CORRIDOR DIAGNOSTIC STUDY OF THE NORTHERN AND CENTRAL CORRIDORS OF EAST AFRICA

ACTION PLAN

Volume 2: Technical Papers

D. Regulatory Framework and Transport Policy

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Contents

Executive Summary **v**

1. Introduction **1**

Background 1

2. National Transport Policies **3**

Introduction 3

Burundi 4

Democratic Republic of Congo 6

Kenya 7

Rwanda 9

Tanzania 10

Uganda 10

Findings and Recommendations 11

3. Transport Legal and Regulatory Frameworks **13**

Road Transport 13

Road Infrastructure 26

Seaports and Inland Waterways 36

Railways 41

Pipelines 44

4. Regional Co-operation Instruments **47**

Overview 47

Findings and Recommendations 48

Appendix A. Summary of the Main Provisions of Regional Co-operation Instruments

Appendix B. Bibliography

Appendix C. Persons Contacted

Illustrations

FIGURES

Figure 1. CDS Geographic Scope 2
Figure 2. Policy Cycle 4
Figure 3. Components of Comprehensive Regulatory System vs. Current System in EAC States 15
Figure 4. Multi-Layered Legal and Regulatory Framework of Multilateral, Bilateral Instruments National Policies and Laws 47

TABLES

Table 1. Benefits of Qualitative Regulation of Road Transport 14
Table 2. Modes of Supply in Services 17
Table 3. Application of Qualitative Regulatory Criteria in EAC Member States 22
Table 4. Comparison of Axle Load and Gross Vehicle Mass Limits in Corridor States 32
Table 5. Overview of Regional Co-operation Instruments per Transport Mode 48

BOXES

Box 1. Examples of EAC Customs Vehicle Licenses 19
Box 2. Summary of Regional Consensus on Vehicle Overloading Control 31
Box 3. EAC Tripartite Agreement on Road Transport and Northern Corridor Protocol Nº 6 on Road Transport: A Comparison 50

Acronyms

BOT	build operate-transfer
CCTTFA	Central Corridor Transit Transport Facilitation Agreement
CFU	Chemins de Fer des Uélès
COMESA	Common Market for Eastern and Southern Africa
DRC	Democratic Republic of Congo
EAC	East African Community
EWURA	Energy and Water Utilities Regulatory Authority
EU	European Union
FONER	Fonds National d'Entretien Routier
GATS	General Agreement on Trade in Services
ICT	Information and Communication Technologies
INTP	Integrated National Transport Policy (Kenya)
IMO	International maritime Organization
ISO	International Organization for Standardization
KenHA	Kenya National Highways Authority
KPA	Kenya Port Authority
KPC	Kenya Pipeline Company Limited
KRA	Kenya Revenue Authority
KRC	Kenya Railways Corporation
LTB	Transport Licensing Board
MoU	Memorandum of Understanding
NCTA	Northern Corridor Transit Agreement
NTB	non-tariff barrier
ODR	Office des Routes
ONATRA	Office Nationales des Transports
PTA	preferential trade area
PPP	Public Private Partnership
RAHCO	Reli Assets Holding Company
REC	Regional Economic Community
RTDA	Rwanda Transport Development Agency
RURA	Rwanda Utilities Regulatory Authority
RVF	Régie des Voies Fluviales
RVM	Regie des Voies Maritimes
RVR	Rift Valley Railways

SADC	Southern African Development Community
SDR	Special Drawing Rights
SME	small and medium enterprise
SNCC	Societé Nationale des Chemins de Fer du Congo
SUMATRA	Surface and Marine Transport Regulatory Authority (Tanzania)
TANROADS	Tanzania National Roads Agency
TLB	Transport Licensing Board
TPA	Tanzanian Ports Authority
TRA	Tanzania Revenue Authority
UNRA	Uganda National Roads Authority
UN	United Nations
URC	Uganda Railways Corporation
VOC	vehicle operating cost
WTO	World Trade Organization

Executive Summary

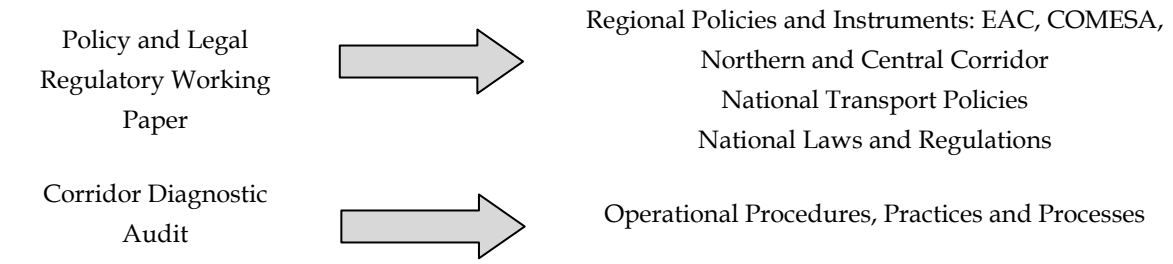
Introduction

This Working Paper analyses the transport policies and laws and regional co-operation frameworks of the EAC states as part of the performance diagnostic of the Northern and Central Corridors. Key questions that have been considered in the policy analysis are: Do policies adopt goals aimed at enhancing corridor performance? Do policies aim at progressive improvements in transport efficiency and lowering of transport costs? Do policies reflect commitments assumed by EAC states as members of RECs and corridors bodies? Are policies inadvertently proposing measures which may constrain transport efficiency or increase transport cost? Are there gaps in policy? If policies are inadequate or incomplete, how can these deficiencies be remedied?

Legislation is the tool by which policy is implemented. Hence, the legal / regulatory analysis considers questions such as: Are laws adequate to support the implementation of proposed policies? Have legal reforms required to implement certain policy proposals been undertaken? Are regulatory processes balanced (in relation to their costs and benefits) or are compliance costs excessive? Do laws enhance competition or do they (deliberately or inadvertently) have anti-competitive effects? What reforms are necessary to redress the effects of laws which are restrictive or not sufficiently enabling?

As shown in Figure E-1 below, this Paper complements the Corridor Diagnostic Audit presented in Technical Paper C in Volume 2. which analyses current practices and operational procedures and processes across transport modes and proposes various remedies to enhance efficiencies.

Figure E-1. Scope of Policy and Legal/ Regulatory Working Paper



Source: Nathan Associates Inc.

The main issues identified in this analysis are listed in table E-1 at the conclusion of this Executive Summary. The table also highlights the principal deficiencies in laws and policies and how they impact corridor performance. Lastly, it lists the various recommendations for remedial action which are discussed in detail in the main body of the report.

National Transport Policies

All EAC states have adopted transport policies although – as the table below shows - the policies differ in terms of their comprehensiveness, currency and the extent to which they specifically address issues related to corridor performance.

Table E-1. Current Status of EAC States Transport Policies

EAC STATES TRANSPORT POLICIES				
Country	**Date**	**Scope**	**Approval Stage**	**Remarks**
BURUNDI	2006	Framework, with some implementation detail	Approved	Policy is time bound (2006 – 2010)
KENYA	2009	Highly-detailed	Approved	
RWANDA	2008	Framework	Approved	
TANZANIA	2003	Framework, with some implementation detail	Approved	New policy being developed
UGANDA	2001	Detailed	Submitted to Cabinet	Revised with preparation of Transport Master Plan

Source: Nathan Associates Inc.

Analysis suggests that all states tend to face common problems with policy formulation and implementation, mainly due to a lack of institutional capacity. One such problem is that policy development tends to be overlong. As a result, events sometimes overtake polices as they are being formulated, undermining their relevance and resulting in policies never being approved. This appears to have happened in Uganda. In Kenya the policy formulation process has also been lengthy, with the 2009 policy reportedly commencing in 2004. A related problem is that policy formulation is not approached as a dynamic process whereby policy is constantly reviewed and updated to reflect changes in operational conditions, etc. In Tanzania, many significant reforms occurred after the adoption of the 2003 policy, but the policy was never updated to reflect this. In the interim, the policy has lost much of its relevance and no longer guides government or officials in terms of pursuing specific goals and actions.

As EAC and COMESA members, all states have agreed to develop a common transport policy[1]. Existing policies contain little evidence of this[2]. Instead, policies tend to only reflect national pre-occupations. This has two negative consequences. Firstly, policies tend to pay lip service to regional commitments, but do not prioritize the implementation of the various regional agreements that have been adopted by the RECs or corridor bodies. As discussed below, the non-implementation of these agreements is a serious shortcoming affecting the performance of the corridors. The second is that the lack of regional focus creates a space for governments to retreat from their commitments to advance regional integration. This can be seen in some policies which propose protectionist measures at odds with governments' commitments as REC members (e.g. in road transport).

Remedying these deficiencies cannot be achieved overnight. Firstly, national policies need to be more closely aligned to ensure that states are truly pursuing complementary objectives. Secondly, a start needs to be made in developing a Common Transport Policy as set out in Art 89 of the EAC Treaty. This is a longer term objective, but one which can be approached in a phased manner, preferably starting with road transport as the dominant mode[3]. In parallel, governments need to bolster their policy formulation and implementation capacity so that the process becomes more dynamic and responsive and delivers a policy which actively guides the achievement of specific goals and programmes. Developing policy advisory capacity at EAC level may be one option to assist this process.

Legal and Regulatory Frameworks

ROAD TRANSPORT

Road transport represents over 90 percent of the transport market. For this reason it is the mode which has received the most attention – relatively speaking – in terms of activities by RECs to liberalize market entry and facilitate the cross-border movement of freight along corridors. Yet, it is the one mode where national transport policies and legislation are the most deficient.

From the perspective of corridor performance, these deficiencies are most significant in Kenya and Tanzania. These countries' trucking industries tend to dominate the regional market (with the Kenyan industry being numerically the largest). Governments' regulation of road transport in these countries – or the lack thereof- has a ripple effect across the region. To the extent that this regulation in benign, the positive impact on transport efficiency will also be felt along both corridors. Unfortunately, the reverse is also true.

Formerly, road transport in Kenya and Tanzania (as well as Uganda) was subject to restrictive regulations largely aimed at protecting the market share of the railways[4]. Over time, these restrictions have been relaxed and today road transport is largely unregulated (except for safety regulations related to roadworthiness and

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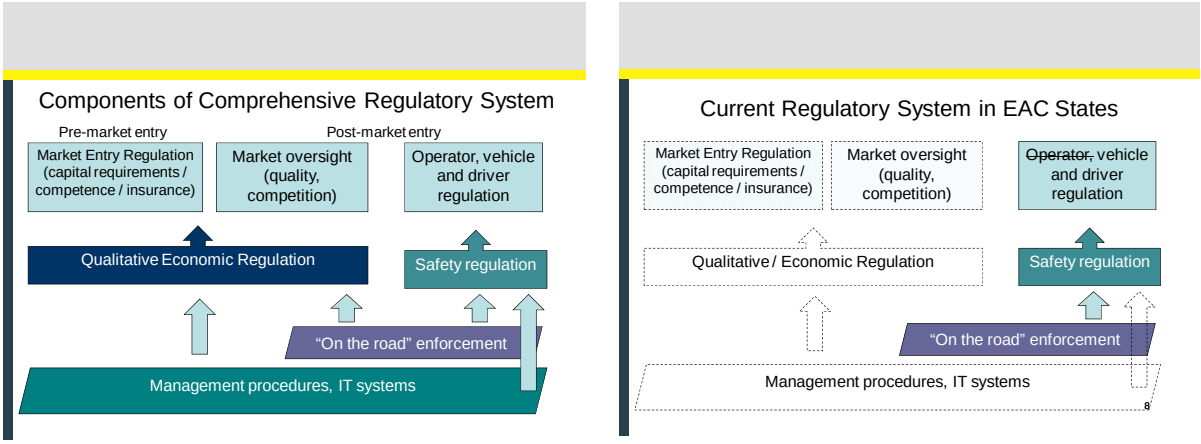
[1] Tanzania is not a COMESA member, but the provisions of the EAC and COMESA Treaties in this regard are almost identical.
[2] This is not intended as a criticism, it is worth recalling that the European Union (EU) took more than 20 years to develop a coherent common transport policy.
[3] As has happened in other regional economic groupings, such as the EU.
[4] In Kenya, Uganda and Tanzania

driver licensing). This approach can be characterized as one of "benign neglect". While the effects of deregulation are positive in some respects, the lack of qualitative regulation has a number of undesirable consequences. Low entry barriers imply that small fly by night operators are able to enter the market and engage in cut throat competition with large firms. While this may keep transport prices low in the short term, the long term effect is to compromise service quality and safety as low profit levels force truckers to defer maintenance of vehicles and investment in new plant. Ultimately, this results in a distortion of competition.

Most developed countries implement qualitative regulation to improve service quality, ensure effective competition, lower transport costs and improve road safety. There is evidence that some EAC states are introducing measures in this direction (e.g. Tanzania, Rwanda). However, as shown in the figure below, all EAC states are still some way from achieving this goal.

Figure E-2. Comprehensiveness of EAC States Regulatory System



Source: Nathan Associates Inc.

No one state's national policy currently proposes moving towards a system of qualitative regulation. This is a significant deficiency, as it also affects the performance of road transportation along the two corridors. Firstly, the absence of regulation implies that governments have not invested in personnel, systems and procedures necessary to implement regional agreements on road transport. For example, EAC states are still not implementing the Tripartite Agreement on Road Transport, which was adopted in 2001. This agreement (which is closely based on earlier agreements concluded in Southern Africa to liberalize cross-border transport) provides a tried and tested model which facilitates various aspects of cross-border operations[5].

Secondly, the regulatory vacuum creates a space for other government agencies to begin dictating transport policy without necessarily having regard to the impacts on efficiency and cost. This is the case with rules imposed by revenue authorities in Kenya and Tanzania on licensing of transit vehicles and vehicles carrying goods under customs control, which are aimed mainly at countering the illegal dumping of imports intended

[5] Non-implementation is also due to other reasons discussed in the section on "Regional Co-operation Instruments" below.

to re-export in the domestic market[6]. These rules restrict truckers from loading backhauls from domestic destinations, thereby forcing truckers to keep trucks idle and preventing them from recovering the costs of an empty return leg. Were transport ministries to re-assert their responsibility over the sector, these ministries could also be charged to engage with revenue authorities to develop transit rules which balance the need for transport efficiency with the need for effective measures to counter the illegal dumping of goods.

Lastly, the regulatory vacuum also creates an opening for protectionist measures to be reintroduced and for new non-tariff barriers to be erected. States which have not licensed foreign trucks (e.g. Rwanda and Burundi) are now contemplating introducing such requirements (which would also be a contravention of their commitments under the Tripartite Agreement). Policies in several states refer to the need to protect local truckers from "foreign competition". This opens the door for states to formalise protectionist measures at a time when the region should ideally be moving towards a more open market in trucking services. Evidence of this trend is the reservation recorded by Kenya in its offer under the EAC's Common Market Protocol to restrict the commercial presence of foreign trucking firms.

Remedying these deficiencies requires EAC states both to give effect to commitments already undertaken and to introduce new measures. Some states also need, individually, to undertake some reforms. The former includes implementing the Tripartite Agreement as promptly as possible[7]. Secondly, states must being adopting a harmonized system of qualitative regulation of road transport. This entails setting and implementing standards for entry into the road transport profession based on a licensing system so that service quality, levels of competition and compliance with safety rules can be progressively raised across the region. Essentially, this is a component of the Common Transport Policy referred to in the previous section. Kenya and Tanzania, individually, need to reform the licensing system administered by their revenue authorities and Kenya, for its part, needs to reconsider its restriction on market access for foreign trucking firms.

Road Infrastructure

EAC states have all undertaken extensive reforms to establish executive roads agencies and road funds. An assessment of the success of these reforms and the need for further institutional development falls outside the scope of this Paper. The remaining issues which have been identified as most critical are (a) greater private sector participation in road infrastructure and (b) implementation of the long-delayed regional consensus on commercial vehicle loading and management strategies.

Only Kenya has prior experience with road PPPs and is most advanced with letting contracts for ROT schemes on its road network. From a policy/regulatory perspective, successful road PPPs require governments to (a) revise road sector laws to accommodate the role of the private sector (b) adopt clear rules on PPP project identification, preparation and procurement and (c) ensure that there is adequate capacity to plan and manage PPP projects, usually located within a PPP unit.

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[6] "Transit" is defined as the carriage of goods to a destination outside the Community, while goods carried under customs control are consigned to a destination in the Community, but have not yet been entered for customs purposes.

[7] To do so require several implementation steps discussed under "Regional Co-operation Agreements" and in the main body of the report. Technical assistance is also likely to be required.

All states still need to implement reforms in these three areas. Roads laws are outdated (or lack enabling provisions) and new roads laws are required to (a) build confidence in government's commitment to a PPP programme, (b) reduce perceptions of political and legal risk (thereby contributing to reducing project costs) and (c) clarify management roles, functions and responsibilities for project management and oversight.

Adopting rules on PPP project identification, preparation and procurement is now generally accepted as best practice within developing countries that desire to attract more investment through PPPs. Only Kenya has adopted such rules to date, while Tanzania has adopted a new Act which still requires refinements to meet best practice[8].

PPP project implementation capacity is limited in all states and the lack of capacity is reportedly one of the factors that has created difficulties with PPP implementation, e.g. in the railway sector. A PPP unit has been established in Kenya and legislation now provides for similar institution(s) in Tanzania. As yet, there are no PPP units in Burundi, Rwanda or Uganda. Given the difficulty in building national PPP capacity, the option of establishing a regional PPP unit should be considered to provide services for national projects and support for future regional PPPs.

Despite intensive efforts by RECs and agreement in principle by national authorities, states have still not fully harmonized the laws on vehicle load limits. Nor has any state (except Tanzania) implemented the agreed regional strategy of overloading control based on administrative penalties that aim to recover the actual costs of road damage (although it is reported to be under consideration in Kenya).

Poor enforcement and ineffective weighbridge management practices are partially a result of the lack of qualitative regulation in road transport discussed earlier. Without a licensing system, authorities are unable to take effective action against carriers cited for overloading or other transport offences, except by way of on-the-road weighing of vehicles in order to detect and penalize offenders (which is resource intensive and has proven limitations). The introduction of qualitative licensing will provide authorities with additional weapons in their enforcement arsenal. This would include the ability to suspend or withdraw carrier licenses in response to specific offences.

Implementation of the REC-agreed proposals requires states to revise their national laws. An alternative option is to adopt an EAC Act on Vehicle Overloading Control which would enjoy direct legal force in each state. Expanding enforcement efforts to better combat overloading also requires states to introduce the system of qualitative licensing discussed in the previous section.

Seaports and Inland Waterways

The ports of Mombasa and Dar es Salaam act as gateways to the Northern and Central Corridors respectively. In Tanzania, the 2004 Ports Act has established a landlord port authority further formalizing reforms that were initiated in 2000 with the concessioning of the container terminal and the establishment of an independent regulator (SUMATRA). Although Kenya's national transport policy has identified the need to convert the Kenyan Port Authority (KPA) into a landlord port authority, little progress has been made with this goal in

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[8] A private member's bill has been tabled proposing the adoption of an EAC Public Private Partnership Act. However, the legislation has been delayed as some provisions are viewed as being inappropriate to the needs of individual states.

Mombasa. The KPA still operates Mombasa as a service port acting both as landlord and provider of terminal and stevedoring services.

Worldwide the ports sector is prone to the formation of natural monopolies. Once private sector participation is introduced, the threat of rent-seeking behaviour and other monopoly abuses increases, underlining the need for effective regulatory frameworks to promote competition.

