transport sector, the welfare and security of entrepreneurs and undermines the safety of the public in certain parts of the country.

*The Permanent Secretary Ministry of Transport and the Permanent Secretary Ministry of Local Government should in collaboration with the Attorney General initiate the process leading to enactment of legislation to specifically address the concerns and challenges posed by cartels and vigilante groups in the public transport sector.*

3. Some Town Councils charge fees in non-designated areas such as petrol stations, which are a hazard to the motorists and the public. In Mombasa there are no designated bus parks. Council staff confirmed that the bus parks were sold out in order to pay for salary arrears for Council workers.

*The Permanent Secretary Ministry of Local Government should immediately issue a circular to all Local Authorities clearly stating the period within which they must stop charging levies from non-designated areas and requiring them to divert all public transport vehicles to the designated bus parks.*

*The Permanent Secretary should also establish the circumstances leading to unavailability of bus parks in Mombasa and other Councils.*

4. Most of the local authorities have not developed transport by-laws addressing the traffic regulations, which include prohibition of touting, management of routes and bus parks.

*The Permanent Secretary, Ministry of Local Government should come up with appropriate and harmonized transport by-laws for adoption by Local Authorities. These by-laws should include the new traffic regulations and all matters pertaining to the management of bus parks.*

## **4. ISSUES FOR FURTHER CONSIDERATION**

The contribution of the road transport sector in the growth of the economy cannot be underrated. However, optimal performance of the sector in terms of revenue collection, ensuring safety of road users and facilitating movement of human resource and goods is hampered by many challenges. Some of these challenges are entrenched in the corrupt practices involved in the registration, licensing of motor vehicles and in the enforcement of traffic laws. Unless the challenges are addressed the on-going reform agenda on the public transport sector will be lopsided. The following observations and general issues must be considered for a holistic approach in the reform process.

### **4.1 The Role of the Judiciary**

Many Police officers and Officers of Local Authorities observed that some Magistrates are compromised and hence impose very low non-deterrent sentences for traffic offences thus frustrating the enforcement of the traffic regulations. Furthermore, it was noted that some courts assign only specific days for hearing traffic cases. This creates a time lag within which some offenders jump bail and/or interfere with the court process. Some of the sentences for traffic offences are not commensurate with the resources used in arresting offenders.

There were suggestions that the inefficiencies in the process of bringing offenders to book could be overcome by on spot fines, which would be cost effective and deterrent. A study into the experiences of other jurisdictions such as Australia, Britain, and United States of America provided many insights into the matter and highlighted the pros and cons of introducing such a system within Kenya's social economic and technological context. Apart from considering the issue of on spot fines the study also examined the efficacy of establishing special traffic courts.

The study revealed that the spot fine system has become the main avenue for keeping petty offenders out of courts and reducing the costs of criminal justice. However in most jurisdictions, reliance on technology to detect offenders and issue the on spot fine is a major feature in the use of the system. Thus the major challenge Kenya is likely to face is the high level of technology required for the system to be effective.

The study also showed that establishment of special Courts may improve efficiency by hastening the process of adjudication of traffic matters hence sealing corruption loopholes that may arise from lengthy court proceedings and delays. However such courts may in the long run succeed in overstressing an already overburdened judiciary thus creating opportunities for corruption. It was concluded that further research is required to establish whether current practice justifies such courts.

The Permanent Secretary Ministry of Transport should in addition to implementing the recommendations of this Report be proactive in streamlining the public service transport sector. The above issues will form a basis for further study and contribution to good governance in the sector.

#### 4.2 **Involvement of Police Officers in Public Transport**

Law enforcement officers are required to serve the public honestly and fairly. The officers are expected to behave according to the highest standards of personal conduct in the performance of their duties. There is an overarching duty on them to comply with the law, to uphold the administration of justice and to protect the integrity of public life. Apart from observing the Force Standing Orders they are also expected to observe the General Code of Conduct and Ethics set out in Part III of the Public Officer Ethics Act 2003. The duty to comply with the law entails loyalty and dedication so as to maintain trust and confidence in the Forces. In this regard, law enforcement officers, like all public officers must ensure that no conflict of interest arises or appears to arise between their public duties and their private interests.