There is anecdotal evidence of threats to competition in both ports. In Dar es Salaam, the Tanzanian Ports Authority (TPA) has begun container handling in competition with the private container terminal operator (which previously enjoyed a period of exclusivity) hence deviating from its role as landlord. This is reportedly a short term measure (to remedy congestion[9]), but conflicts of interest may clearly arise if this were to become an established practice in the port. This suggests that there may be a greater need for SUMATRA to monitor the situation and if necessary, intervene with an appropriate remedy. In Kenya, bulk grain handling is a private monopoly and attempts by other private service providers to obtain licenses from KPA to offer competing services have been unsuccessful in the past. . The need for independent port regulation has been recognized by the government of Kenya. Regulations will shortly be gazette charging the Kenya Maritime Authority with the responsibility to ensure competitiveness in the provision of maritime transport services and to regulate anti-competitive practices.

Further efficiency enhancements can be secured in both ports by introducing changes in operational procedures whereby inland container depots are more tightly integrated with marine terminals. At present, one constraining factor appears to be the reluctance on the part of shipping lines to agree to extend their liability for containers from the marine terminal to the inland depot. A further factor is the need to relax vehicle load limits on short distances between the port and inland depots to facilitate the delivery of overweight cargoes. These and other issues are explored in further detail in the Technical Paper C. Corridor Diagnostic Audit .

Inland waterways have been a moribund sector on both corridors. The KPA has so far not assumed responsibility for the management of the lake ports on Lake Victoria. Steps are underway to amend the Kenya Railways Act (which originally provided for the Kenya Railways Corporation to manage these ports) to enable the transfer of responsibility to the KPA. For its part, the TPA has taken over the management of ports on Lakes Victoria and Tanganyika, while in Burundi the management of the port has been subject to a long-standing concession (lease). All states hope to revitalize inland ports and marine services through greater private sector investment. Port legislation does not pose a constraint in this regard. However, as discussed with regard to roads sector PPPs, the need to improve the investment environment by adopting clear and comprehensive PPP rules and building institutional capacity to manage PPPs, also applies here. A similar need exists in Burundi, Rwanda and Uganda.

The regulation of inland waterway shipping is entrusted to SUMATRA, the Kenyan Maritime Authority and the Transport Licensing Board in Uganda. The EAC states have adopted the Tripartite Agreement on Inland Waterway Transport which provides a suitable framework for harmonizing regulation in this sub-sector.

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[9] And because the TPA remains the default port operator.

Further work is needed to operationalize the Agreement within the national laws of each state. Legislation is also being prepared by the EAC to provide for a common approach to the safety regulation on Lake Victoria. This legislation provides a potential model for harmonized safety regulation on all waterways within the EAC.

RAILWAYS

All three states with railway networks had earlier implemented legal reforms to enable the joint Kenya/Uganda railway concession and the concessioning of the Tanzania railways to proceed. Both concessions have, however, encountered problems, some of which may be due to a lack of appropriate legislation and a need for stronger institutional oversight.

The Kenya/Uganda concession has been characterized by various breaches of the concession agreement, while in Tanzania the contract has been cancelled and steps are being taken to transfer management back to a government-appointed entity. These events underline the importance of effective PPP contract monitoring capacity, for which the need has been highlighted with regard to other transport modes.

While steps are being taken to revitalize the railways, there are a number of ongoing operational concerns which suggest a need for better railway regulation. These include mechanisms to secure access rights for private wagon owners as well as customs regulations which complicate transit movements. These issues are explored further in Technical Paper C. Corridor Diagnostic Audit.

Finally, there is regional agreement to move ahead with a standard gauge railway as a PPP project(s) as well as ongoing studies to expand the regional railway network to Burundi and Rwanda. These developments underline the need for comprehensive PPP rules and PPP institutional capacity. Only Tanzania has invested in establishing an independent safety regulator for railways (SUMATRA), and there is a need for a parallel body in Kenya and Uganda (or possibly even a regional regulator) to establish and administer common regional safety standards for the entire region.

PIPELINES

Regulatory frameworks to oversee pipeline transport are in place in Kenya and Tanzania. While no pipeline has yet been constructed in Uganda, a similar regulatory framework is also already in place in that country. No regulatory framework exists in Rwanda or Burundi and these states need to adopt regulatory legislation prior to the implementation of the planned pipeline projects in their territories.

Further consideration needs to be given to the governance structure for pipeline transport in the region. The subject is dealt with in the transport policies of Kenya, Tanzania and Uganda, but in all states actual policy planning and regulation falls under the ministries of energy.

Regional Co-operation Instruments

As shown in the table below, there is a network of regional agreements in the transport sector initiated by the RECs and the two corridor institutions. The majority of these relate to road transport.

Table E-2. Overview of Regional Co-operation Instruments per Transport Mode

Road Transport	Inland Waterways	Railways	Maritime Transport	Pipelines
EAC Treaty (Chap 15)				
Common Market Protocol (Art 38 and Schedule on services)				
Tripartite Agreement on Road Transport	Tripartite Agreement on Inland Waterway Transport			
COMESA Treaty (Chap 11)				
Protocol on Transit Trade and Transit Facilities Protocol on Third Party Motor Vehicle Insurance Scheme COMESA Single Carrier License				
Northern Corridor Transit and Transport Agreement				
Protocol n° 2: Routes and Facilities Protocol n° 6: Transport of Goods by Road	Protocol n° 7: Inland Waterways Transport of Goods	Protocol n° 5: Transport of Goods by Rail	Protocol n° 1: Maritime Port Facilities	Protocol n° 8: Transport by Pipeline
Central Corridor Transit Transport Facilitation Agreement				

Source: Nathan Associates Inc.

The agreements fall into two categories. The first category includes the two treaties, the Common Market Protocol and overarching corridor agreements. These agreements reflect a broad consensus on issues of principle, but assume further work and negotiation will take place to operationalize this consensus in practice. Agreements in this category do not necessarily become effective immediately, but rather introduce a process of regional liberalization and harmonization. This is the case, for example, with the Common Market Protocol in which states agree to progressively open their markets to permit the free movement of persons, goods, capital and services over a period of years or even decades. The second group of agreements, which includes the Tripartite Agreements on Road Transport and Inland Waterways, already contain substantial operational detail. As such, the premise is that they can be implemented immediately or as soon as individual governments have amended laws and put in place the necessary personnel, procedures etc.

As noted above, the Tripartite Agreement on Road Transport has still not been implemented fully, despite being an operational—type agreement and having been adopted almost 10 years ago. This is due to various factors:

- Lack of domestication in national law. EAC states have never passed legislation to implement the agreement. Without a legal mandate, transport ministries have no basis to request funds from their treasuries to appoint personnel, acquire IT system, design and print permits and forms, etc, to implement the agreement.

- Lack of capacity. RECs have limited capacity to assist national government with implementation, while national ministries are also thinly resourced.
- Lack of urgency and appreciation of the potential benefits inherent in various agreements. Concerns about the impacts of market liberalization and reflexive tendencies to protect national industries exercise a powerful influence in national governments. There is an understandable reluctance to open markets to foreign competition especially if there are opposing domestic lobbies.
- Overlap between various agreements. For example, the Tripartite Agreement on Road Transport and the COMESA Single Carrier License pursue identical outcomes. There is no justification for EAC states to implement both measures. Moreover, the EAC agreement is superior in terms of being of more recent vintage and having been drafted with reference to similar agreements that have been implemented in Southern Africa since the early 1990's.

The above underlines the need for EAC states to move proactively to comply with regional commitments and – given the importance of road transport – to focus efforts on implementing the Tripartite Agreement on both the Northern and Central Corridors. In so doing, it is also necessary to rationalize the overlap between existing agreements. In this regard, technical assistance is likely to be required to (a) domesticate the Agreement in national laws, (b) acquire IT systems to administer the licensing system and (c) design procedures and train personnel in their application.

Table E-3. Issues, Deficiencies, Potential Impact on Corridor Performance and Recommended Actions

Subject	Issue	Deficiency	Potential Impact on Corridor Performance	Recommended Actions
National Transport Policies	Currency, comprehensiveness and complementarity	Some transport policies outdated Lack of complementarity between policies States not giving effect to commitment to develop a common transport policy under Art 89 of the EAC Treaty Over-long policy development time	Inaction by national authorities to implement measures to improve corridor performance	Develop a Common Transport Policy to give effect to Art 89of the EAC Treaty adopting phased approach and commencing with road transport Pending the development of a common policy align national policies to ensure greater complementarity Appoint transport policy advisor at EAC Secretariat Invest more human and financial resources in national policy-making, implementation and monitoring capacity
	Implementation of regional agreements	Policies do not guide implementation of regional agreements by national authorities	Facilitation benefits of regional agreements not secured In action by national authorities to implement regional agreements Potential threat of new NTBs being introduced	Promptly implement EAC Tripartite Agreement on Road Transport and domesticate under national laws

Subject	Issue	Deficiency	Potential Impact on Corridor Performance	Recommended Actions
Road Transport: Legal and Regulatory Framework	Road transport efficiency (also see "Regional Co-operation Instruments" below)	Absence of qualitative regulatory system to guide development of road transport sector No guidelines or programs to improve operational standards and service quality No framework for the regulation of intra-modal competition Protectionist tendencies in member states Restrictions on commercial presence of foreign trucking firms in Kenya	Lack of regulation perpetuates poor service quality and lack of safety Cut throat competition resulting from low entry barriers Poor risk perception of industry increases capital costs Proliferation of anti-competitive practices (e.g. cartel formation and price fixing) Regulation influenced by non-transport related concerns of other ministries and agencies, e.g. customs, police Introduction of new tariff barriers Restriction on growth of a regional trucking market	Implement EAC Tripartite Agreement on Road Transport Harmonize road transport policy and adopt a common regulatory regime of qualitative licensing to raise industry standards and improve safety through the adoption of an EAC Road Traffic and Transport Act Kenya to reconsider its restriction on market access for foreign firms
	Licensing requirements for movement of goods under customs control or transit goods	Restrictive customs requirements in Kenya and Tanzania limit carriers' ability to optimize use of vehicles	Sub-optimal vehicle utilization increases transport costs	EAC to facilitate discussion between stakeholders to phase out licensing of transit vehicles and vehicles carrying goods under customs control (possibly using TRA approach as starting point)

Subject	Issue	Deficiency	Potential Impact on Corridor Performance	Recommended Actions
Road Infrastructure: Legal and Regulatory Framework	Identification and preparation of PPP projects	Lack of PPP type project identification, preparation and procurement rules (except Kenya)	Poor project preparation Absence of robust project assessment affects risk perception and increases project cost Vulnerability of projects to improper influence / lack of proper due diligence Lack of predictable and transparent PPP procurement framework discourages investor interest Lack of appreciation on part of government of fiscal risks Poor project monitoring and oversight	Adopt PPP project identification, preparation and procurement rules (Burundi, Rwanda and Uganda) Revise PPP Act to clarify approval stages and institutional responsibilities (Tanzania)
	PPP implementation capacity	Limited institutional capacity Resource restrictions	Poor project preparation Long project development time Delay in project implementation	Review options to bolster regional PPP capacity (including investigating option of establishing regional PPP unit at EAC level to act as a resource centre for regional and national PPPs)
	Legal framework for road PPPs	Lack of enabling provisions permitting private toll collection Lack of clarity regarding project management and oversight	Delay in implementing road projects requiring private investment Threat of project failure	Revise road laws (or adopt new laws) to provide a comprehensive enabling framework for road infrastructure PPPs

Subject	Issue	Deficiency	Potential Impact on Corridor Performance	Recommended Actions
	Commercial vehicle overloading control	Non-implementation of REC –approved system of administrative control of overloading coupled with economic penalties (except Tanzania)	Ineffective enforcement Increased road pavement damage Increased transport costs Non-recovery of road damage costs	Implement REC –approved load limits and adopt system of administrative controls with penalties commensurate with actual road damage by revise national laws or adopting an EAC Act on Vehicle Overloading Control Implement qualitative regulation (see above) to provide additional enforcement tools to combat overloading in addition to on-the-road enforcement
	Harmonization of axle and vehicle mass limits	Non-implementation of REC-approved axle mass load and gross vehicle mass load limits	Increased transport costs Increased potential for corruption	As above
Seaports and Inland Waterways: Legal and Regulatory Framework	Management of inland waterways	Non-implementation of Protocol on Inland Waterway Transport	Lack of harmonized regulation	Adopt measures to implement Inland Waterway Protocol
	Port management reform	Delay in implementing landlord port authority model in Kenya	Delays in expanding port capacity Costs associated with port inefficiencies	Revise Kenyan Ports Authority Act to establish a landlord port authority
	Competition regulation	Framework for port economic regulation developed, but not yet operational Development of private monopolies	Potential abuse of dominant position by monopolistic service providers / rent-seeking behavior No competition to moderate pricing of port services Discouragement of private investment	Implement legislation to provide a framework for independent port regulation and develop capacity to oversee port pricing, access issues and arbitrate disputes between service providers and customers
	Identification and preparation of PPP projects	See “Road Infrastructure” above	See “Road Infrastructure” above	See “Road Infrastructure” above

Subject	Issue	Deficiency	Potential Impact on Corridor Performance	Recommended Actions
Railways: Legal and Regulatory Framework	Railway safety	Lack of regulatory framework for railway safety in Kenya and Uganda	Higher incidence of derailments and other accidents	Establish an independent safety and environmental regulatory for the railway sector (Kenya and Uganda)[10]
	Railway legislation	Lack of enabling frameworks for railway infrastructure and services (in Burundi, DRC and Rwanda)	Heightened uncertainty for investors Potential delay in implementing PPP projects Discouragement of private investment	Adopt enabling laws for the provision of railways services
	Identification and preparation of PPP projects	See "Road Infrastructure" above	See "Road Infrastructure" above	See "Road Infrastructure" above
Pipelines: Legal and Regulatory Frameworks	Enabling framework	Lack of enabling frameworks for pipelines in Burundi and Rwanda	Heightened uncertainty for investors Potential delay in implementing PPP projects Lack of clarity regarding government oversight and regulation	Adopt legislation to govern pipelines prior to the implementation of pipeline projects in Burundi and Rwanda
Regional Co-operation Instruments	Lack of implementation of regional agreement	Regional agreements not domesticated in national law Non-implementation of facilitation measures, e.g. single transport license No framework for regulating competition between domestic and foreign trucking companies	Potential facilitation benefits arising from implementation of regional agreements not secured National authorities continue to apply more restrictive national rules that run counter to regional commitments Discrimination against foreign carriers by national authorities	Member states to build capacity to implement regional agreements

[10] Burundi and Rwanda to follow once a decision is taken to incorporate these states in the regional rail network.

Subject	Issue	Deficiency	Potential Impact on Corridor Performance	Recommended Actions
	Overlap in EAC, COMESA and Northern Corridor Facilitation Instruments relating to road transport	Lack of clarity regarding provisions to be applied by national authorities	Potential facilitation benefits arising from implementation of regional agreements not secured	RECs to critically assess existing road transport agreements and initiate a process of rationalization to eliminate incidences of overlap. Pending adoption of a revised instrument, EAC states to implement the Tripartite Agreement on Road Transport to govern intra EAC road transport, while retaining the COMESA single carrier license only for transport between EAC and non EAC states who are COMESA members[11].

Source: Nathan Associates Inc.

[11] In the case of Tanzania, which is not a COMESA member, road transport with other COMESA states on the corridor (i.e. DRC) could be regulated by a bilateral agreement if the two states deem this necessary or under a future multilateral instrument reported to be under development within SADC.

1. Introduction

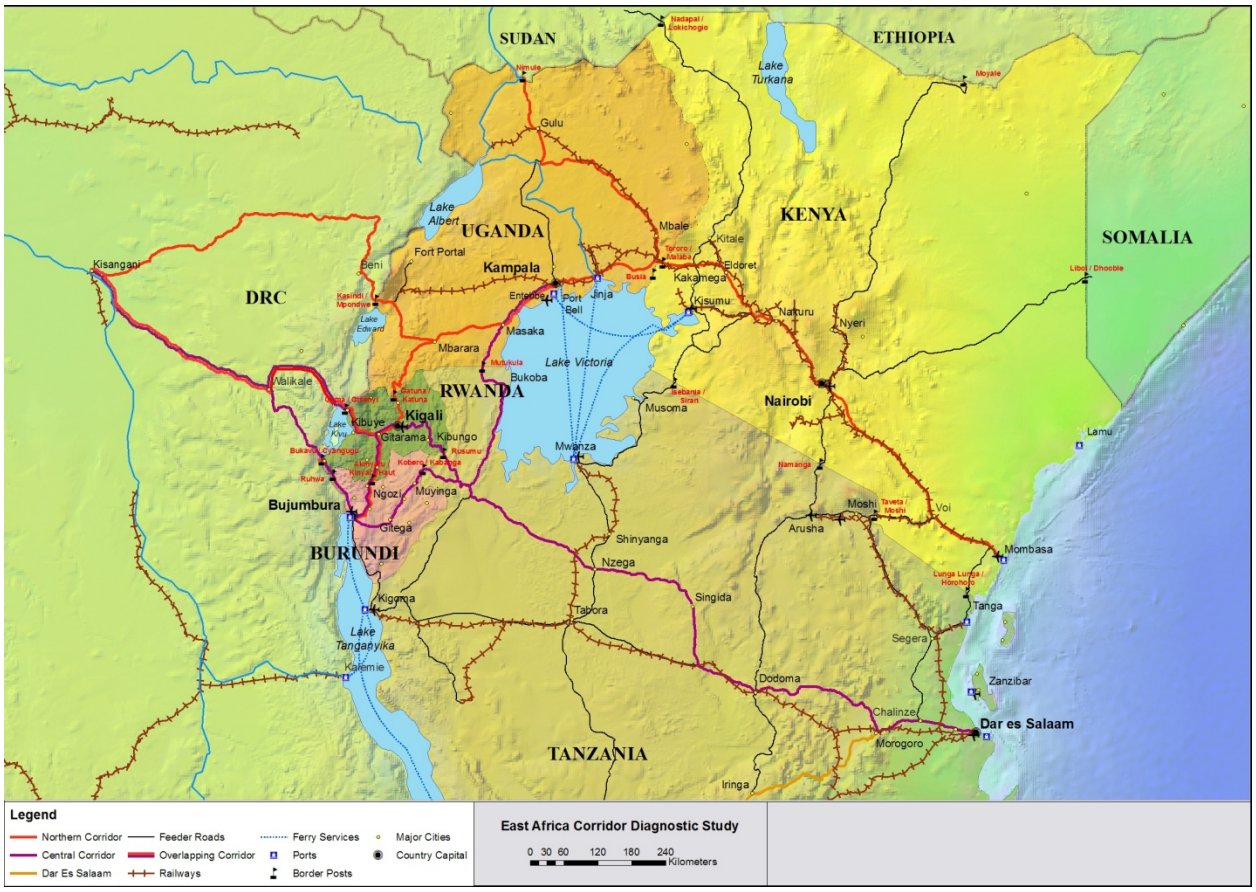
Background

The Northern Corridor anchored by the port of Mombasa in Kenya, and the Central Corridor, anchored by the port of Dar es Salaam in Tanzania, are principal and crucial transport routes for national, regional and international trade of the five East African Community (EAC) countries, namely; Burundi, Kenya, Rwanda, Tanzania and Uganda (see Figure 1). Due to inadequate physical infrastructure and inefficiency, these corridors are characterized by long transit times and high cost. Freight costs per km are more than 50 percent higher than the USA and Europe and for the landlocked countries; transport costs can be as high as 75 percent of the value of exports. Modernization of transport infrastructure and removal of non-tariff barriers along these corridors is critical for trade expansion and economic growth, which are key to the success of regional integration as well as creation of wealth and poverty alleviation in the individual countries.

The Heads of State in the COMESA, EAC and SADC, the Tripartite, have determined that the transport inefficiencies are among the biggest impediments to realizing their vision to lead their countries out of poverty. Transport costs are prohibitively high and are a barrier to trade and investment, which are the cornerstone for the aspired economic growth to regional prosperity.

Having had the experience of successful development of an action plan to effectively tackle transport bottlenecks on the North-South Corridor, the Tripartite have ordered the preparation of a similar action plan for the key trade routes of Eastern Africa. As a technical foundation for the action plan, regional stakeholders in March 2009 agreed to carry out a Corridor Diagnostic Study (CDS) with funding from the U.S. Agency for International Development (USAID) and the U.K. Department for International Development (DFID).