Participation of law enforcement officers in the matatu sector raises various issues:

- Where officers have an interest in the sector without the consent of the Commissioner of Police, it is a violation of the Force Standing Orders.
- A conflict of interest has most often occurred, where the officers have found themselves in a situation requiring them to attend to their personal affairs as well as serving the public. Law enforcement officers have a duty to enforce traffic laws. The ability of officers to discharge this duty may be compromised if the officers have an interest in the public transport sector. They therefore are required to declare this interest to the Commissioner of Police. Where they do not, and they act as traffic officers, they commit the offence of Conflict of Interest contrary to section 42 of the Anti-Corruption and Economic Crimes Act 2003.
- There are reports of harassment of other law-abiding public members by officers as a way of stifling competition in the public transport sector where officers have an interest .
- There is a crisis of confidence and trust by members of the public in law enforcement agencies. The Public expects that the law enforcement officers will do their best to discharge the duties for the benefit of the public. When law enforcement officers go contrary to this expectation, they are guilty of breach of trust.

- The team was informed that some of PSV vehicles owned by police officers flout traffic regulations with impunity. Some have tinted dark windows to avoid detection of overloaded passengers.

Some of the questions that arise from the participation of law enforcement officers in the matatu sector are for example,

- Who polices the law enforcement officers and
- How do they handle complaints against fellow officers?

These questions and others have a bearing on the enforcement of traffic laws and other legislation aimed at creating order and enhancing security and safety in the road transport sector. The Commissioner of Police must come to terms with the fact that Police Officers must discontinue their interests in the public transport sector in order to restore law and order in the sector.

### 4.3 Dealing with Cartels

Existence of cartels in the public transport sector was a major concern before recent reforms in sector namely Traffic ( Amendment ) Rules, 2003, The Traffic Amendment Rules 2004 and the Traffic Amendment ( No. 2 ) 2004. The reforms normally referred to as the *Michuki Rules*, aimed principally at ensuring security, order and safety on the roads. Prior to the reforms, cartels thrived on disorder in the public transport sector. They extorted money from matatu owners and drivers in exchange for route allocations, management of bus terminus and other services. The reforms in the sector brought a high level of order, which threatened a major part of their foundation. However the problem of cartels has not ended. There are cartels, which still control bus parks and bus routes and continue to extort money from matatu investors

The Local Government Act confers wide powers on local authorities to regulate matters within their jurisdictions. These powers have significant implications with regard to the public transport sector. These powers include entering into agreements with persons or organisations to provide various services that would otherwise be provided by the Council. Some of these services include management of bus parks. In view of this, some Councils have entered into such agreements. However, this is being done without any criteria and guidelines. This implies that even cartels may enter into such agreements in collusion with Local Authorities' officials and Councillors. These officers may then by order prohibit other entrepreneurs from joining the public transport sector in the jurisdiction of the local authority. Such a power, in the absence of a system of controls, creates a loophole for corruption as persons offer, give, demand and receive bribes and other inducements or rewards to influence the exercise of the Local Authority's power and discretion in this regard.

Looked at against the policy of privatisation of services, which has been an integral part of public sector reforms, agreements for provision of transport services by private persons and the allocation of land to transport operators appears to be laudable. However, when the issue is critically examined against the background of the cartel menace in the transport sector, it acquires negative implications that must be addressed. In other words the process of privatising the transport services within local authorities could perpetuate cartels if not properly administered.

Law enforcement agents, Local Authorities and the public in general need to be sensitised on the law relating to cartels and the penalties provided to deal with persons who organize themselves into these groups. They should also be educated on corruption and the measures and penalties in place to respond to corruption and economic crimes. This, it is hoped, will reduce the incidences of collusion between law enforcement agents and Local Authorities, and these cartels and vigilante groups.

Section 201 of the Local Government Act allows Local Authorities to make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety, and well-being of inhabitants of its area, and for the prevention and suppression of nuisances, and to fix appropriate penalties. The Act also allows for the prosecution of persons or bodies for contravention of by-laws made by Local Authorities. Offences against any by-law made under the Act are deemed to be offences under the Act.

This section allows Local Authorities to legislate on wide issues falling within their jurisdiction. Such issues include but are not limited to the public transport sector. Local authorities may make by-laws to firmly deal with any issue concerning the public transport sector, including the challenges posed by cartels, and may prescribe penal measures to be taken against persons for non-compliance with the by-laws.

Most of the by-laws made by Local Authorities provide for the offence of idling at an omni-bus station amongst others. This may be used to root out cartels as many of their members are to be found loitering around bus parks and *matatu* termini.