Figure 1. CDS Geographic Scope



Source: Nathan Associates Inc.

2. National Transport Policies

Introduction

This chapter presents the findings of an analysis of the National Transport Policies of the EAC states. It also includes a description of policy reforms in the Democratic Republic of Congo (DRC) sourced from numerous recent transport laws and other reports[12].

Existing transport policies in the EAC states differ in terms of their scope and currency. Kenya adopted a detailed policy in 2009, while Rwanda has a more concise policy dating from 2008. Uganda's policy was developed in 2001, but never formalized. It was, however, updated alongside the development of a national transport master plan in 2009. Tanzania has an outdated policy adopted in 2003 which is currently undergoing revision. Burundi has adopted a sector policy for the period 2006–2010.

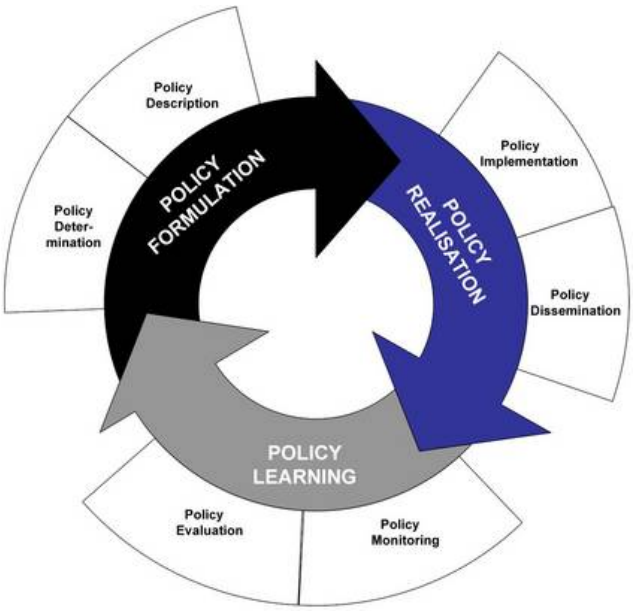
Three trends in policy development and implementation among the states are worth mentioning. It is noticeable that the process of policy development tends to be lengthy. For example, Kenya embarked on its policy development in 2004 and only finalized it in 2009. Tanzania has waited seven years before embarking on the development of a new policy. After almost 10 years, a final policy has still not been adopted in Uganda. The lengthy policy development and approval process comes at a cost: (a) while policy is under development, government programmes tend to be "stalled" until the outlines of future policy become clear and have received formal approval and (b) at times, events overtake policy and the policy no longer responds to practical reality. Both mean that ministries and officials are often left to work in a policy "vacuum". The danger is that governments may then tend to react to events and adapt policy *ex post*, rather than to formulate specific policy goals and proactively implement programmes to achieve them.

A second observation is that little attention appears to be given to ongoing policy monitoring and review. As Figure 2 shows, policy-making is a continuous process. Once adopted, a policy can become outdated fairly quickly (as events in many states illustrate). For this reason, policy-makers need to build in mechanisms to monitor policy implementation. Policy revisions are sometimes needed frequently to respond to changing realities. This point is illustrated by Tanzania's 2003 policy. Due to its age, it does not reflect many of the far-

[12] No formal transport policy for the DRC could be found in online searches.

reaching reforms implemented in the transport sector since its adoption. In many respects, the document can no longer provide guidance to planners and implementers on the future direction of Tanzania's transport sector. Ideally, the policy should be a dynamic document guiding the day-to-day programmes of the government and providing benchmarks and performance indicators to measure progress with policy implementation.

Figure 2. Policy Cycle



Source: ERA-NET Transport

A third trend worth noting is the lack of coordination and complementarity between the transport policies of the various states. In terms of Art 89 of the EAC Treaty, the member states have committed themselves to developing harmonized and complementary transport policies. Despite this commitment, it appears that each state still approaches policy development purely as a domestic exercise. There is little evidence that policy development occurs with reference to developments in partner states. As a result, the policies do not speak to each other, nor do they reflect common approaches to implementing the commitments which the states have assumed under the Treaty and its various subsidiary instruments.

Burundi

Burundi has a sector policy for transport, postal services and communications for the period 2006 – 2010[13].

A central theme of the policy is Burundi's land-locked status. Accordingly, it prioritizes investment in road transport, lake transport and civil aviation to facilitate the country's exports and well as imports of inputs for the local market. The main constraints to international surface transport are identified as: the decayed state of

[13] *Politique Sectorielle*, April 2006

infrastructure; the lack of transport fleet and equipment; and physical and administrative constraints on road corridors. Aside from Burundi's land-locked status, the policy identifies the main challenges as being:

- Lack of economic development of the country;
- Weak levels of regional integration;
- High transport costs;
- Lack of progress in negotiating arrangements to facilitate transport with neighbouring states acting as transit routes;
- The political crisis in Burundi since 1993;
- The weakness of the local transport industry in the face of foreign competition; and
- The need to renew and modernize transport infrastructure and equipment.

The policy devotes particular attention to international road transport. The Central Corridor carries between 75-80 percent of goods originating from or destined for Burundi. Principal constraints on this corridor are: the decayed state of railway infrastructure (in Tanzania) and the lack of transport equipment in Kigoma (Tanzania). By contrast, the Northern Corridor is identified as being characterized by several physical and non-physical barriers, in particular the need for police escorts in Kenya which increase both travel time and cost. The policy highlights that Burundi's interests diverge from those of transit countries (Kenya/Tanzania) as many of the constraints are related to fiscal concerns in those states.

Given these concerns, Burundi's policy emphasizes the need to engage neighbouring states actively - both on a bilateral basis and through regional institutions – in order to address barriers to corridor efficiency. Specific actions proposed in the policy are mostly institutional in nature. They include:

- Engaging Tanzania to encourage the rehabilitate the port of Kigoma and the railway line to Dar es Salaam;
- Re-activating the bilateral technical committee with Tanzania to address issues related to Central Corridor;
- Finalizing the negotiation of the Central Corridor Agreement (which has subsequently been concluded); and
- Strengthening the Secretariat of the Northern Corridor Transport and Transit Authority and revising the NCTTA Agreement (also subsequently concluded).

The policy does not link the state of the domestic road transport industry with Burundi's position in the international road transport market. It does, nevertheless, highlight shortcomings within the domestic industry which, if attended to, will impact the efficiency of services provided by Burundian truckers on the corridors. The policy identifies a need to better regulate road transport and to do so by adopting a law on domestic road transport[14]. Issues to be addressed include: introducing a system of axle load control; providing for mandatory

[14] Since the policy was adopted, such a law has been passed

and periodic roadworthiness testing ("contrôle technique") and investing in a truck freight station. Amongst others, the policy emphasizes the need for the Ministry to develop capacity to improve transport planning and implement a freight transport database.

With regard to inland waterway transport, the policy identifies the following challenges:

- The decayed state of the fleet, infrastructure and equipment (and lack of port infrastructure);
- The reduction in water levels in Lake Tanganyika (as well as pollution by hydro-carbons);
- The lack of legislation governing inland waterway transport;
- Deficiencies in the management of the port of Bujumbura; and
- Lack of qualified personnel.

Particular measures which have been proposed for this sub-sector include:

- Adopting a Code for Navigation of Inland Waterways;
- Encouraging private investment and improving partnerships with lenders and transit countries; and
- Reviewing the concession agreement for the port of Bujumbura.

Investment is also proposed in improving infrastructure by dredging the lake ports, rehabilitating aids to navigation, constructing a secondary port at Rumonge and constructing the Isaka – Gitega – Musongati railway line. Long term proposals include constructing a free port at Bukumbura, constructing a rail link between Gitega and Bujumbura as well as the Grand Lakes railway (Kasama – Mpulungu – Bujumbura – Ruhwa – Bukavu/Goma – Kigali).

Democratic Republic of Congo

The DRC's transport sector is dominated by a number of parastatals[15] the majority of which are characterized by poor performance levels, poor service delivery, lack of productivity and overstaffing, high levels of debt (mostly owed to government or other parastatals) and uncompetitive pricing. Aside from parastatal activity, road and inland waterway transport services are provided by large number of small operators who largely operate outside the bounds of any technical or economic regulation.

Given the importance of the transport sector (estimated at 10 percent of GDP), the government's strategy is aimed at implementing institutional reform of the parastatal sector in order to rationalize activities, improve efficiencies and to promote greater private sector involvement. The latter may entail full or partial privatization

15 For the purposes of this report, the major parastatals are: (a) Office Nationale des Transports (ONATRA) which maintains and operates seaport and river port facilities, and manages the infrastructure and operations of the Matadi to Kinshasa railway; (b) Societé Nationale des Chemins de Fer du Congo SNCC) which operates the south eastern railway network; (c) Régie des Voies Fluviales (RVF), which is responsible for dredging and mapping inland waterways (Congo river and its tributaries between Kinshasa and Kisangani s well as to Ilebo); and (d) Office des Routes (ODR) which manages and maintains national and regional roads structured around work brigades stationed throughout the country. The Chemins de Fer des Uèlès (CFU) is responsible for a (non-operational) 0.6 meter railway linking the goldmines at Kilo Moto to the Congo River.

or a public-private partnership (PPP) arrangement.[16] PPPs may include concessions, management contracts and outsourcing.

The strategy has a two-pronged focus: parastatals that have the potential to become commercially viable are transformed into corporations with the state as sole shareholder ("sociétiés commerciales"), while parastatals whose activities are an extension of state functions and benefit from tax revenues and/or do not have the potential to be profitable are transformed into public agencies (établissement publiques"). A third group of non-performing entities will be liquidated and dissolved.

Within the transport sector, paratstatals identified for commercialization are: Office Nationale des Transports (ONATRA), Societé Nationale des Chemins de Fer du Congo (SNCC) and Chemins de Fer des Uélès (CFU). The Régie des Voies Fluviales(RVF) and Office des Routes (ODR) will both become public agencies.

With regard to ONATRA, it is proposed to outsource non-core activities and to seek to concession the Kinshasa to Matadi railway on a PPP basis. A River Port Authority will be created and the main river ports will be concessioned subject to oversight by the authority. It is also proposed that the authority will absorb the dredging functions for the seaports undertaken by the Régie des Voies Maritimes (RVM), which will be liquidated. The non-core activities of the SNCC will be outsourced and an asset holding company will be created which will assume responsibility for the fixed rail assets. Rail operations will be concessioned.

Kenya

Kenya embarked on a transport policy review process in 2003 which culminated in the adoption of an Integrated National Transport Policy (INTP) in May 2009.

The INTP is a lengthy 241 page document. It covers all transport modes, including non-motorized transport, the use of information and communication technology in the transport sector as well as funding and health issues.

The policy contains several references to the Northern Corridor within the context of road transport, road infrastructure, railways, inland water transport and ports. A separate chapter is also devoted to "Integrating Transport Services with the National and Regional Economy". In this chapter, the government undertakes to strengthen implementation and monitoring mechanisms under the various regional transport agreements with reference to COMESA and the EAC. Unfortunately, the policy does not offer any critical analysis of the state of implementation of these agreements, nor does it indicate what measures are proposed to secure better implementation of its various commitments in future. This should be regarded as a significant failure in the policy, especially with regard to road transport, where the lack of implementation of regional agreements is one of the main constraints to improved transport efficiencies.

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[16] Loi n° 08/008 du 7 juillet 2008 portant Dispositions Generales relatives au desengagement de L'etat des Entreprises du Portefeuille.

ROAD TRANSPORT

The policy commits Kenya to support the provision of low-cost, high quality freight services on the Northern Corridor for both domestic and transit traffic. It also adopts the objective of minimizing or eliminating non-tariff barriers (NTBs) to domestic and regional road transport. On the Northern Corridor, the following constraints are cited: high freight cost due to poor road conditions, excessive market power of big transport companies, corruption, multiple and high taxes on road transport, cumbersome customs procedures at Mombasa, lengthy waiting times at weigh-bridges, police road blocks and police escorts.

As potential solutions to these problems, the policy proposes fiscal incentives to encourage small and medium enterprises (SMEs) into freight transport, and a consolidation and reduction of taxes imposed on road transport. The policy also commits government to "protect" local truckers against transit (foreign) truckers, without spelling out how this is to be achieved. The policy states the intention to improve customs procedures through simplification of procedures, more use of information and communication technologies (ICTs) and the privatization of cargo verification and inspection. The elimination of NTBs such as road blocks, police escorts, etc is also proposed.

RAILWAYS

The policy affirms the importance of the railways sector for the Northern Corridor and acknowledges that its performance has been unsatisfactory due to the lack of investment by the government, the Kenya Railways Corporation (KRC) and the concessionaire. The current restrictive and overly-complex legal framework is identified as a constraint to the effective operation of the KRC. Amongst others, the present legal framework subjects the KRC to oversight from numerous government agencies and does not allow it the flexibility to promote private sector investment in the development and operation of the railways.

The policy commits government to monitor investment by the concessionaire more effectively, but does not offer solutions how the current lack of investment is to be remedied. In the longer term, the construction of a new standard gauge railway to both the ports of Mombasa and Lamu is proposed.

PORTS

The policy acknowledges that port operations are hampered by lengthy customs procedures and that these have impeded traffic growth over several years. Lack of transit facilitation also contributes to higher transit costs. Delays in cargo take-off from the port are also caused by poor transport infrastructure and poor turnaround times for trucks and railway wagons.

The policy proposes that these problems be addressed through upgrading of infrastructure and streamlining of customs procedures (This work has commenced with a joint initiative by the Kenya Port Authority (KPA) and the KRA to develop a new manifest management system[17]). It further acknowledges that the present institutional framework of the port whereby the Kenya Port Authority (KPA) acts both as landlord and service

[17] The system will integrate the KPA-KWATOS and KRA/SIMBA 2005 systems allowing for a sharing of data. The Government of Kenya has also embarked on a national single window system project to provide an integrated platform for the electronic exchange of data among port community users engaged in cargo clearance and documentation processes.

provider, exacerbates inefficiencies. The restructuring of KPA into a landlord port authority and regulated private sector participation in stevedoring, storage and shore handling is proposed as a solution.

INLAND WATERWAYS

The policy highlights that the role of inland waterway transport on the Northern Corridor has been negligible largely due to low levels of investment in vessels. Most are broken down or have been disposed of. The railway concessionaire also took charge of the wagon ferry, but has struggled to rehabilitate it to an acceptable standard due to its relative age and other factors. Low levels of utilization of the waterways are compounded by the need for rehabilitation of jetties and approach roads. There is also a need to upgrade sections of the Nakuru – Kisumu branch line.

Measures proposed in the policy to address these constraints include: rehabilitation of port, road and rail infrastructure, promotion of private sector participation in operations, adoption of a comprehensive safety framework for inland waterway operations and a revision of the railway concession agreement to enable the concessionaire to comply with an appropriate standard for the wagon ferry. At present, steps are being taken to amend the Kenya Railways Act (which originally provided for the KRC to manage these ports) to enable the transfer of responsibility to the KPA.

Rwanda

Rwanda adopted a Transport Sector Policy in December 2008. It is a concise (28 page), high-level document which offers a broad analysis of the problems and constraints faced by the sector to be addressed by a number of programs and strategies.

The policy emphasizes the impact of Rwanda's land-locked status. For this reason it is committed to supporting the implementation of the regional instruments governing transit on both the Northern and the Central Corridors. Surprisingly, given the importance of regional transit routes for Rwanda, the policy does not offer any analysis of how well these agreements have worked or how they may be improved.

Critical issues identified in the policy relevant to the two corridors are:

- High transport costs associated with Rwanda's land-locked status;
- Dominance of foreign trucking firms from Kenya, Tanzania and Uganda in Rwanda's transit trade; and
- Restricted financial resources for road maintenance.

The policy proposes a number of specific strategies:

- A focus on specific corridors that offer the most economic routes, coupled with an effective road maintenance strategy based on multi-annual programming;
- Construction of "common" joint border posts;

- Use of electronic data interchange in customs transaction and electronic tracking of transit goods;
- Developing capacity within the Rwandan transport industry; and
- Assessing the feasibility of extending the railway networks of neighbouring states.

Tanzania

Tanzania adopted a National Transport Policy in 2003. The policy is now fairly dated, and a new policy is under preparation.

Since the adoption of the 2003 policy, several significant reforms have been undertaken in the transport sector. These include the establishment of a multi-sector regulator (SUMATRA), reforms in the road sector and the granting of concessions in significant sub-sectors (port terminals, railways and airports).

The policy addresses regional transport issues in a separate chapter entitled "International Transport Policy Directions". With regard to road infrastructure, the policy emphasizes the central role of Tanzania as a transit state. Hence, the policy commits government to develop infrastructure to assist the flow of goods and persons and to apply internationally-agreed rules on vehicle standards, axle loads, drivers, etc. With regard to road transport, the policy acknowledges that this is governed by international agreements, but that truckers still face various NTBs, especially at borders. Government undertakes to remedy this by harmonizing policy and rules with its neighbors, promoting market access in terms of international agreements and coordinating with border post agencies to minimize negative impacts on transit operations. With regard to port and railway operations, the policy affirms government's intention to continue to promote private sector participation to enhance efficiencies.

Due to its relative age, the policy is silent with regard to the outcomes of the reform initiatives mentioned above. Hence, there is no discussion, for example, of (a) the performance of the Dar-es-Salaam container terminal since its concessioning or (b) the outcome of the Tanzania Railways Corporation concession.

Uganda

Uganda adopted a draft Policy and Strategy Paper on the Transport Sector in December 2001. In 2009, a National Transport Master Plan was completed which updates the policy and strategy.

Due to its relative age, the policy is outdated and does not provide guidance in relation to many recent initiatives. For example, the policy only refers to plans to concession the railways and expresses the intention to establish an executive Road Agency (both of which have subsequently occurred).

With regard to the Northern and Central Corridors, the policy proposes that both corridors be utilized for international traffic to and from Uganda. It identifies the slow progress with ratification and implementation of regional treaties and agreements as one of the causes of the region's high transport costs. Other causes that are identified include: border crossings, unofficial road blocks, inefficient port operations and ineffective coordination of rail and ferry services on Lake Victoria.

With regard to road transport, the policy proposes to continue the existing de facto deregulation with prices being set by supply and demand in the market. In the inland watery sector, the policy proposes that all services be owned and operated by the private sector, subject to licensing and regulation to ensure adequate quality and safety standards. In common with the policies adopted by other states, the Ugandan document does not give any attention to measures that are needed in order to domesticate regional agreements in national law.

Findings and Recommendations

Gaps in policies relating to regional commitments

Existing transport policies all recognize the need for states to comply with commitments arising from their membership of regional organizations – RECs (EAC, COMESA, SADC) and corridor organizations to improve corridor performance. However, policies do not spell out how governments will implement the commitments they have assumed in signing up to membership of RECs and corridor institutions. This is a significant failure in all states, especially with regard to road transport which is the dominant transport mode on both corridors (see section on Regional Co-operation Instruments below).

As a result, current policies do not (a) identify regional instruments which governments are required to implement (e.g. the Tripartite Agreements on Road Transport and Inland Waterways), (b) assess which legislative and institutional measures are needed to implement regional agreements domestically or (c) quantify these commitments in terms of required financial and human resources. There is also evidence of national priorities intruding and overshadowing regional commitments. For example, despite a commitment towards liberalization of the cross-border road transport market, several countries' policies express sentiments aimed at protecting their trucking industries from foreign competition. This creates a space for new non-tariff barriers to be introduced (as illustrated in the road transport sector – see discussion below).

Lengthy policy development and implementation processes

In most states, the process of policy development and implementation is too lengthy. This undermines the relevance of the policy documents. While policy is under development, officials are constrained from embarking on new programmes and initiatives, as there is an understandable tendency to await the outcome of the policy process. Moreover, if policies are not formalized (vide Kenya, Uganda), policy proposals are not translated into appropriate legislation and programmes. In the absence of a legislative mandate, transport ministries are constrained in motivating for additional funds to implement new or expanded programmes.

Notwithstanding the fact that some states' policies are outdated, there have been piecemeal reforms that have superseded existing policies which indicate that governments have embarked on new policy directions. This is the case, for example, in Tanzania, which has revised its ports legislation to implement the landlord port authority model, despite the fact that this is not expressly foreseen in the existing policy.

In view of the above findings, the following is recommended:

R 1: The EAC and member states must collectively develop a Common Transport Policy giving effect to Art 89 of the Treaty. Various ongoing initiatives, such as the EAC Transport Strategy and the Trade and Transport

Facilitation Study, are expected to provide a framework and inputs to this process. The aim must be to develop a common vision for the regional transport sector, backed by harmonized policy goals and programmes – giving effect to existing regional instruments such as the Common Market Protocol and the Tripartite Agreements on Road Transport and Inland Waterways. At the same time, the process must ensure that national policies are aligned to pursue complementary policy objectives and programmes. The development of a common policy is likely to be a phased process[18] and should commence with regard to priority sectors, such as road transport (which accounts for over 90 percent of the market in all member states). It could be undertaken by way of a Protocol (capturing the main policy goals and detailing the implementation measures) and further elaborated by way of an individual Act (or Acts) adopted by the EAC Legislative Assembly (see discussion in the next chapter on the proposed EAC Road Transport Act).

R 2: Pending the development of a common policy, existing national policies must be aligned to ensure greater complementarity. There is a need to bridge the gap between the regional decision-making activities of the RECs and national implementation. To this end, national policies must (a) clearly identify the regional commitments which governments have assumed, (b) include a strategic analysis of national measures required to implement regional decisions and (c) set definitive timelines for implementation.

R 3: RECs and their member states need to invest more human and financial resources in policy making and monitoring capacity. There is a need for governments to move beyond the stage where policy development is viewed as an arcane, "add-on" activity, to where it occupies a central position as a daily government function. To this end, the capacity of the EAC Secretariat must be strengthened with the appointment of a full-time policy advisor. The advisor will play a central role in coordinating the development of a common policy, assisting national governments in aligning national policies with regional objective and monitoring policy implementation on behalf of the sectoral Council. Similarly investment in capacity is needed in all member states. In particular, the aim must be to (a) shorten policy development time; (b) support ministries to translate policy into legislation and other programmes; and (c) build effective monitoring and evaluation capacity so that progress towards specific goals is measured effectively.

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[18] It is worth recalling that in the European Union, significant progress with the development of a common transport policy was only achieved more than 20 years after its founding when the 1985 White Paper on the Completion of the Internal Market was adopted.

3. Transport Legal and Regulatory Frameworks

Road Transport

Worldwide, governments tend to regulate road transport to secure certain economic and safety outcomes. Within the corridor states, these objectives have been pursued through a system of carrier licensing coupled with safety regulation based on periodic testing of vehicle roadworthiness and driver licensing.

The corridor states that are former British colonies (Kenya, Tanzania, Uganda) all inherited road transport laws which provided for a system of quantitative regulation now deemed outdated. Regulation was undertaken largely to protect market share for the railways. Hence, licensing authorities were empowered to (a) prohibit carriers from carrying certain goods, (b) impose tariffs, and (c) limit the number of operators able to enter the road transport market. In Burundi and Rwanda, legislation also provided for licensing systems but with a more limited focus. As these countries have no railway networks, laws did not regulate intermodal competition, but focused rather on regulating carrier competence and financial capacity.

Over time the system of quantitative regulation proved to have several shortcomings. The focus on protecting the railways meant that regulation neglected to implement standards and systems to improve service standards in the road transport industry. Eventually, quantitative licensing proved unable to protect the market share of the railways against the inherent competitive advantages of road transport. Governments were gradually forced to abandon market entry restrictions for road transport, and retained the system only for its revenue collection features. Finally, the legitimacy of revenue-collection function also fell away, as reforms to establish road funds and impose fuel levies introduced alternative ways of revenue collection. As a result, transport authorities in Kenya and Tanzania have abolished or suspended their carrier licensing systems, while Kenya and Uganda have retained only the system of safety regulation.

In most developed countries, - as well as in Southern Africa – a shift from quantitative regulation to qualitative regulation had occurred much earlier, but in East Africa, most governments are only now moving in this

direction.[19] As shown in Table 1, a qualitative approach to licensing has several advantages, while it focuses on promoting intermodal competition through measures which allows each mode to exploit its inherent advantages and seeks to raise standards in service quality by focusing on carrier qualifications, financial standing and management capacity.

Table 1. Benefits of Qualitative Regulation of Road Transport

Advantages of a Qualitative Approach to Licensing
• Improved creditworthiness of road transporters and increased access to credit (reduced perception of risk on part of banks) • More effective marketing of transport services to customers • Improved service (cost, timeliness of delivery) • More effective competition • Lower transport costs • Improved road safety (better trained drivers / less mechanical failures) • Improved compliance with traffic laws and vehicle loading limits • Increased options to introduce self-regulation and reduce the regulatory burden

Source: Nathan Associates Inc.

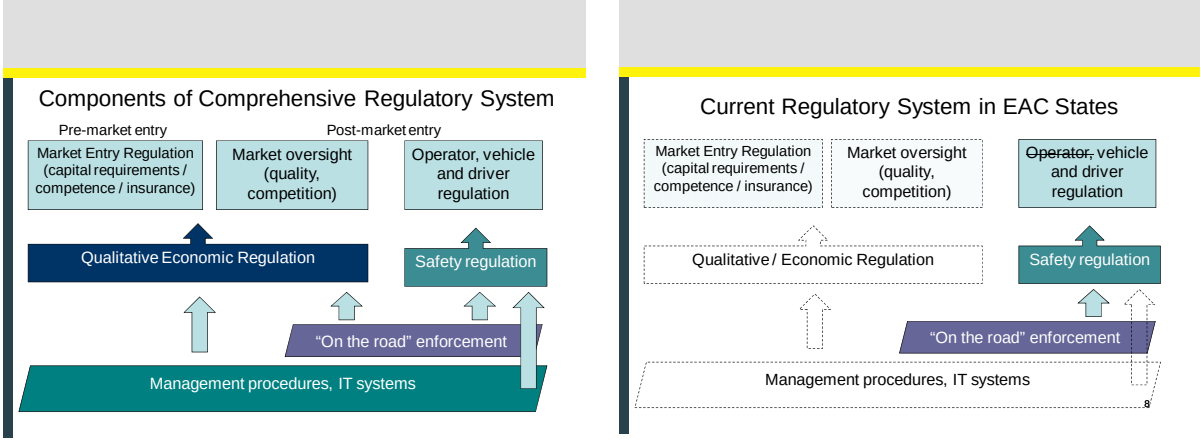
In addition to the benefits described in the table, introduction of qualitative regulation can also help to address a number of other issues which states have individually flagged as concerns in their transport policies. These include:

- The need to guard against anti-competitive practices, such as tariff collusion.
- The need for effective data collection and management systems to build profiles of carriers, vehicles and drivers. Such systems are essential for better enforcement, countering practices such as overloading and improving standards of vehicle maintenance, safe operation and safe driving (the need for better and more relevant road transport data in Tanzania has, for example, prompted SUMATRA to introduce an annual registration requirement for all freight operators in 2008).
- Managing capacity in the regional market. The road transport market is dominated by carriers based in Kenya and Tanzania. Authorities in other states have a legitimate concern to promote the growth of their domestic transport industries and to seek a balanced share for those industries in the regional market.
- Effectively administering regional transport agreements.

Aside from Tanzania, there is evidence that other EAC states are also introducing measures that could pave the way for qualitative operator licensing and comprehensive pre- and post-market entry regulation (e.g. Rwanda). However, as shown in the figure below, all EAC states are still some way from achieving this goal.

[19] In the European Union and Australia, for example, an alternative system of regulation is pursued which aims to raise quality standards to ensure that road transport services are delivered as efficiently and cost-effectively as possible, while also adhering to adequate safety standards.

Figure 3. Components of Comprehensive Regulatory System vs. Current System in EAC States



Source: Nathan Associates Inc.

REGIONAL INSTRUMENTS

COMESA Single Carrier License / EAC Tripartite Agreement on Road Transport

In theory, two regional agreements apply to road transport on the corridors. Under the Northern Corridor Transit and Transport Agreement, Protocol n° 6 commits the parties to implement the COMESA Single Carrier License. However, as all Northern Corridor countries (except the DRC) are also members of the EAC, the EAC Tripartite Agreement on Road Transport similarly applies to the Northern Corridor[20].

The COMESA Single Carrier License does not apply on the Central Corridor, as Tanzania is not a COMESA member (although it arguably applies to transport between Burundi, Rwanda, DRC and Uganda). However, the EAC Agreement does apply to the Central Corridor, and would also cover transport between Kenya and Tanzania on routes not part of the corridor.

At present, neither one of the agreements is being applied. During 2009, the Tripartite tasked COMESA with coordinating activities between the RECs to develop a new multilateral transport agreement. To this end, SADC is seeking funding for a study to develop such an agreement[21].

Both the COMESA and the EAC Agreements aim to liberalize access to the cross-border road transport market based on a single carrier license or permit. Carries are licensed only in their states of origin. The agreements require authorities in other states to recognize such licenses/permits on the basis of reciprocity. Effectively, the need for a second or third permit in the country of destination or transit is abolished.

The single carrier regime is applied in many jurisdictions worldwide and has been successfully implemented in Southern Africa for almost 20 years[22]. It has noteworthy advantages in terms of eliminating a number of non-

[20] Although the Agreement was concluded prior to Burundi and Rwanda joining the EAC, the treaties of accession of the two states specify that they are bound by all prior agreements concluded by members of the community.
[21] Report of the 2nd Extraordinary Meeting of the COMESA-EAC-SADC Tripartite Task Force, 18 September 2009, Lusaka, Zambia.

tariff barriers (many of which currently plague road transportation on the corridors) and more effective transport demand management. Aside from the abolition of a permit requirement in the state of destination/ transit, these include:

- Mutual recognition of weighbridge certificates;
- Mutual recognition of driving licenses and vehicle road worthiness certificates;
- Mechanisms to manage market share between carriers of the respective participating countries;
- Mechanisms for exchange of information on permits/license issued and data on transport and traffic offences; and
- Procedures to bar non-compliant carriers from undertaking cross-border transport.

As demonstrated in Southern Africa, the implementation of a similar system on the Northern and Central Corridors holds significant potential benefits for the region. However, implementation has been held back in all states by a combination of factors:

- The overlap between the COMESA and EAC regimes on the Northern Corridor (both propose comparable regulatory systems, although the EAC Tripartite Agreement is more modern and built on the earlier experience with these agreements in Southern Africa).
- Lack of domestication of regional agreements. Implementation requires legislative amendments in all member states. In the absence of the latter, national officials have no mandate to apply the regional agreements. Implementation also requires additional resources in terms of hardware, software programmes, the design of procedures, etc. Without a statutory mandate, national authorities are constrained in securing funds to recruit personnel, purchase equipment, print forms, permits, etc.

The lack of implementation has far reaching consequences for the road transport industry. Not only are the benefits of liberalization and abolition of NTBs not secured, but there is evidence that individual states are implementing (or tolerating) protectionist measures and contemplating new regulatory barriers which undermine the spirit of the agreements (see discussion below with regard to individual states).

The implications of the lack of implementation are appreciated at REC level. The EAC Secretariat views both the EAC Transport Strategy which is under development and the Trade and Transport Facilitation study as steps towards securing more effective implementation of the agreement.

EAC Common Market Protocol

The Common Market Protocol was signed in 2009. Member states agreed that 1 July 2010 would mark the commencement date to operationalize the Protocol. The Protocol binds the member states to work towards realizing a common market characterized by the free movement of people, goods, services and capital. Transport has been identified as a sector in which states will progressively liberalize the free movement of

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[22] In terms of the Southern African Customs Union Memorandum of Understanding on Road Transport. A similar system operates in terms of bilateral agreements between South Africa, Mozambique, Malawi, Zimbabwe and Zambia, and between Namibia, Zambia and Zimbabwe.

services. As shown in Table 2, the Protocol identifies four modes by which services can be supplied, following the same categorization as the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS).

Table 2. Modes of Supply in Services

Mode 1: Cross-border Supply	Mode 2: Consumption Abroad	Mode 3: Commercial Presence	Mode 4: Presence of Natural Persons
Services supplied by a service provider in State A to a consumer in State B without the service supplier physically moving from State A	A consumer from State A purchases services from a service provider in State B	Service provider from State A establishes a physical presence in State B to supply services to consumers in State B	Natural person from State A moves to State B to supply services in consumers in State B

Source: Nathan Associates Inc.

Member states have made a number of commitments to liberalize the transport services market. These commitments cover all transport modes and are contained in a Schedule to the Protocol. The commitments range across all four modes of supply and apply both to market access and national treatment.

With regard to road transport, all states have made identical commitments to eliminate restrictions on the freedom to supply services by 2010. The only exception is Kenya, which has reserved the right to restrict the commercial presence of road freight hauliers from other member states. This implies that commercial trucking companies from other EAC states do not have an automatic right to establish offices and premises in Kenya and to market their services to Kenyan consumers.

The impact of commitments made in respect of other transport modes are discussed separately below.

Burundi

Existing legislation only regulates domestic road transport within Burundi. There is no regulation of cross-border transport, whether undertaken by a Burundian or foreign carrier.

Loi n° 1/04 of 2009 regulates entry to the domestic road transport market. International road transportation is expressly excluded from the law[23], and the relevant multilateral or bilateral instrument applies.[24] Truckers are subject to registration by the Ministry of Transport and provincial authorities. Both the owner ("entrepreneur") and the driver must meet conditions pertaining to good repute, financial standing, and professional competence.[25] Standards for compliance with these conditions and their assessment must be stipulated in a

[23] Arts 2 and 94.
[24] However, in practice, it can be assumed that most Burundian operators undertaking cross-border transport would also be active in the domestic market and hence subject to regulation by the Ministry.
[25] Art 74-75, Loi n° 1/04 portant sur les Transport Interieurs Routiers

ministerial decree. To date, no such decree has been issued, although a draft text is currently under consideration.[26]

Currently, no licensing requirement applies to foreign transporters entering Burundi for local delivery or transiting Burundian territory. However, according to the Ministry the introduction of a licensing requirement is under consideration. If introduced, the licensing of foreign truckers would conflict with the proposed liberalization of market access envisaged under both the COMESA and EAC regimes.

Democratic Republic of Congo

Road transport is technically regulated by the Ministry of Transport and Communications. Licenses are issued for goods transport distinguished in the basis of truck size (under 5 tons, between 5-9 tons, 10–19 tons and over 20 tons).[27] A separate license is issued for international transport. Formerly the Ministry also collected a toll on foreign vehicles entering the DRC at border posts, but this function is now transferred to the Road Fund.

Technical regulation of road transport is undertaken in terms of the Code de la Route. With regard to goods transport, the law only addresses equipment standards and driver licensing. Provisions governing vehicle dimensions and loads are rudimentary and inadequate to support effective regulation.[28]

Kenya

Since 1995, the Ministry of Transport's functions relating to the registration and licensing of vehicles have been transferred to the Kenya Revenue Authority (KRA). The functions transferred to the KRA initially included the licensing of commercial goods and passenger vehicles.[29] With the introduction of a fuel levy in 2006, the licensing of goods vehicles previously undertaken by the Transport Licensing Board (TLB) was abolished. Amongst others, licensing entailed that the TLB could undertake enquiries into a license holder's "reliability" and "financial stability" as a means of regulating the quality of transport services offered in the market[30].

Regulatory activity – aside from the requirement of driver licensing and vehicle roadworthiness testing – is now limited to the licensing of (a) vehicle carrying goods under customs control and (b) transit vehicles.[31]. As discussed below, the KRA undertakes licensing largely as a revenue-protection activity. There is no evidence that consideration is given to the impacts of the licensing regime on transport efficiency – in fact current rules severely constrain the cost-effective use of transport equipment and entail a significant extra cost for the trucking industry.

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[26] Copy of text could not be obtained as they are still under internal consideration.

[27] Arrête interministeriel n° 409/CAB/MIN/TC/003/2006 et n° 100/CAB/MIN/FINANCES/2006 du 14 juin 2006 portant fixation des taux des droits, taxes et redevances à percevoir à l'initiative du Ministère des Transports et Communications.

[28] Loi n° 78/022 du 30 août 1978 portant Nouveau Code de la route.

[29] In terms of the Transport Licensing Act.

[30] These qualitative criteria are comparable to those applied in the European Union where carriers are required to meet standards relating to good repute, financial standing and professional competence.

[31] It is observed that vehicles involved in carrying goods between EAC states are referred to colloquially as "transit vehicles". In fact, "transit" is defined in the EAC Customs Management Act as "the movement of goods imported from a foreign place through the territory of one or more of the Partner States to a foreign destination" (Sec 2). This implies that goods carried from Kenya for delivery in Uganda under customs bond are not transit goods and the vehicles are not transit vehicles as the entire journey is still within the EAC. The correct description for the latter would be "movement under customs control".

Licensing of vehicles carrying goods under customs control and vehicles carrying transit goods is a requirement under EAC customs legislation.[32] The regulations further permit the commissioner to attach such conditions to the license as he deems fit. One such condition is that the licensed transit vehicle must be used exclusively to convey transit goods or goods under customs control (see portions in bold in forms C 32 and C 45 in Box 1). This implies that the vehicle (rigid vehicle, truck tractor and/or trailer) is effectively excluded from being used to convey goods destined for domestic destinations. Truckers operating licensed transit vehicles are thus forced to keep such plant idle if no transit loads are available and also may not load domestic goods to compensate for empty backhauls when using such vehicles. Similarly, vehicles are obliged to travel only on appointed transit routes.

The EAC Customs Management Regulations have been revised and new draft regulations have been prepared[33]. Under the revised regulations, a transit license is not required for a vehicle licensed in a COMESA or SADC member state. However, a certificate of approval issued by the Commission is still required. The likely impact of these changes remains to be assessed.

Box 1. Examples of EAC Customs Vehicle Licenses

C 32 EAST AFRICAN COMMUNITY CUSTOMS VEHICLE/VESSEL LICENCE FOR CONVEYING TRANSIT GOODS Subject to the observance by the Licensee of the provisions of the East African Community Customs Management Act and the conditions prescribed herein, a License is hereby granted to…….…… ……PIN/TIN……of…… ……..……from…… ……until the 31st December, for the vehicle/vessel(make/name)…… ……..……(Registration nº)……..… for the conveyance of goods in transit through the Partner states. SPECIAL CONDITIONS FOR VEHICLES CARRYING TRANSIT/RE -EXPORT GOODS 1. The license shall be permanently affixed to the licensed vehicle in a prominent position where it is visible at all times **2. The licensed vehicle shall be used exclusively for the carriage of goods in transit/re-exports and for no other purpose, unless otherwise authorized by the Commissioner** 3. The licensed vehicle shall travel through the partner states only along those routes appointed in accordance with the provisions of the East African Community Customs Management Act. 4. The licensed vehicle shall be distinguished by the following inscription in yellow painted letters, not less than 31cm high, on both sides of the vehicle. TRANSIT GOODS 5. The licensed vehicle carrying goods in transit/re-	C 45 EAST AFRICAN COMMUNITY CUSTOMS VEHICLE/ VESSEL LICENCE FOR CONVEYING GOODS UNDER CUSTOMS CONTROL 1. Date of issue……. Date of expiry …….….. 2. Attesting that the means of transport specified below fulfils the conditions required for admission to inter-EAC transport of goods under Customs seals. 3. Operator's name and address…… …… TIN/PIN ……..….. 4. Vehicle Registration nº …… Capacity ……. 5. Make ……Type ……... 6. Engine nº ……...…….…… Chassis nº …….….….. 7. Transporter's Reg. nº …… 8. Other Particulars ……..…… 9. Issued at …….…….…… (place) on …….....…….. (date) 10. License fee (Dollars) …….. Receipt nº …….of ……..…… COMMISSIONER: Note: This certificate must be framed and exhibited in the cab of the means of transport. If not in use or on a charge of the owner or carrier or on expiry of the period of validity of the certificate or if there is any material change In any essential particulars of the means of transport must be surrendered to the issuing authority. Conditions 1. This certificate must be permanently affixed to the approved vehicle in a permanent position where it is visible at all times

[32] Reg 210(3)
[33] East African Customs Management Regulations, 2010

exports shall be sealed by the Proper Officer except in the case of 'exceptional loads' as defined in regulation 108(7) or in any special case otherwise authorized by the Commissioner 6. (Any other special conditions)…… …… …… COMMISSIONER: Fees paid dollars …… Receipt nº …… dated……at……	2. It must be readily available on demand for verification by the "Proper Officer" 3. It shall not be sold or transferred in any manner without written approval of the Commissioner 4. The approved motor vehicles shall travel only upon those appointed transit routes 5. **The licensed vehicle shall be used exclusively for the carriage of goods under Customs Control, other than transit, and for no other purpose, unless otherwise authorized by the Commissioner** Types of Body: a. Flat/platform body b. Flat with side drops c. Box body with sailing provisions d. Tanker for carrying liquid products

Source: Nathan Associates Inc.