Cartels are extortionist and should be removed from the transport industry if the industry is to remain vibrant and competitive.

#### **4.4 Integration of Road Transport Services**

Streamlining the road transport sector requires a comprehensive approach, which must take into account the roles of the judiciary, the police, local authorities and other players in the sector including the public. Integrity issues affecting any of the players have negative impact on the overall objective of maintaining road safety and maximum financial returns from investments in the sector. There is urgent need to coordinate efforts by all players in the road

transport sector as regards enforcement of the Traffic Act and other relevant statutes as well as general issues affecting road transportation.

There is great opportunity for reforming the public transport sector to a vibrant and orderly business. The greatest advances in this regard have been in Victoria, Australia; the United States; and the Netherlands. The Republic of South Africa has borrowed from the practices of these countries after detailed studies, which revealed marked reduction in road deaths in the said countries despite increase in vehicular traffic. These reductions were a result of dedicated activities over a considerable period of time linked to a clear, coordinated, and integrated strategy. Having realized the benefits gained from the strategy, South Africa enacted the Road Traffic Management Corporation Act (No. 20 of 1999). The main objectives of the Act are:

- To provide for cooperative and coordinated strategic planning; regulation, facilitation and law enforcement in respect of road traffic matters by the national, provincial and local spheres of government;
- To regulate the contracting out of road traffic services;
- To provide the phasing in of private investment in road traffic; and
- To provide for the establishment of the Road Traffic Management Corporation.

One of the underlying philosophies of the Act is the engagement of the private sector to take up business opportunities in the provision of road traffic services in order to refocus and supplement public sector capacity. In Kenya, the concept of privatisation has been floated in areas largely controlled by the public sector- namely bus termini and motor vehicle inspection. The Act establishes a Corporation which consists inter alia, of a shareholders Committee which is duty bound to establish as many functional units as required to ensure effective management of ,at least, the following areas namely:

- Road traffic law enforcement
- Training of traffic personnel
- Vehicle registration and licensing
- Vehicle and roadworthiness testing
- Testing and licensing of drivers
- Road traffic information
- Accident investigations and recording thereof
- Communication and education
- Infrastructure safety audits
- Administrative adjudication of road traffic offences

Clearly these areas deal with most of the critical areas found deficient in the road sector during the examination. It seems logical that all the above

functional areas should be under one roof and this may be the time to take a critical look at the South African experience. Many benefits could be reaped in terms of developing integrated policies on road safety and revenue collection; maximizing on available resources in both the public and private sectors. Indeed removal of the law enforcement function from the mainstream Police Force could greatly assist in preventing the prevailing corrupt practices associated with the police officers and address matters of conflict of interest scenarios described in this report.

Kenya has a lot to borrow from South Africa in terms of the law and the institutional framework for management of the motor vehicle sector. The Transport Licensing Board (TLB) may be the right body to carry out the integrated functions, as is the case in South Africa. However an effective institutional framework must be backed by technological advancement especially in the enforcement area and coordinated information systems. Customer care must also be given a clear priority. All these concerns need to be studied further and in comparison with other jurisdictions.

## 5. CONCLUSION

This examination has highlighted weaknesses in the systems, procedures and policies applied in the registration and licensing of motor vehicles and enforcement of traffic regulations. The Report has identified the main areas that are prone to corruption and that afflict the public in registration and licensing processes.

One of the key findings is the existence of a thriving market for forged registration and licensing documents including number plates. This can be attributed to a number of factors, which perpetuate production of forged documents. These include the delays in issuance of number plates, the manual, lengthy and laborious processes employed in the registration and licensing of motor vehicles.

Most of the documents used in the processes including the logbook lack any security features thus making them vulnerable to forgery. Poor records management coupled with a manual registry process makes information retrieval difficult and time consuming. The presence of middlemen has exacerbated the problem as they offer quick solutions to clients eager to circumvent the process and hence drive the parallel market.

There is lack of co-ordination between the Traffic Police Department, Local Authorities, the Transport Licensing Board and Ministry of Transport in the implementation and enforcement of the Traffic Act and the new transport rules regulating the *matatu* sector. This lack of harmonization has resulted in perpetuation of cartels in the road transport sector.

The Traffic Police and the Motor Vehicle Inspection Department lack adequate and appropriate equipment for enforcement of traffic regulations and inspection of motor vehicles respectively. Further all the sectors examined lack clear documented guidelines for subsequent reference by officers in their daily operations. In essence, this opens up opportunities for negotiations and exercise of unchecked discretion with clients, which can be exploited for corrupt practices.