Foreign goods vehicles entering Kenya are required to obtain an authorization permit[34]. This requirement does not apply to a vehicle issued with an international certificate or a COMESA license. As the latter are not issued in any of the states, this implies that all foreign commercial vehicles entering Kenya are subject to the permit requirement.[35]

As discussed above, Kenya has qualified its offer under the Common Market Protocol whereby it reserves the right to restrict the commercial presence of carriers from other EAC states in its territory. It should be noted that no other EAC state restricts market access in this way. The Kenyan approach introduces a potential hurdle to the creation of a common market in transport services. As seen in Southern Africa, one of the effects of market liberalization was that trucking firms have grown into regional operators by establishing commercial presences in various countries where they operate. For the most part, this development has had beneficial impacts across all countries in terms of improving the offer of transport services and ensuring competitive pricing[36].

Rwanda

Goods transport is regulated by the Rwanda Utilities Regulatory Agency (RURA).[37] Amongst others, RURA is responsible for verifying that operators have adequate financial means to finance their operations, protecting users from anti-competitive practices and ensuring that operators comply with legal requirements governing their operations.[38]

RURA has issued draft regulations governing goods transport operations which were subject to public consultations in May 2010.[39] Under the draft regulations, all providers of goods transport services are to be licensed by RURA. The regulations also apply to foreign truck owners, who must obtain a transit license if they

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[34] Rule 7A (5), Traffic Rules
[35] The permit fee is $20 for a vehicle not exceeding 3 tons tare weight.
[36] Raballand, G, C Kunaka and B Giersing, "The Impact of Regional Liberalization and Harmonization in Road Transport Services", World Bank, 2008.
[37] Established in terms of Law 39/2001 of 13 September 2001
[38] Art 5. The extent to which actual verification is done by the RURA could not be determined.
[39] Board Decision nº …/… of …/2010 regulating the functioning of Goods transport on Rwandan Territory (draft).

intend operating across Rwanda territory[40]. In addition to technical specifications applicable to vehicles, license applicants must meet several requirements such as proof of roadworthiness and insurance.[41] The draft regulations contain several potentially restrictive provisions:

- Companies applying for licenses are subject to a minimum fleet size requirement (i.e. if a company owns less than the specified number of vehicles, no license may be issued).[42]
- The Licensing Board is empowered to set tariffs and such tariffs form part of the licensing conditions. Hence, the Board may interfere in the market's price setting function.

Tanzania

Formerly, goods transport was subject to licensing by SUMATRA.[43] As part of the licensing procedure, SUMATRA could take into account the applicant's reliability, financial stability and facilities and previous conduct.[44] However, as in Kenya, the issuing of operating licenses for goods vehicles in Tanzania has been abolished. Moreover, the Transport Licensing Act is being reviewed and SUMATRA is considering options to introduce a system of operator licensing based on quality and safety standards for operators, drivers and vehicles..In the interim SUMATRA has introduced a system of operator registration mainly on order to build a database so that it can execute its mandate to monitor and regulate transport prices. Since 2008, SUMATRA requires all truck operators register their vehicle details annually on the basis of which a operator decal ("sticker") is issued which must be affixed to the vehicle. The registration process acts as a form of safety regulation in that an operator is required to provide a copy of the vehicle inspection report[45] and proof of third party insurance. SUMATRA also verifies that the vehicle has been registered by the TRA. It is anticipated that the registration requirement will provide the basis for the introduction of more extensive quality standards for freight operations (a system of quality standards has already been introduced for passenger transport).

Previously, foreign commercial vehicles were also subject to a licensing requirement, but this was abandoned in 2004/5.

In common with Kenya, the Tanzania Revenue Authority (TRA) also licenses vehicles carrying transit goods[46]. Such vehicles may only be used to undertake cross-border operations, but this restriction only applies to a trailer or a rigid vehicle, not a truck tractor. Hence, Tanzanian transporters enjoy somewhat more flexibility in managing the utilization of transport equipment than their Kenyan counterparts. The TRA have also recently permitted transit operators returning from international trips to pick up backhauls from locations within

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[40] Art 2. This provision conflicts with the intended liberalization of market access for cross-border transport as envisaged in the Tripartite Agreement and COMESA Single Carrier License regime.
[41] Art 9
[42] Art 9.2
[43] Sec 25(3), Transport Licensing Act, 1973
[44] Sec 73
[45] This is basically a roadworthiness certificate issued by the Police.
[46] This is a requirement under the EAC Customs Management Regulations. Confusingly this license issued to the carrier is referred to colloquially as a "transporter's license", while the separate license issued to the vehicle is known as a "transit license". The transporter's license fee is TSH 1 million, while a vehicle transit license is $ 15 for each vehicle. In addition, a bond must be provided to the value of $ 10,000. It should also be noted that intra-EAC transport does not, strictly speaking fall within the "transit transport", as transit has been defined as transport to a destination outside the customs union. Intra-EAC movement of goods under bond is defined as "movement of goods under customs control". In practice, however, TRA is treating intra-EAC transport as "transit", as the various EAC revenue authorities are not yet mutually recognizing each other's licenses.

Tanzania provided they remain on the designated transit route. For example, a vehicle returning from Kigali to Dar cannot divert to pick up a return load from Mwanza. At present, this arrangement is a concession granted by the Commissioner and thus subject to reversal at any time.[47]

Uganda

The Traffic and Road Safety Act, 1998 regulates the licensing of goods vehicle transport which is entrusted to the TLB[48]. However, the licensing of goods vehicles has not yet been introduced as the necessary capacity still needs to be developed within the Ministry. The establishment of a multi-sector transport regulator has been proposed and in future this function may be assumed by the regulator.

It has been reported that Ugandan shippers face constraints in Kenya due to action by Kenya Police as the latter insist that trucks carrying goods to Kenya or transiting Kenya be Kenyan-registered.[49] No statutory basis for this action could be identified and if correct it would amount to a contravention of Kenya's obligations under Art 5(b) of the Northern Corridor Transit and Transport Agreement.

Findings and Recommendations

Regulatory gap in road transport

Despite road transport accounting for more than 90 percent of all transport in the member states, there is a policy and legal vacuum in the road transport sector, as measures have not yet been introduced to replace the former system of quantitative regulation with qualitative regulation (see Table 3). This situation is most prominent in Kenya and Uganda and to a lesser extent in Tanzania. Kenya has devolved authority over road transport to the KRA, while Uganda has not yet implemented the regulatory regime envisaged in its 1998 legislation. Tanzania abandoned its previous regulatory system, and is only now taking steps to introduce operator registration as a precursor to progressively introducing qualitative regulation. Both Burundi and Rwanda are contemplating new regulatory measures, but unfortunately the proposals under consideration reverse the proposed market access liberalization envisaged under regional agreements. In Rwanda, the proposed measures have potential anti-competitive effects.

Table 3. Application of Qualitative Regulatory Criteria in EAC Member States

Typical Qualitative Regulatory Criteria	Burundi	Kenya	Rwanda	Uganda	Tanzania
Good Repute	Under consideration	Abandoned	No	Yes, but not applied	Abandoned
Financial Standing	Under consideration	Abandoned	No	No	Abandoned
Professional Competence	Under	No	No	No	No

47 Personal communication, TATOA.
48 Sec 83
49 A Survey of Non-Tariff Barriers that affect Ugandan Imports and Exports within EAC and COMESA Countries, August 2007.

Typical Qualitative Regulatory Criteria	Burundi	Kenya	Rwanda	Uganda	Tanzania
	consideration				
Operator Registration / Appointment of Transport Manager	Yes	No	Yes	No	Yes, partially
Insurance	Yes	Yes	Yes	Yes	Yes
Adequate Workshop / Maintenance Facilities	No	Abandoned	No	No	Abandoned
Regulation of Conditions of Carriage	Yes	No	Partially	No	No

Source: Nathan Associates Inc.

The lack of regulation has several negative consequences:

- Due to low or non-existent entry barriers, it remains easy for fly by night operators with old, unsafe vehicles to enter the market. Thanks to low overheads (as a result of deferring maintenance of vehicles, etc), these operators are able to engage in cut throat competition and undercut larger, more established carriers. The net effect is to lower service standards and to perpetuate high levels of vehicle breakdown and general lack of road safety.
- Low quality levels in the industry increase the risk perception of financiers (banks, etc). This translates into an unwillingness to provide credit for capital investment and/or higher interest rates putting upward pressure on transport prices.
- In the absence of a clear policy on qualitative regulation, governments have also not invested in developing data management systems to support licensing activity. Authorities do not have access to real-time information on carriers, drivers, vehicles, transport capacity and other market indicators (although states like Tanzania are implementing measures to overcome this). This has severe consequences for authorities' planning abilities. Moreover, it implies that they are unable to manage issues such as competition between local and foreign truckers as they have no access to reliable data on supply and demand in the market. Law enforcement is also seriously compromised. In the absence of accessible data linking vehicles to owners/carriers, authorities have no ability to weed out offenders, e.g. by linking access to permits with a good record of complying with traffic regulations such as vehicle load limits.
- Poor competition climate. As market participants are not subject to similar criteria, competition between large and small firms is distorted. .

- The benefits of regional agreements aimed at liberalizing access to the cross-border market are not secured. As most governments are not building domestic regulatory capacity, their ability to regulate the international market is similarly compromised.
- Lastly, as discussed below, the regulatory gap creates an environment where non-transport related issues start to dictate market behaviour. This is the case with the licensing regime for transit goods and the transport of goods under customs control.

R 1: The EAC member states must take prompt action to implement the EAC Tripartite Agreement on Road Transport on the Northern and Central Corridors and for all other road transport between their territories using other routes[50]. To do so, technical assistance is likely to be required to:

- Revise existing legislation and adopt new legislation to domesticate the Agreement in the national laws of the member states;
- Design licence application, adjudication and issuing procedures and forms;
- Design license administration software systems and procure hardware;
- Train personnel in the handling of applications, adjudication and issuing;
- Train law enforcers in the application of on-the-road enforcement of the rules under the Agreement;
- Develop transport supply and demand capacity to manage competition between carriers from different states; and
- Undertake monitoring and evaluation.

R 2: EAC member states must harmonize road transport policy and adopt a common regulatory regime for road transport aimed at raising quality standards and improving safety. As discussed in Chapter 1, consideration should be given to an ECA Road Transport and Traffic Act which provides a framework for the regulation of international and domestic road transport supported by an appropriate institutional framework. Tanzania's system of economic regulation is the most advanced and offers a potential model for the region, but needs further refinement. Such a policy must adopt clear goals with regard to desired economic, social and environmental outcomes and propose a comprehensive regulatory system in order to achieve them. Technical assistance is likely to be required to:

- Design the features of the regulatory system through a process of stakeholder consultation;
- Develop an appropriate institutional framework;
- Draft an EAC Road Transport and Traffic Act and implementing regulations;
- Define standard for access to the road transport profession;

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[50] While it is appreciated that the Tripartite are currently reviewing the various agreements prepared by the RECs, the consultant's view is that the EAC states can secure significant short term benefits by implementing the EAC Tripartite Agreement, especially as the process of reaching consensus between COMESA, EAC and SADC may be a lengthy one bearing in mind that a similar initiative by SADC was initiated as far back as 2002. Moreover, it is unlikely that the features of a revised system will depart significantly from what the EAC has already agreed, especially as it is based on a tried and tested model.

- Develop procedures for evaluating applicants and issuing operator licenses;
- Design support software and procure hardware to operate a multi-module database;
- Conduct training of regulatory and law enforcement personnel; and
- Undertake monitoring and evaluation.

(It should be noted that the process of domesticating the EAC Tripartite Agreement as proposed under R .1 can be folded into the adoption of the EAC Road Transport and Traffic Act).

Distorting effects of customs regulations

The regulatory vacuum has also meant that policy towards road transport has been dictated by the tax-collection concerns of revenue authorities. While these concerns may be legitimate, revenue authorities are not technically-competent to formulate policy for road transport, nor able to implement regulatory frameworks aimed at stimulating efficient service delivery, ensuring cost effective operations and promoting operator, driver and vehicle safety. The decision by the Kenya authorities to transfer all regulatory functions to the KRA appears particularly ill-advised.

The impact of the licensing regime in Kenya and Tanzania being implemented by the revenue authorities is a major constraint to the efficient use of transport equipment and a contributor to the high transport costs that burden the region. The restrictions imposed on the ability of carriers to freely utilize vehicles licensed for cross-border operations, reduce efficiency and raise costs. A better compromise needs to be achieved between concerns to prevent revenue loss and optimal usage of transport equipment.

R 3: The license conditions whereby transit vehicles and vehicles carrying goods under customs control may not be used for domestic and other types of carriage must be phased out. It must be recognized that the current situation arises from legitimate concerns on the part of all stakeholders: (a) customs authorities wish to combat illegal dumping of import goods which are transported under bond and destined for export while (b) transporters are concerned with optimizing their investment in transport equipment. To this end, it is recommended that the EAC facilitate discussion between revenue authorities, transporter associations and transport ministries in order to arrive at a suitable arrangement. In this regard, the approach adopted by the TRA to permit transit vehicles to load backhauls from domestic destinations provided that the vehicle travels the same route and complies with customs clearances at destination, offers a starting point which could be emulated in other countries.

Developing the regional market in road transport services

As noted above, Kenya has reserved the right to restrict transport firms from other EAC states to establish a commercial presence in Kenya. No other EAC state imposes such restrictions.

R 4: It is recommended that Kenya reconsider its restriction on market access for foreign trucking firms. An open market in trucking services has demonstrated benefits in terms of improved transport efficiencies and maintaining competitive pricing in Southern Africa. Similar benefits are likely to be captured once the Tripartite Agreement on Road Transport is implemented.

Road Infrastructure

Most states have implemented extensive policy and legal reform to overcome long-standing constraints to effective road management and funding. Dedicated executive agencies responsible for managing the primary road networks have been set up in most states[51] (exceptionally, Rwanda has set up an agency responsible for road infrastructure as well as ports and airports (and potentially, railways)). Separate road funds funded from fuel levies and other sources also operate in all states.

States have also all entrusted vehicle overloading control to road agencies (although there are as yet no functioning weighbridges in Burundi or Rwanda). However, only Tanzania has implemented a system of administrative controls based on economic fees for overloading, while weighing practices in all states with existing weighbridges continue to be criticized for incidences of corruption and poor management which result in long delays. Finally, all states still need to domesticate the agreed harmonized regional load limits in national law.

Private investment in road infrastructure remains a new frontier for all states. Kenya is most advanced in embarking upon PPP type contracts, while the legal framework for PPPs is still underdeveloped in all states.

ROAD NETWORK MANAGEMENT, FUNDING AND PPPS

Burundi

The classified roads that comprise sections of the Northern and Central Corridors in Burundi fall under the Ministry of Public Works and Equipment and are managed by the Office Nationale des Routes. The total classified network comprises some 4,800 km.[52] A road fund – the Fonds National Routier - has been established which is funded primarily from a fuel levy. Other sources of revenue are: import duties on vehicles, road tolls and driving license fees.

To date, Burundi has not undertaken any PPPs in the roads sector. There is also no enabling legal framework for road PPPs.

Democratic Republic of Congo

The national and road network of the DRC is managed by the Office des Routes (ODR). As noted above, the ODR has been earmarked to be restructured into a public agency ("établissement public"). Under law, a public agency disposes of its own assets and enjoys managerial autonomy subject to oversight of the sector ministry. It is also able to determine its own service conditions.[53]

A road fund – the Fonds National d'Entretien Routier (FONER) was established in 2008.[54] The fund is placed under the administrative oversight of the Ministry of Finance, while technical oversight is rendered by the Ministries of Public Works and Transport. Overload control is vested in the Ministry of Public Works. The

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[51] The status of the Office Nationale des Routes in Burundi could not be verified.
[52] An Infrastructure Action Plan for Burundi, AfDB, September 2009, p 169.
[53] Loi n° 08/009 du 7 juillet 2008 portant dispositions generals applicable aux établissements publics.
[54] Loi n° 08/006-A du 7 juillet 2008 portant creation d'un Fonds national d'Entretien Routier.

sources of the fund include: (a) levy on petrol and liquefied petroleum gas; (b) road tolls levied on national routes (except on roads subject to concessions); and (c) penalties, budgetary allocations and donations.

Kenya

Kenya has recently embarked on extensive institutional reforms in the roads sector. Three separate road agencies have been established, respectively responsible for national highways (international trunk roads, national trunk roads and primary roads), rural roads and urban roads.[55]

The Kenya National Highways Authority (KenHA) was mobilized in 2008 and is responsible for the sections of the Kenya road network on the Northern Corridor. KenHA is responsible for implementing a number of proposed PPPs in the roads sector, notably the Nairobi bypass project.

Kenya has recently adopted comprehensive PPP legislation permitting "procuring entities"[56] to enter into a broad spectrum of PPP-type arrangements.[57] The regulations comply with international and regional benchmarks in laying down rules governing the identification of PPP projects, project preparation, bidding and adjudication of bids and management of PPP contracts.

While the PPP regulations authorize KenHA to enter into PPP type contracts, the Public Roads Tolls Act was also updated[58] to permit either the Minister or KenHA to enter into PPP arrangements and to mandate the road concessionaire to collect tolls and to erect weighbridges. However, the Act still retains the requirement that concession agreements must be approved by the National Assembly prior to signature.[59] Moreover, an additional requirement has been added whereby the tolling regime also requires prior approval of the legislature.[60] These conditions are likely to dampen investor interest as it introduces a high degree of political risk at a fairly late stage in a project. There is also the danger that the approval of agreement and tolls may become subject to political influences.

Rwanda

Rwanda has recently undertaken extensive institutional reforms in the roads sector. The Rwanda Transport Development Agency (RTDA) was established in 2010 to manage and control road, airport, rail and inland waterway infrastructure. The Agency is mandated to act as project manager of infrastructure projects, as well as undertaking rehabilitation and construction work itself. It is also authorized to grant (unspecified) concessions. Despite the power given to the RTDA to enter into concessions, further work is needed to create an enabling framework for roads sector PPPs. This includes specific legislation authorizing private toll collection. Legislation should also preferably specify a procedure for the adjustment of tolls.

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[55] Kenya Roads Act, 2007.
[56] Procuring entities include, amongst others, government ministries and parastatals such as KenHA.
[57] Public Procurement and Disposal (Public Private Partnerships) Regulations, 2009.
[58] See Schedule 5, Kenya Roads Act, 2007
[59] Sec 4A (3), Public Roads Toll Act, CAP 407
[60] Sec 4A(4)

A road fund was established in 2007.[61] It is funded from a fuel levy, road tolls levied on local and foreign vehicles, fines imposed for overloading, other traffic fines as well as transfers from the state budget and donor funds.