The issue of police officers owning and operating *matatus* in their areas of jurisdiction creates conflict of interest in the enforcement of the Traffic Act and related legislation. These officers are likely to turn a blind eye to corrupt practices on the roads or to actively participate in those practices where their vehicles are involved in illegalities. The possible involvement of councillors in the management of bus parks, is also a matter of great concern as it has the potential of undermining Councils ability to generate revenue from bus termini.

The above situation can only lead to one conclusion, that at the very least, reform in the road sector is of necessity. Opportunities exist in the ongoing policy reforms and modernization programmes aimed at improving efficiency in the sector. The main challenge facing the transport sector in Kenya is to consolidate and institutionalise these positive changes. Prime among these policy processes is the on-going modernization programmes under the Road Transport Department aimed at simplifying and automating the administrative procedures of issuance of licenses and registration and achieve connectivity of the RTD with the other KRA departments. The Ministry of Transport is developing an integrated transport policy in collaboration with other stakeholders, while the Police Department has also been undertaking reforms aimed at restructuring the traffic police Department.

It will however be necessary for the various stakeholders to take into account and address the emerging issues and challenges in the transport industry as highlighted in this report. These include supervision of driving schools and administration of driving tests; auctions of motor vehicles by police; and the need for specialised traffic courts. The will to change policies and legislation in conformity with the demands of the time is necessary if emerging challenges are to be addressed.

With close co-ordination and cooperation between the various stakeholders, the adoption of a broadly based approach can realize the objectives of minimizing corruption and streamlining the road transport sector.

The recommendations outlined in this report will greatly benefit the Kenya Revenue Authority, The Transport Licensing Board, the Police Department, Local Authorities and other stakeholders if implemented.

Finally, the recommendations made, cannot be effective without the support and commitment of the Executives of the respective stakeholder institutions. It will therefore be necessary for the management of institutions addressed in this report to spearhead the implementation of these recommendations in order to prevent corruption and revenue loss. The Kenya Anti-Corruption Commission will expect all the stakeholders to work out an implementation Plan for the recommendations and will be at hand to offer necessary guidance when required.

Some of the issues discussed in this Report namely, cartels and touting, the participation of law enforcement officers in the public transport sector and on-spot fines for traffic offences were considered in detail. Research papers on these subjects can be obtained separately.

## **APPENDIX I**

### **AREAS VISITED AND SOME PERSONALITIES INTERVIEWED**

#### **Ministry of Transport**

- Permanent Secretary Ministry of Transport
- Officers In-charge Motor Vehicle Inspection Unit
- Director Motor Vehicle Inspection Unit

#### **Transport Licensing Board**

- Chairman
- Chief Executive

#### **Motor Vehicle Inspection Centres**

- Nairobi
- Nyeri
- Kisii
- Thika
- Mombasa
- Nakuru
- Eldoret
- Kericho

#### **Ministry of Local Government**

- Permanent Secretary Ministry of Local Government

#### **Local Authorities**

- Embu
- Mombasa
- Nakuru
- Kisumu
- Kericho
- Eldoret

#### **Kenya Bureau of Standards**

- Director

#### **Border Offices**

- Kilindini
- Busia
- Malaba

## **Ministry of Finance**

- Directorate of Fiscal and monetary affairs

## **Kenya Revenue Authority**

- Commissioner General
- Registrar of Motor Vehicles (Deputy Commissioner RTD)
- Deputy Commissioner, Customs and Excise
- Senior Deputy Commissioner RTD

### **RTD Sections**

- Registration
- Driving License
- Logbooks
- Duplicates
- Number plates
- Transfers
- Finance
- CRB
- Registry
- Microfilming

### **KRA Field Stations**

- Nyeri
- Kerugoya Satellite office
- Thika
- Embu
- Mombasa
- Malindi
- Eldoret
- Kisii
- Kericho
- Kisumu
- Bungoma
- Malaba
- Kakamega

### **District Treasuries**

- Nanyuki
- Molo
- Siaya
- Busia

### **Police Department**

- Traffic Commandant

**(PPO's & Base Commanders)**

- Nairobi
- Nyeri
- Kerugoya
- Eldoret
- Nakuru
- Kericho
- Kakamega
- Mombasa
- Malindi

**Other Stakeholders interviewed**

Matatu Welfare Association