Tanzania

A national road authority, TANROADS, was established on July 1, 2000, under the Executive Agencies Act with responsibility for managing trunk and regional roads. TANROADS is also responsible for installing and operating weighbridges.

Tanzania established a road fund in 1998. The fund receives monies collected as road tolls, levies imposed on diesel and petrol, transit fees, heavy vehicle licenses, vehicle overloading fees or from other sources at the rates to be determined by Parliament. [62] All monies collected as roads tolls are deposited in the account of the fund and at least 90 percent of the money must be used for maintenance and emergency repair of classified roads and related administrative costs in mainland Tanzania in accordance with approved operational plans made by TANROADS and local authorities. A maximum of 10 percent of the money deposited in the fund may be used for road development and related administration costs in accordance with plans and budgets approved by the Parliament.

There is as yet no framework for roads sector PPPs in Tanzania. The outdated Highways Act was repealed in 2007 and replaced by the Roads Act[63]. The latter provides that the Minister may appoint a "road authority" for a specific road or roads. Amongst others, an authority may also enter into concession agreements with the private sector to finance and develop "selected roads"[64]. However, as legal framework for road PPPs, the Roads Act is inadequate[65]. An earlier Act, the Road Tolls Act, 1985 authorizes the levying of tolls at scheduled tolling stations and via a fuel levy. However, the Act was also not envisaged to serve as a basis for road PPPs, as it does not authorize the collection of tolls by private road operators on concessioned roads. Since the adoption of the Public Private Partnership Act 2010, it appears that the latter restriction has been overcome. The Act allows a Ministry, Department or Agency to enter into a PPP agreement whereby the private party performs one or more functions of the government entity[66]. This provision overrides all prior laws.

The Act creates an institutional framework to manage the PPP process. Unlike other states, Tanzania has created twin institutions: (a) a PPP Coordination Unit established in the Tanzania Investment Centre and (b) a PPP Unit in the Ministry of Finance. The role of the former is promotion, advice and coordination, as well as assessment of projects against affordability, value for money and risk transfer criteria[67]. It must also approve projects and feasibility studies and ensure that requests for proposals comply with feasibility study requirements. The Ministry of Finance's PPP Unit is responsible for verifying the fiscal impacts of projects and to advise the Minister when proposed projects have financing implications for government.

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[61] Law n° 52bis/2006 of 12 December 2007 determining the attributions, structure and functioning of the road maintenance fund.
[62] Roads Toll Act (Amendment n° 2), 1998
[63] Act n° 17 of 2007
[64] Sec 6(2)(c)
[65] For example, the Act is silent with regard to issues such as the power to collect tolls, procedures for the increasing tolls, etc.
[66] Sec 12, Public-Private Partnership Act, 2010
[67] Sec 7

The decision to establish two parallel PPP institutions can be questioned on efficiency grounds. It appears that both units will be evaluating projects from a financial viewpoint. This will require duplicating resources in two institutions which is likely to be difficult. Moreover, the interrelationship between the units is not clear. It would seem that the unit in the Ministry of Finance will only be involved during the latter stages of project preparation, while best practice suggests that it is preferable to involve the finance authorities earlier to address fiscal and affordability concerns. Overall, the law can be improved by introducing additional approval stages in line with the approach followed in Kenya. This ensures thorough vetting of projects and filters proposals to avoid poorly-prepared projects being submitted for bidding. Despite the fact that the Act now establishes a legal framework for infrastructure PPPs in Tanzania, there is still a need for a road specific enabling framework. (See discussion under "Findings and Recommendations" below).

Uganda

The Uganda National Roads Authority (UNRA) was established by the Uganda National Authority Act, nº 15 of 2006 and became operational on 1 July 2008. The UNRA is responsible for developing and maintaining the national roads network, managing ferries linking the national roads network and controlling axle overloading.

The Act provides limited authority for the private sector to provide "road services", but contains no clear mandate authorizing the National Roads Authority to enter into typical road sector PPPs such as R/BOTs and management contracts.[68]

A road fund has been established in terms of the Uganda Road Fund Act, 2008. The fund is sourced from road user charges[69], traffic fines, monies appropriated from the state budget and grants.

Findings and Recommendations

Lack of enabling framework for road PPPs

All states lack an enabling framework for road sector PPPs. Kenya has initiated some ROT contracts and is able to rely on general PPP rules to overcome shortcomings in its sector legislation to ensure that these PPPs can proceed. However, in the longer term Kenya, as well as the other states will require tailored roads PPP legislation. The principal advantage is to (a) build confidence in government's commitment to a PPP programme, (b) reduce perceptions of political and legal risk (thereby contributing to reducing project costs) and (c) clarify management roles, functions and responsibilities for project management and oversight.

R 1: Member states must revise existing road laws (or adopt new laws) to provide a comprehensive enabling framework for road infrastructure PPPs. Amongst others, such legislation must address:

- Designation of the contracting authority;
- Empowering the private road operator (management company / concessionaire) to erect toll stations, collect tolls, undertake traffic management, conduct weighing operations;

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[68] Sec 6 (1)(f), UNRA Act, 2006

[69] These are defined as including the fuel levy, international transit fees imposed on foreign vehicles, road license fees, overloading fines, bridge and road tolls and weight distance charges as imposed by Ministerial regulation.

- Procedures for toll adjustments; and
- PPP contract monitoring and evaluation (responsibilities and procedures).

Lack of PPP project identification, preparation and bidding rules

Apart from Kenya, (and more recently, Tanzania) the remaining states all lack appropriate rules governing PPP project identification, preparation and bidding. As discussed above, Tanzania has adopted new legislation in 2010, which require improvement to meet best practice. The main threats posed by the lack of dedicated PPP rules are:

- Lack of clarity on the part of government authorities about how to identify and prepare bankable projects.
- Vulnerability of projects to improper influence due to inadequate economic and financial evaluation and lack of proper due diligence regarding social, environmental and legal aspects.
- Poor project preparation resulting in (a) projects which do not attract competent bidders or (b) failed projects.
- Lack of investor interest due to perceptions of weak PPP management capacity within government.
- Inadequate appreciation on the part of government of fiscal risks associated with projects dependent on government guarantees.
- Inability on the part of contracting authorities to manage and oversee project implementation and compliance by the private party with contractual obligations.

R 2: Burundi, Rwanda and Uganda must adopt PPP project identification, preparation and procurement rules in line with best practice. **Tanzania must refine its PPP Act to clarify approval stages and institutional responsibilities**.

Limited PPP implementation capacity

PPP project implementation capacity is limited in all states. A PPP unit has been established in Kenya and legislation now provides for similar institution(s) in Tanzania. As yet, there are no PPP units in Burundi, Rwanda or Uganda.

PPP capacity constraints are common in many countries worldwide. Given the limited PPP activity in most states, it may be difficult to justify building extensive capacity in individual national PPP units.

R 3: EAC and member states must investigate options to bolster regional capacity in PPPs. One option that can be considered is the establishment of a regional PPP unit. The advantage of a regional unit would be to pool scarce expertise and thereby develop stronger PPP capacity than national governments may be able to build individually. A regional unit could develop into a centre of excellence and provide advisory services as and when needed for individual national projects. At the same time, it could act as support unit for regional projects which may in future be undertaken as PPPs. Technical assistance would be required to:

- Study institutional options and define the status of the unit within the overall structure of the EAC;

- Define the role, functions and duties of the regional unit vis-à-vis national units and contracting authorities;
- Recommend an organizational structure and staffing;
- Propose funding options; and
- Recommend and draft an appropriate legal instrument to establish the unit.

HEAVY GOODS VEHICLE OVERLOADING CONTROL

The harmonization of vehicle load limits and management of overloading is a long-standing objective of the RECs. After significant joint efforts by all three RECs, a general consensus was achieved on the harmonisation of limits and the implementation of best practices at a joint workshop in July 2008[70], the major features of which are listed in Box 2.

Box 2. Summary of Regional Consensus on Vehicle Overloading Control

- Axle Mass Load Limits:

Steering Axle	Single		8,000 kg
Non-Steering Axle	Single	Single tyres	8,000 kg
		Dual tyres	10,000 kg
	Tandem	Single tyres	16,000 kg
		Dual tyres	18,000 kg
	Tridem	Single tyres	24,000 kg
		Dual tyres	24,000 kg

- Permissible Gross Vehicle Mass: 56,000 kg
- Application of Bridge formula: P = 2,100 X L + 18,000 kg (P = permissible mass / L = distance (m) between centres of outer axles of any group of consecutive axles)
- Mass tolerance: 5 percent
- No quadrem axles permitted
- Decriminalisation of overloading offences and introduction of administrative penalties based on road damage costs

Source: Nathan Associates Inc.

Despite the above consensus, there are still significant policy and legal differences between the states. As shown in Table 4, several states need to revise legislation to adopt the regional approved limits and in some cases there are significant differences in the legislated limits. Moreover, legislation needs to be harmonized as

[70] Regional Workshop on harmonisation of Key Elements and Implementation of Best Practice in Overload Control, Nairobi, 10 – 11 July 2008.

categorizations differ, while the current provisions in the Burundi, DRC and Rwanda law are rudimentary and do not facilitate a proper comparison with rules in other states.[71]

Other factors that may be noted are:

- Two states (Burundi and Rwanda) have no operational weighbridge infrastructure and hence no overloading control system. Uganda had temporarily suspended weighing operations in an attempt to address issues of corruption at weighbridges, and has now restarted weighing operations.
- Only Tanzania has implemented the proposed decriminalisation of overloading offences and introduced administrative fees that penalize overloading on the basis of the economic costs of road damage.
- Repeated weighing of vehicles at every weighbridge along the corridor in Kenya and Tanzania is a long-standing source of complaints by the trucking industry. There appears to be no strategy to screen vehicles, selective targeting of repeat offenders or risk management. The authorities' practice of attempting 100 percent weighing is probably counterproductive and provides an incentive for corruption.

Table 4. Comparison of Axle Load and Gross Vehicle Mass Limits in Corridor States (in tons)

Axle Load	Burundi / DRC	Kenya	Rwanda	Tanzania	Uganda	Approved EAC/ COMESA / SADC Limits	Northern Corridor Agreement[72]
Single steering axle (2 wheel)	No data obtained	**8**		**8**	**8**	**8**	**8**
Single non-steering axle (2 wheel)		**6**		**8**	**8**	**8**	
Tandem steering drive operated (2 wheel)		12		14	14		
Single non-steering axle (4 wheel)		10	10	10	10	10	10
Single steering axle draw-bar controlled (4 wheels)		8		9	8		
Tandem non-steering axle (4 wheel)				12	12	16	16
Tandem non-steering axle (6 wheel)		14		15	12		

[71] A copy of the Burundian law was requested but could not be obtained.
[72] Art 16, Protocol n° 6

Axle Load	Burundi / DRC	Kenya	Rwanda	Tanzania	Uganda	Approved EAC/ COMESA / SADC Limits	Northern Corridor Agreement[72]
Tandem non-steering axle (8 wheel)		16	16	18	16	18[73]	
Tandem steering (Dolly) (8 wheel)		16		16	16		
Triple non-steering axle (6 wheels)		18		15	18	24	24
Triple non-steering (10 wheels)				21	18		
Triple non-steering axle (12 wheels)		24	24	24	24	24	
Triple super single tires (6 wheels)		18		24			
Gross vehicle mass (GVM) – 2 axle vehicle		18		18	18		
GVM 3 axle vehicle		24		26	24		
GVM 4 or more axles		28		28	30		
Vehicle plus semi-trailer with 3 axles		28		28	28		
Vehicle plus semi-trailer with 4 axles		34		36	32		
Vehicle plus semi-trailer with 5 axels		42		44	40		
Vehicle plus semi-trailer with 6 axles		48		50	48		
Vehicle plus draw-bar trailer with 4 axles		36		37	38		
Vehicle plus draw-bar trailer with 5 axles		42		45	42		
Vehicle plus draw-bar trailer with 6 axles		48		53	50		
Vehicle plus draw-bar trailer with 7 axles		56		56	56	56	

Source: EAC reports and national laws.

[73] Decision of the 27th Meeting of the COMESA Council of Ministers, 7 December 2009

Burundi

Legislation has been adopted to regulate vehicle load limits. However, due to the absence of weighbridge infrastructure, no vehicle load control is currently undertaken in Burundi.

Democratic Republic of Congo

Overload control is vested in the Ministry of Public Works.[74] No legislation prescribing axle load limits, gross vehicle mass limits, weighing procedures or penalties for overloading has been identified.

Kenya

KenHA is responsible for managing 13 weighbridges[75] and conducting vehicle load controls. Seven of these weighbridges occur on the Northern Corridor. Load checking is done by KenHA officials (or private weighbridge managers in some cases). If contraventions are detected, prosecutions are instituted (there is no option to pay admission of guilt fines and vehicles are impounded until a court has issued judgment).[76] In practice, prosecutions are handled by the Kenya Police acting under delegated authority from the Attorney-General.

KenHA intends introducing various improvements to the VOC system. A project to computerize weighing stations is underway so that real-time information can be relayed to KenHA as vehicles are weighed. KenHA appreciates that the prosecution of drivers only for overloading is not an effective deterrent (as the incentive for overloading exists on the part of owners and consignors). The introduction of a loading certificate is being considered, as a means of identifying consignors and obtaining evidence on the basis of which consignors can also be prosecuted. The introduction of the Tanzanian system of administrative penalties for overloading approved by the RECs is also under consideration. At present, overloading fines range between $ 50 (less than 1,000 kg overload) to $ 2,500 (more than 10,000kg overload).[77]

Current overloading practice is a source of extensive complaint by corridor users:

- According to truckers, vehicles tend to be stopped at all weighbridges along the corridor, even although there are no grounds for suspecting that a load has been increased since the last weight check. According to KenHA, transit vehicles are in principle only checked upon leaving Mombasa and again upon exiting Kenya at either Malabar or Busia. The delays resulting from excessive checks are acknowledged in the INTP and the policy proposes that weighbridges be privatized and sited only at major sources of freight and exit border points.[78]
- There are persistent (undocumented) allegations of corruption. These allegations are directed at both weighbridges under KenHA and private management.
- Weighbridges are allegedly not well-calibrated and tend to give widely different readings.

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[74] Art 10, Loi n° 08/006-A du 7 juillet 2008 portant creation d'un Fonds national d'Entretien Routier
[75] Located at Mariakani, Mtwapa (near Mombasa), Athi River, Isinya, Juja, Mahiu, Gilgil, Eldoret, Malabar, Webuye, Kisumu. Busia and Isebania.
[76] In practice, cases are disposed of within 24-48 hours and offenders invariably plead guilty.
[77] Schedule 1, Traffic Rules.
[78] INTP, 4.10.5

Rwanda

The RTDA is responsible for installing and operating weighbridges. As noted above, legislation specifying load limits is rudimentary and requires revision to create an effective enforcement framework. New legislation is reported to be under consideration.

Tanzania

Vehicle overloading control is the responsibility of TANROADS. There are eight permanent weighbridges on the network[79] and several mobile weighbridges are also used.

Tanzania is the only corridor state which has implemented a system of administrative penalties for overloading aimed at imposing fees that are commensurate with the economic costs of the overload[80]. Trucks tend to be weighed at each weighbridge. This practice, together with the requirement to report to Tanzania Revenue Authority checkpoints, increases journey times significantly. From the trucker's perspective, a rationalization of checkpoints to reduce the number of obligatory stops would be welcomed. Truckers argue that TANROADS needs to adopt a more flexible approach and not re-weigh vehicles that are, for example, carrying sealed loads when there are no reasonable grounds for suspecting that loads have been tampered with. It is estimated that reforms in this area could cut journey times between Dar and Kigali by a full day.

Uganda

Uganda issued new vehicle load and dimension regulations in 2009. These regulations authorize the use of fixed and mobile weighbridges. The regulations still impose fairly modest fines for overloading. These range from $135 for a first offence to double that amount for subsequent offences. As shown in Table 4, the most recent regulations do not fully align the Uganda limits with those proposed by the RECs.

Findings and Recommendations

Long-standing delays in harmonizing load limits and overloading control strategy

Despite recorded agreement between the RECs and individual states, axle mass limits are still not harmonized. Gross vehicle mass limits have been harmonized at 56,000 kg except for Burundi and Rwanda. Moreover, only Tanzania has implemented the REC-approved decriminalisation of overloading offences and administrative penalty system, while this is under consideration in Kenya.

R 1: It is recommended that all states revise their legislation to (a) implement the REC-approved load limits and (b) adopt the administrative system of overloading control. Two options are available: (a) revision of individual national laws or (b) the adoption of an EAC Act on Vehicle Overloading Control. The former is likely to be a lengthier process, but could be helpful in ensuring that there is national buy-in for the process. The adoption of an EAC Act may be a speedier route to adopting a regional benchmark, but must be accompanied by thorough national consultation to ensure buy-in by all states.

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[79] At Kurasini, Kibaha, Mikese, Dodoma, Singida, Mwendakulima, Nyakahura and Isaka.

[80] However, under the same regulations carriers of abnormal loads are being required to pay 8x the overloading fee, which amounts to over-recovery of the costs of the overload. The impact on transport costs for importers of over-sized capital goods such as the mines is reported to be significant. This approach is arguably based on a misinterpretation of the regulations by TANROADS personnel and a separate system of fees for the carriage of abnormal loads should be implemented

Poor enforcement

Poor enforcement and ineffective weighbridge management practices are partially a result of the current regulatory vacuum in road transport regulation discussed in the previous section. None of the states have an efficient system of pre- and post-market entry qualitative regulation to enable the authorities to take effective action against carriers cited for overloading or other transport offences. As a result, the only enforcement option remains on-the-road weighing of vehicles in order to detect and penalize offenders. The introduction of qualitative licensing will provide authorities with additional weapons in their enforcement arsenal. This would include the ability to suspend or withdraw carrier licenses in response to specific offences. It could also include a system of rewarding compliant carriers through measures akin to the "accredited operator" system applied by customs authorities.

R 2: Implementation of the common regulatory regime for road transport (see discussion under road transport)

Seaports and Inland Waterways

The assessment of legal and regulatory frameworks focuses mainly on efforts to enhance private sector participation in port infrastructure and services. Tanzania is the regional leader having successfully concessioned its container terminal in 2000, and having established a multi-sector economic and safety regulator with responsibility for regulating competition and promoting safety. By contrast, Kenya has not made significant progress in moving towards a landlord port authority model, although its PPP project preparation and procurement rules now set a regional benchmark. Anecdotal evidence of monopolistic practices in the port of Mombasa have highlighted the need for independent port regulation in Kenya which is now being addressed through draft regulations which will empower the KMA to regulate competition in the ports and maritime sector .

PPP frameworks in Burundi, Rwanda and Uganda are still rudimentary. Further legal reform is needed to create enabling laws to support inland port and maritime service PPP arrangements.

REGIONAL INSTRUMENTS

Tripartite Agreement on Inland Waterway Transport

The Agreement was concluded by Kenya, Tanzania and Uganda in 2002. By virtue of their treaties of accession, Burundi and Rwanda subsequently also became bound by the Agreement upon joining the EAC.

The Agreement provides a comprehensive framework for regulating inland waterway shipping. It harmonizes requirements relating to ship documents and registration. It imposes common safety standards related to periodic ship surveys, safe manning requirements and the provision of aids to navigation and radio communication. The Agreement adopts the important principle that states should mutually recognize each other's registration, survey and safe manning certificates. The Agreement further commits the states to apply the IMO's rules on the prevention of collisions and to adopt common rules on conducting search and rescue

operations. It also contains a commitment to harmonize rules on the prevention of marine pollution. The Agreement adopts several common principles governing the liability of carrier for loss or damage to goods and liability for personal injury and death arising out of the conveyance of passengers[81].

Common Market Protocol

The general provisions of the Protocol are discussed above (see Road Transport).

On internal waterway transport, it is noteworthy that neither Kenya nor Tanzania have made any offers to liberalize services in this sub-sector[82]. By contrast, the remaining states have all agreed to open their markets in passenger and freight transport, vessel rental, vessel maintenance and repair, pushing and towing services and support services. Uganda has recorded a reservation with regard to market access in relation to commercial presence, which is restricted to the extent that it has already entered into concessions (with RVR). Burundi and Rwanda's offers are valid from 2010, Uganda's becomes valid in 2012.

Given the level of market activity at present, Kenya and Tanzania's failure to liberalize is unlikely to have any impact currently, but this may change if inland waterway services pick up.

In maritime transport services, Kenya has followed a similarly restrictive approach. It has made an offer to allow market access in vessel maintenance and repair, but in the case of foreign firms it requires a joint venture with Kenyan nationals. Tanzania has made offers in respect of passenger and freight transport and cargo handling. It has agreed to liberalize market access, although in the case of cargo handling this is restricted to the extent that it has already granted concessions in this area. Unlike Kenya, Tanzania has made no offer in vessel maintenance/repair.

Burundi

Since colonial times, the port of Bujumbura has been subject to various concessiond as well as direct management by government. At independence, the port was under concession and this arrangement lasted until 1967 when a decree was passed transferring control to the government. After undertaking various investments, a new concession was entered into in 1992, whereby government leased the port infrastructure to an operating entity in which it took a minority share (48 percent)[83]. The contract was renewed in 2002 and will again be up for renewal in 2012. Meanwhile, government is reviewing the current legal structure whereby the port is administered with a view to possible future improvements.

No specific legislation governing ports or inland waterway transport has been identified. For comments regarding potential future PPP projects see discussion under "Railways" below.

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[81] It should be noted that the EAC Legislative Assembly is considering an Act dealing with transport management on Lake Victoria. The Act proposes to introduce a common safety regime and will effectively operationalize the Protocol in respect of shipping on the lake.

[82] This omission is the more remarkable as in the case of Kenya it has undertaken to apply national treatment to nationals, property and vessels flying flags of other parties to the Northern Corridor Agreement. Ideally, Kenya could have restated this commitment in its services offer under the Common Market Protocol.

[83] *La Société Concessionnaire de l'Exploitation du Port de Bujumbura*

Democratic Republic of Congo

The current operator of the seaports and river ports ONATRA has been earmarked for commercialization. As noted above, government's strategy is to establish a River Port Authority and to outsource ONATRA's non-core activities. The Authority will concession the port of Matadi as well as the main river ports. Responsibility for the management of the concessions will vest in the Authority.

There is no technical or economic regulatory framework for ports at present. The DRC has also not yet adopted any PPP-type procurement or PPP project preparation rules.

Kenya

Seaports

The adoption of a landlord port authority model is set as an explicit policy goal in the INTP, but this goal is not yet fully reflected in ports legislation. Current legislation does permit the Kenya Ports Authority (KPA) to enter into agreements with private parties for the supply or construction of infrastructure or the performance of services which are typical in landlord ports, such as concessions to build and operate terminals.., However, no explicit duty is placed on the KPA to assume a landlord role and to enter into concessions for port facilities and services.[84] Moreover, the overall functions attributed to the KPA clearly envisage the authority operating a service-port model and providing the full spectrum of land- and marine-side services associated with commercial ports[85]. It is, therefore, unlikely that the KPA will self-transform into a landlord authority, especially as it has no explicit statutory duty to do so and this policy objective will only be achieved by revising the KPA Act.

Efficiency constraints arise mainly due to the absence of an economic regulatory framework for ports. One example is the provision of bulk grain handling in Mombasa which is a private monopoly. Attempts by other private service providers to obtain licenses from the KPA to offer competing grain handling services have, so far, been unsuccessful. These constraints have been recognized by the Government which has entrusted the KMA to act as competition regulator for the ports and maritime sector[86]. Draft regulations have been prepared which will, amongst others, provide for:

- Economic regulation of ports, including regulation of monopolies, tariff monitoring and tariff regulation for monopoly service providers;
- Powers vested in the regulator (KMA) to induce competition;
- An arbitration procedure administered by the regulator to resolve disputes between the port authority, private port operators, other maritime service providers and port users; and
- Penalties and sanctions for antic-competitive behavior.

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[84] Sec 12(2)(n), Kenya Ports Authority Act, 1978

[85] Such as providing stevedoring, warehousing and related services (Sec 12(1)).

[86] It is worth noting that countries that have set up port regulators tend to separate responsibility for economic regulation of port and maritime activities from technical (safety and environmental) regulation and to establish different regulators for each. The two forms of regulations require different skills, approaches and procedures. Moreover, skills in port regulation are a scarce resource and the KMA will need to invest heavily in building the necessary capacity to undertake this function effectively.

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Inland Ports

The provision of inland water services and associated port infrastructure is a statutory responsibility of the Kenya Railways Corporation (KRC). With the concessioning of the Kenya railways, the operation of the wagon ferry on Lake Victoria was also transferred to the concessionaire. However, the ferry requires rehabilitation to class standards and is currently non-operational as it is awaiting certification and insurance (although reportedly it may be put back into service soon). It is also envisaged that the Kenya Ports Authority would assume the management of the lake ports, but to date this has not occurred as it requires an amendment of the KRC Act.

Under the PPP regulations, the KRC enjoys the powers to enter into PPP-type arrangements related to port infrastructure on Lake Victoria.

Shipping services on inland waters are subject to regulation by the Kenya Maritime Authority in terms of the Merchant Shipping Act, 2009.

Rwanda

The RTDA has the mandate to develop inland waterway infrastructure. Most lake transport occurs on Lake Kivu. While the RTDA is able to enter into concession arrangements, there are no specific policy guidelines for this sub-sector.[87]

Tanzania

Seaports

Tanzania's transport policy is outdated and provides limited guidance in terms of future development of its ports. It recognizes the need for further restructuring to improve infrastructure and to enhance private sector participation in key services.[88] The policy does not express any specific preference for the landlord port authority model. However, subsequent legislation referred to below has explicitly provided for the conversion of the harbour authority to landlord status.

Legislation has been updated to enable the Tanzanian Ports Authority (TPA) to grant port concessions and to enter into other types of PPP such as management contracts.[89] At the same time, SUMATRA was established and became operational in 2004 with responsibilities to oversee service standards, monitor performance regulate tariffs and promote competition.

As in Kenya, the ports in Tanzania are prone to natural monopolies. The container terminal – concessioned in 2000 – has operated with periods of exclusivity, albeit subject to oversight by the TPA as landlord and SUMATRA as regulator. More recently, congestion at the terminal appears to have prompted the TPA to offer container handling services at its wharves in competition with the private operator (TICTS). While this may be

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[87] Transport Sector Policy, Ministry of Infrastructure, December 2008
[88] National Transport Policy, 2003, 2.3.3
[89] Sec 12(1)(d) Ports Act, 2004

justified as a short term measure by virtue of the TPA's duty to act as default operator, there is a clear potential for conflict of interest if this situation were to persist. This suggests that there is a need for SUMATRA to monitor the situation and to intervene with an appropriate remedy, if necessary.

Inland Waterways

Under the Ports Act, the TPA is responsible for inland ports on Lakes Victoria, Tanganyika and Nyasa. Hence, the powers it enjoys to enter into PPPs in respect of seaports also extends to inland ports. Similarly, SUMATRA's role as economic and safety regulator also extends to inland ports.

Uganda

The Uganda Railway Corporation (URC) is mandated to provide inland waterway transport services and is also authorized to enter into agreements with any person for the provision of such services.[90] Such agreements may also provide for the private party to levy fees for the services it provides in behalf of URC and can, therefore, provide for suitable PPP type arrangements on inland waterways, such as concessions, managements contracts, leases, etc. The Ugandan wagon ferries and the terminals at Port Bell and Jinja were included in the railway concession and have since November 2006 been transferred to Rift Valley Railways.

Inland water transport services are subject to regulation by the Transport Licensing Board (TLB).[91] Regulation has both a safety and an economic dimension. The former verifies seaworthiness of the vessel through routine vessel inspections.[92] With regard to the latter, the TLB may (a) regulate fares, (b) specify routes that the vessel may apply, (c) restrict goods that the vessel may carry and (d) grant exclusive licenses (monopolies). New legislation governing inland water transport is reported to be under consideration.[93]

The URC is also authorized to provide and manage port infrastructure. The authority to enter into PPP type arrangements also extends to the construction and operation of infrastructure.

Parallel authority has been vested in the Uganda National Roads Authority (UNRA) to also provide inland waterway and ferry services. UNRA is charged with the development and management of the road network. "Road" is defined as including a ferry or ship or designated by the Minister[94], but does not include port infrastructure. It should be noted that unlike the URC Act, the authority of UNRA to enter into PPP type arrangements is generally less well-defined.

Findings and Recommendations

Implementation of Inland Waterway Protocol

To date, the EAC states have not taken steps to implement the Inland Waterway Protocol. Due to the limited commercial activity on inland waterways, the lack of implementation probably does not pose a significant

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[90] Sec 5(ii), Uganda Railways Corporation Act, CAP 331
[91] Inland Water Transport (Control) Act, CAP 365
[92] The TLB is reported to experience severe resource restrictions in carrying out these functions (National Transport Masterplan, 2009, par 9-15)
[93] Parliament of Uganda, Report of the Committee on Physical Infrastructure for the Financial Year 2006 – 2007.
[94] Sec 4(b)(c), UNRA Act

constraint at present. However, the Protocol provides a common regulatory framework which can be usefully applied once inland waterway traffic picks up.

R 1: EAC states to adopt measures to implement the Inland Waterway Protocol.

Transformation of the Kenya Ports Authority into a landlord port authority

Under the 1978 Kenya Ports Authority Act, the KPA is set up as a service port acting both as landlord and provider of port services such as terminal operation and stevedoring. Kenya's new transport policy recognizes that this is an inefficient arrangement and that the legislation must be changed to include appropriate provisions to encourage greater private sector participation in ports. Due to the prevalence of natural monopolies in ports, there is a parallel need to ensure that a framework for economic regulation – which is in the process of being created – becomes operational as soon as possible.

R 2: The Kenya Ports Authority Act must be revised (or repealed) to transform the KPA into an autonomous landlord port authority with a clear mandate to privatize port services through PPP arrangements, will retaining responsibility for infrastructure and safety and environmental oversight. At the same time, the economic regulator which is being set up must assume responsibility to regulate port pricing, access and act as neutral arbiter in the event of disputes between services providers and customers.

Framework for PPP arrangements in sea and inland waterway ports

PPP arrangements in this sub-sector are limited to Kenya and Tanzania. Kenya's PPP procurement rules are the most advanced, but Tanzania has progressed further with implementing a landlord port model and creating a regulatory framework to oversee port concessions. As with other infrastructure sectors, enabling framework for PPPs in Burundi, Rwanda and Uganda are still rudimentary and further legal reform is needed (procurement rules, concessioning and PPP law, economic and safety regulation).

R 3: Implement PPP project identification, preparation and procurement rules and bolster PPP management capacity (as discussed under Road Infrastructure).

Railways

Railways operate only in the DRC, Kenya, Tanzania and Uganda. The Kenya-Uganda railway was subject to a joint concession in 2006 to Rift Valley Railways (RVR), while in Tanzania the network managed by the Tanzanian Railway Corporation was concessioned in 2007 to RITES. Both concessions have experienced problems. In the former case, the shareholding of RVR has been restructured and concession terms renegotiated. Operations are reportedly limited to the Kenyan side of the border. In Tanzania, the concession has been cancelled and steps are being taken for the management of TRL to be transferred from the concessionaire to a manager to be appointed by the government.

Several PPP projects are under consideration. These include an extension of the Tanzanian line to Burundi and Rwanda. Moreover, all EAC states have adopted a decision in principle to build a standard-gauge network.

REGIONAL INSTRUMENTS

EAC Common Market Protocol

The general provisions of the Protocol have been discussed above (see Road Transport).

Only Rwanda and Uganda have made offers to liberalize the railway services sector. Neither imposes any restrictions on consumption abroad or cross-border supply. However, Rwanda has indicated that it reserves the right to restrict the commercial presence of foreign service providers with regard to market access. Similarly, Uganda has entered a reservation with regard to the commercial presence of foreign service providers to the extent that it has already granted concessions in this area.

Burundi

At present there is no railway network in Burundi. An extension of the Tanzanian railway network into Burundi has been mooted, but this development is heavily dependent on anchor projects in the mining sector to ensure sufficient traffic to justify the investment.[95] If this project proceeds, it is likely to be undertaken as a PPP.

There is at present no railway law in Burundi. Moreover, Burundi lacks an enabling environment for PPPs. There is no PPP policy, and no PPPs have been undertaken in the transport sector. Procurement rules have not been adapted for PPP projects, nor has a PPP unit been established.

Democratic Republic of Congo

There is no railway economic or technical regulatory framework. The remarks made with regard to PPPs in the seaports sector also apply here.

Kenya

The Railways Act has been amended to authorize the concession which was granted to Rift Valley Railways in 2006 to jointly operate the Kenya/Uganda railway system and permits Kenya Railways to enter into concessions, management contracts and leases. Unlike Tanzania – where legislation provides explicitly for a separate infrastructure management company and therefore expresses a preference for a vertically-separated concession model (see below) – the Railways Act does not specify the nature of the concession arrangement which the Kenya Railways Corporation (KRC) may enter into.

By virtue of the recently-adopted PPP regulations[96], KRC is, as procuring entity, responsible for managing the PPP agreement entered into with the concessionaire. This includes measuring the output, monitoring implementation and day-too-day management.

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95 The East African Railway Master Plan proposes two possible rail extensions into Burundi. One is an offshoot from the proposed main line from Isaka to Kigali. The extension into Burundi would begin at Keza and would run through to Gitega, and perhaps on to the Musongati mining area. The other option put forward in the Master Plan is an extension from Uvinza to Bujumbura, with a possible extension to Musongati.

96 Public Procurement and Disposal (Public Private Partnership) Regulations, 2009

However, the provisions of the Act are inadequate in terms of creating a comprehensive safety regulatory framework. No provision is made for the development and implementation of railway safety standards, nor for independent oversight to ensure compliance and to undertake safety and accident investigations.

Rwanda

At present, Rwanda has no railway infrastructure, but the option of extending the Tanzanian system to Kigali as a PPP-type project is under consideration (also see discussion under Burundi above). Rwanda has made some progress towards creating an enabling environment for PPPs, but several measures remain to be taken. There is no overarching PPP policy. However, the recently-adopted Transport Strategy (2008) identifies the general need for private sector participation in the provision of transport infrastructure and services.

Rwanda has no general PPP law, but the Privatisation Law permits some limited PPP options in the case of parastatals, such as leases. It appears there is a trend to incorporate specific PPP provisions in sub-sector laws, as has happened in the case of the draft gas law.

Rwanda has made good progress in establishing a dedicated economic infrastructure and services regulator. The Rwanda Utilities Regulatory Agency regulates air, water and road transport (as well as other sectors).

Tanzania

The Railways Act establishes the Reli Assets Holding Company (RAHCO) with the mandate to acquire the rail transport functions of the Tanzania Railways Corporation[97]. The Act empowers RAHCO to enter into vertically-separated concessions whereby a private operator(s) will provide railway services, while RAHCO remains responsible for managing railway infrastructure. In the absence of any concession, RAHCO has the residual role to operate railway infrastructure and provide rail services.[98] RAHCO also manages the leased rail assets and retains responsibility for implementing heavy infrastructure renewal projects. The Railway Act also vests powers in SUMATRA to economically-regulate the rail transport sector, including powers to regulate the tariff and act against anti-competitive practices. Similarly, the Act mandates SUMATRA to undertake rail safety regulation and to this end, SUMATRA has issued various safety regulations[99]. SUMATRA is responsible for issuing railway operating licenses, ensuring railway safety and approving engineering and maintenance standards.

Uganda

The URC enjoys the same powers to enter into PPP-type arrangements with regard to railways as it does in relation to inland waterways (see discussion above). The main deficiency is the lack of a regulatory framework for railway safety. The establishment of a multi-sector transport regulator is reported to be under consideration. Meanwhile the transport regulation department in the Ministry of Works is entrusted with

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[97] The lake ports and services formerly undertaken by TRC have been transferred to the TPA.
[98] Sec 6 and 11, Railways Act, 2002
[99] Railways (Accident Investigation and Reporting) regulations, Railways (Licensing of Railway Operators) regulations, Railways (Safety Plan) regulations, Railways (approval of New Works and Rolling Stock) regulations, see www.sumatra.go.tz

overseeing compliance by the concessionaire with safety requirements stipulated in the concession agreement[100]. In practice, it appears this role is delegated to the URC.[101]

The Uganda Railways Corporation may enter into agreements with any person for the provision of a service or facility which the URC is authorized to provide, by such person.[102] This provision does not provide a comprehensive framework for PPP arrangements.

Findings and Recommendations

Framework for PPP arrangements

The remarks made above with regard to the need for suitable PPP project identification, preparation and procurement rules in road infrastructure and ports, also apply to the railways. The problems experienced with the cancellations of concessions and the non-compliance with concession agreements highlight the need to invest in better PPP project preparation and oversight.

R 1: Burundi, Rwanda and Uganda must adopt PPP project identification, preparation and procurement rules in line with best practice. **Tanzania must refine its PPP Act to clarify approval stages and institutional responsibilities including the role of government in the day to day operation of railway companies and the appointment of suitably qualified board members**.

R 2: EAC and member states must investigate options to bolster regional capacity in PPPs.

Independent regulatory framework for railways

Only Tanzania has undertaken institutional reforms to set up an independent railway regulator (SUMATRA), while proposals for a similar arrangement are being studied in Uganda.

R 3: Kenya (and Burundi and Rwanda once final decisions are taken to incorporate the latter two states in the regional railway network) must establish an independent regulator for the railway sector.

Pipelines

At present, the regional pipeline network is limited to Kenya and Tanzania. The option of extending the line from Kenya to Uganda and eventually Rwanda is under consideration.

Burundi

There is at present no pipeline infrastructure in Burundi, nor is there any legislation governing pipeline operation.

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[100] See www.works.go.ug.
[101] National Transport Master Plan, 2009, Pag 7-10
[102] Sec 5, Uganda Railways Corporation Act 1992

Kenya

The pipeline network of 896 km comprising three lines[103] is wholly-owned by the Government through the Kenya Pipeline Company. The transportation of petroleum products is regulated by the Energy Regulatory Commission[104]. The Commission is empowered to license pipeline operators and set and monitor compliance with operational standards. The Commission also licenses tanker vehicles and certifies drivers for the purposes of employment as tanker drivers.[105]

As a procuring entity, the KPC falls under the PPP regulations and is therefore empowered to enter into PPP-type agreements of the nature authorized by the regulations (see discussion above). A private pipeline operator will also fall within the ambit of regulation specified by the Energy Act.

Rwanda

Rwanda's transport policy does not cover pipeline transport. Although the possible extension of the Eldoret – Kampala pipeline to Rwanda is under consideration, there is as yet no legal framework regulating pipeline transport. A memorandum of understanding (MoU) was signed in March 2008 between the Government of Rwanda, the Government of Uganda and Tamoil Africa Holdings Ltd, a private company selected to develop the project on a build-own and operate model.

Existing legislation is limited to the setting of petroleum storage facilities at Gatsata, Bigogwe and Rwabuye and the concessioning of these facilities to PETRORWANDA.[106]

Tanzania

There are currently no pipelines in Tanzania serving the Central Corridor.[107] The only existing pipelines are the TANZAM pipeline between Dar and Ndola in Zambia (1,710 km) and the 230 km marine and land gas pipeline from the Songo Songo field to Ubongo in Dar.

Pipeline transport is subject to regulation by the Energy and Water Utilities Regulatory Authority (EWURA). EWURA also licenses road tankers involved in the transport of petroleum products.

Uganda

There is currently no oil pipeline in Uganda. The extension of the Eldoret pipeline to Kampala is in an advanced stage of planning, but the project is on hold due to the oil discoveries in Uganda which may necessitate reversing the flow of the pipeline (or the construction of a dual flow line). It is overseen by a joint coordinating committee comprising representatives from the energy ministries of both states established in terms of a bilateral agreement between the governments.

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[103] Mombasa to Nairobi (450 km), Nairobi to Eldoret (325 km) and Sinendet to Kisumu (121 km)
[104] Energy Act, 2006
[105] Sec 80
[106] Arrêté Présidentiel nº 776/07 du 30 Octobre 1989 relative à la Création d'entrepôts publics pour produits pétroliers à Gatsata, à Bigogwe et à Rwabuye and Arrêté Ministériel nº 01/Fin.07.00 du 19 Janvier 1990 portant Concession d'entrepôts publics pour les produits pétroliers à Gatsata, à Bigogwe et à Rwabuye.
[107] The government has signed a memorandum of understanding with Noor Oil of Qatar for a $2 billion project to construct a pipeline from Dar to Mwanza on Lake Victoria (including a refinery at Mwanza). However, this project has been in the planning stage for a long time and is not expected to be implemented soon.

The transport of petroleum products is a regulated activity requiring a license issued by the Commissioner of Petroleum Supply in the Ministry of Energy and Mineral Development.[108] The construction of any petroleum supply facility also requires a petroleum construction permit.

Findings and Recommendations

Lack of regulatory frameworks for pipelines in Burundi and Rwanda

Regulatory frameworks to oversee pipeline transport are in place in Kenya and Tanzania. While no pipeline has yet been constructed in Uganda, a similar regulatory framework is also already in place in that country. No regulatory framework exists in Rwanda or Burundi.

R 1: Burundi and Rwanda must adopt regulatory legislation to govern pipelines prior to the implementation of the planned pipeline projects into their territories.

Lack of clarity regarding policy planning and oversight responsibility for pipelines

Further consideration needs to be given to the governance structure for pipeline transport in the region. The subject is dealt with in the transport policies of Kenya, Tanzania and Uganda, but in all states actual policy planning and regulation falls under the ministries of energy.

R 2: It is recommended that the governments of Kenya, Tanzania and Uganda adopt a decision to clarify responsibility for policy planning and oversight in relation to pipelines and if necessary, establish the necessary mechanisms to ensure coordination in this area between authorities responsible for transport and energy.

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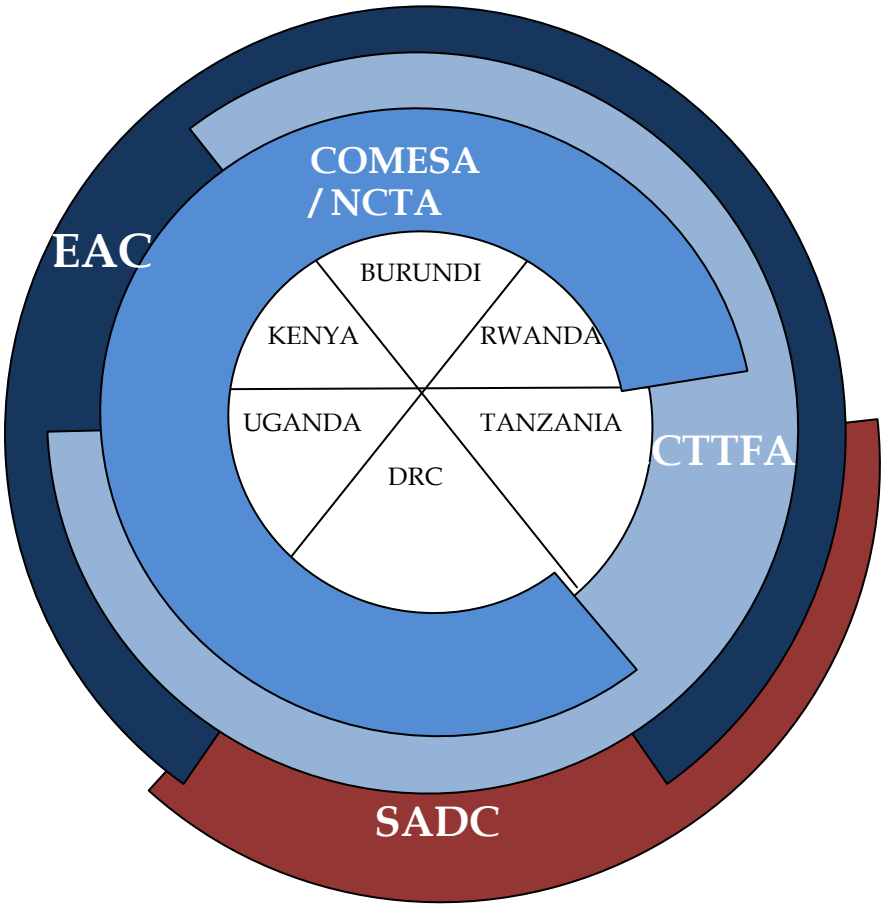
[108] Petroleum Supply Act, 2003

4. Regional Co-operation Instruments

Overview

Transport along the Northern and Central Corridors occurs within a framework of overlapping regional and national policies. As shown in Figure 4, there are differences between the five corridor states in their memberships of the RECs and adherence to specific corridor instruments. As a result, states have different obligations in terms of adopting regional measures to facilitate transit and inter-state transport.

Figure 4. Multi-Layered Legal and Regulatory Framework of Multilateral, Bilateral Instruments National Policies and Laws



Source: Nathan Associates Inc.

All states except the DRC are members of the EAC. By the same token, all states, except Tanzania are members of COMESA. Hence, the regional transport instruments of the EAC and COMESA provide the largest common denominator in terms of policies to be pursued by the region.

The adherence of individual states to regional corridor instruments displays a similar pattern. All states, except Kenya are parties to the Central Corridor Agreement. For its part the Northern Corridor Agreement includes all states except Tanzania.

The various regional instruments not only differ in terms of geographic application. As shown in Table 5, there are also differences in terms of the extent to which agreements address individual transport modes.

Table 5. Overview of Regional Co-operation Instruments per Transport Mode

Road Transport	Inland Waterways	Railways	Maritime transport	Pipelines
EAC Treaty (Chap 15)				
Common Market Protocol (Art 38 and schedule on services)				
Tripartite Agreement on Road Transport	Tripartite Agreement on Inland Waterway Transport			
COMESA Treaty (Chap 11)				
• Protocol on Transit Trade and Transit Facilities • Protocol on Third Party Motor Vehicle Insurance Scheme • COMESA Single Carrier License				
Northern Corridor Transit and Transport Agreement				
Protocol n° 2: Routes and Facilities Protocol n° 6: Transport of Goods by Road	Protocol n° 7: Inland Waterways Transport of Goods	Protocol n° 5: Transport of Goods by Rail	Protocol n° 1: Maritime Port Facilities	Protocol n° 8: Transport by Pipeline
Central Corridor Transit Transport Facilitation Agreement				

Source: Nathan Associates Inc.

The main provisions of the various instruments are summarized in the Appendix A.

Findings and Recommendations

Non-implementation of regional instruments

Despite being in existence for several years (even decades in some cases), there is significant non-implementation of various instruments, especially in road transport[109]. This conclusion applies to agreements which embody implementation arrangements such as the EAC Tripartite Agreement on Road Transport. It

[109] With the exception of the COMESA Yellow card Scheme.

must be distinguished from agreements that contain commitments in principle and which initiate a process of regional integration, such as the Common Market Protocol. The former agreement already contains much of the implementing detail necessary for it to become operational. By contrast, the Common Market Protocol is intended to initiate a process of regional liberalization whereby states progressively liberalize their markets to permit free movement of goods, persons, services and capital, which is a process that may take years or decades.

Given the importance of the road transport mode, non-implementation of road transport agreements implies that none of the benefits which the various agreements seek to achieve, are being secured. There appear to be various reasons for non-implementation:

- Lack of domestication in national law. This problem has been discussed earlier with regard to road transport. Without legal force, officials at national level are unable to apply the provisions of measures such as the EAC Tripartite Agreement on Road Transport. Similarly, ministries have no basis on which to request funds from treasuries to secure implementation.
- Lack of capacity. There is limited capacity within the RECs to assist national governments with implementation. At the same time, national ministries also lack resources to drive implementation. Despite good intentions, the reform efforts flounder.
- Insufficient appreciation of the potential benefits inherent in the various agreements. It is the consultant's view that there is a low level of awareness among stakeholders (governments, service providers and users) about the existence of regional facilitation instruments. The fact that instruments are already several years old and have not been implemented, is discouraging and saps the enthusiasm of those responsible for taking steps to move the process forward.
- Overlap between agreements. This issue is discussed next.

Overlap in regional instruments

There is significant overlap between agreements. This is illustrated by the following:

- The two principal guiding instruments – the EAC Treaty and the COMESA Treaty – are almost verbatim copies in terms of their respective chapters on transport.
- The EAC Tripartite Agreement on Road Transport and the COMESA Single Carrier License seek similar outcomes. By virtue of its geographic scope, the EAC Agreement applies to both Northern and Central Corridors. However, under Protocol n° 6 to the NCTTA, the COMESA license also applies to the Northern Corridor. Hence, there is confusion about which instrument applies. As discussed in Box 3, the EAC Agreement is more detailed and has been drafted with reference to the experience of Southern African governments in implementing similar arrangements since the early 1990's. In the consultant's opinion, the EAC Agreement is the superior instrument.

Box 3. EAC Tripartite Agreement on Road Transport and Northern Corridor (NC) Protocol Nº 6 on Road Transport: A Comparison

Both instruments cover inter-state and transit transport of goods by road. The following may be observed:

1. The definition of "transit" in the two agreements differs from the definition in the EAC Customs Management Act. The latter only includes the movement of goods imported from outside EAC transported to a location outside the EAC. The former defines transit as movement across the territory of a party to a destination beyond its frontier.

2. The NC Protocol requires each party to recognize the road transport license issued by another party based on the COMESA Carrier License regime. The EAC Agreement assumes that states will issue an EAC license and that there will be a process of license adjudication and that licenses may be refused (e.g. on the grounds of contravention of license conditions or to manage capacity on routes).

3. The EAC Agreement contains an express clause that a carrier licensed in its home state requires no additional license in the state of destination or transit. Both agreements prohibit cabotage.

4. The EAC Agreement has the specific objective of managing capacity in the market and provides a suitable mechanism.

5. The EAC Agreement provides for specific oversight bodies to be created to administer its implementation (Joint Technical Committee and Route Management Groups). The NC Protocol relies on institutions created under the main treaty.

Source: Nathan Associates Inc.

In view of the above, the following is recommended:

R 1: RECs must critically assess existing road transport agreements and initiate a process of rationalization to eliminate incidences of overlap. As mentioned earlier, COMESA has been tasked to review agreements in the road transport sector and that the development of a new multilateral instrument has been under consideration for several years. Pending this development, the consultant's view is that the EAC states should proceed with the implementation of the existing Tripartite Agreement. There are several reasons for this recommendation:

- The EAC states are already all party to the agreement and bound in principle to apply it.
- The Agreement is based on a tried and tested model and can, therefore, be implemented relatively easily.
- The development of a consensus between the three RECs on a future model may be protracted. Meanwhile, non-implementation is affecting transport efficiency and cost negatively. Both are strong arguments favouring immediate implementation.
- Given their success, it is unlikely that the eventual REC consensus will depart significantly from current models used in Southern Africa. The EAC agreement is in line with this approach.

- The implementation of the Tripartite Agreement on Road Transport will only govern intra EAC road transport. Hence, states should retain the COMESA single carrier license only for transport between EAC and non EAC states who are members of COMESA (e.g. DRC). As Tanzania is not a member of COMESA, it is not obliged to issue or recognize the COMESA carrier license. On the corridors, Tanzania's unique position potentially only affects transport to and from the DRC. For such transport, Tanzania may wish to consider negotiating a bilateral agreement with the DRC, unless a suitable multilateral arrangement is agreed within SADC which would then apply to such traffic.

R 2: Member states must initiate a parallel process to build implementation capacity to administer regional agreements. This issue has already been dealt with under "Road Transport" above.

Appendix A. Summary of the Main Provisions of Regional Co-operation Instruments

East African Community

The East African Community (EAC) has adopted various instruments which potentially impact transport efficiency on the corridors. These instruments are arranged in a hierarchy, with the founding treaty at the apex. To date, only road transport has been the subject of a specific sectoral agreement. This reflects the relative importance of road transport on the corridors vis-á-vis the other modes.

The Treaty establishing the East African Community of 1999 is the community's founding document. Apart from establishing its various institutions, the Treaty also contains 16 chapters spelling out the principles of co-operation between its members in various sectors. For the purposes of this study the most relevant are:

Chapter 11: Co-operation on Trade Liberalization and Development; and

Chapter 15: Co-operation in Infrastructure and Services.

Chapter 11 commits the member states to the establishment of a custom union, which will be characterized, inter alia, by the use of harmonized customs documentation and procedures. In a further stage of development, it is envisaged that the customs union will make way for a common market characterized by the free movement of persons, goods, services and capital.

Chapter 15 commits the member states to implement harmonized transport policies and expanded transport links. Areas of co-operation include: harmonizing laws, standards and procedures and improving and integrating transport infrastructure. Specific articles deal with each mode separately, as well as multimodal transport, freight forwarding, customs clearing and shipping agency.

Specific commitments contained in the Treaty which potentially impact corridor operations are:

ROAD TRANSPORT

- Harmonizing traffic laws;
- Harmonizing law on licensing of transport vehicles;
- Adopting common standards for vehicle construction and inspection; driver training and licensing;
- Minimum standards on transport of dangerous substances;
- Common standards on facilitation road transit traffic;
- Common rules on vehicle dimensions and load limits;
- Common standards of road network design and maintenance;
- Coordinating the implementation of trunk road projects;
- Common and simplified procedures for road transport and harmonized transit charges;
- Elimination of non-physical barriers to road transport;
- Non-discrimination against common carriers of one party in the territory of another party and equal treatment of operators; and
- Promoting competition in road transport.

RAILWAYS

- Common railway policies;
- Promoting autonomous railway management;
- Adoption of common safety rules;
- Harmonization and simplification of documentation;
- Harmonizing packing, marking and loading of goods;
- Applying non-discriminatory tariffs;
- Integrating operations to include synchronization of schedules and unit train operation;
- Measures to deploy rolling stock and locomotives to and from each other;
- Non-discriminatory service provisioning; and
- Joint utilization of facilities.

MARITIME TRANSPORT AND PORTS

- Harmonization of maritime transport policies;
- Commercialization and liberalization of port operations;
- Provision of access to land-locked states; and

- Non-discriminatory tariffs for goods from other member states.

INLAND WATERWAYS TRANSPORT

- Harmonization of inland waterways policies, rules and procedures;
- Joint use of maintenance facilities;
- Harmonizing tariff structures;
- Adoption of common rules on packaging, marking and loading;
- Non-discrimination in the allocation of cargo space; and
- Undertaking joint ventures and establishing joint shipping services;

MULTIMODAL TRANSPORT

- Harmonization of rules, procedures and documents applicable to implement multimodal transport;
- Adoption of common rules on packaging, marking and loading; and
- Provision of facilities for transshipment of goods, i.e. dry ports.

The Treaty also commits the member states to establish freight booking centers, and to harmonize requirements for registering and licensing freight forwarders, customs clearing agents and shipping agents.

The EAC member states have given further effect to their co-operation in the area of road transport, by concluding the Tripartite Agreement on Road Transport.

The agreement (between Kenya, Uganda and Tanzania), introduces a single-permit system for goods and passenger transport. A transport operator need only obtain a permit from his home state to undertaken cross-border operations into the territories of the other parties. The parties also agree to mutually recognize each other's vehicle roadworthiness certificates. The parties re-affirm their commitment towards harmonizing vehicle dimension and mass limits as stated in the EAC Treaty, as well as road user charges.

The agreement creates and institutional framework to oversee it implementation. A Joint Technical Committee of the parties is established, while Route Management Groups can be established to oversee route operations on a more regular basis.

Common Market of Eastern and Southern Africa

The Common Market for Eastern and Southern Africa (COMESA) was established as successor to the Preferential Trade Area (PTA) for Eastern and Southern Africa by treaty in 1993.

The COMESA Treaty outlines a number of broad commitments with regard to co-operation in the transport sector. The main objectives of the common policy on transport are: adequate maintenance of roads, ports,

airports and other facilities, the security of transport systems, the grant of special treatment to landlocked states and the development of intermodal systems.[110]

With regard to road transport, the parties agree to accede to international conventions on road traffic, road signals, etc., harmonize the provisions of their laws, standards, formalities, regulations, transit traffic, and ensure equal treatment of common carriers and road operators in all countries of the Common Market.[111] In the railways sector, the priorities are common policies for the development of railways and railway transport, with common safety rules, procedures, regulations, non-discriminatory tariffs and standards of equipment.[112] The parties also commit themselves to the provision of better and more efficient air transport. Joint air services should be developed as steps towards the establishment of a Common Market airline. Common policies would involve the liberalization of granting traffic rights and coordinating flight schedules.[113] The Treaty commits the parties to coordinate and harmonize maritime transport and to work towards efficiency and profitability in the ports services. Coastal states should facilitate the trade of landlocked states. International conventions on maritime transport - to be ratified and non-discriminatory tariffs are to be applied.[114] The parties also agree to harmonize and simplify rules, procedures and regulations governing inland waterway transport[115] and to co-operate in the development of pipeline transport.[116]

COMESA has adopted a number of individual protocols to promote the facilitation of road transport, transit and customs procedures.

PROTOCOL ON TRANSIT TRADE AND TRANSIT FACILITIES

The Protocol on Transit Trade and Transit Facilities was issued as the Treaty on 5 November 1993, as Annex 1.

The Protocol provides that until a common external tariff is established, all transit traffic has freedom to cross the territories of the Common Market whether from or to partner states or from and to third countries, subject to any restriction imposed by a partner state for the purpose of safety, public health, etc., and generally the public interest. Transit trade is exempt from import or export duties and rates and tariffs applicable shall be applied without discrimination.

All carriers engaged in transit traffic shall be licensed. Satisfaction of technical conditions of the carriage shall be a condition of licensing. A Standard Common Market Transit Document is prescribed to be used to accompany goods in transit. Transit goods will be transported under seal. Unless there is suspicion of abuse, goods in transit are exempt of import or export duties; and shall not be subject to Customs examination at Customs offices. All transit traffic shall be covered by Customs bonds and sureties arrangements.

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[110] Art 84
[111] Art 85
[112] Art 86
[113] Art 87
[114] Art 88
[115] Art 89
[116] Art 90

PROTOCOL ON THIRD PARTY MOTOR VEHICLE INSURANCE SCHEME

This Protocol constitutes Annex II to the COMESA Treaty. It provides for a common third party insurance scheme based on a Common Market Yellow Card issued by a National Bureau and handed over to motorists on the usual terms by an insurer authorized to undertake this type of business. National Bureaus, composed of insurers, will settle on behalf of the insurers the claims arising from accidents caused abroad by holders of cards that they have issued and claims arising from accidents caused in its country by holders of card issued by other National Bureaus.

Yellow Cards, proof of the existence of an insurance policy, are issued for a maximum of one year and for a specific vehicle. Notwithstanding the insurance policy under which it is issued, the Yellow Card provides all the guarantees required by law governing motor vehicle insurance in the country in which the accident occurred. The Protocol provides for various institutions to administer the scheme. A Council of Bureaus, meeting at least once a year, is composed of representatives of all the Bureaus of the Common Market. The Council shall orientate, coordinate and supervise the insurance scheme established by the Protocol together with the legal, technical and financial operations of the National Bureaus. It settles disputes between Bureaus. An Inter-Bureaus Agreement determines the maximum amount for the delegation of the powers of settlement by one National Bureau to another, and the minimum handling fee payable for each case handled by them.

Northern Corridor Transit and Transport Agreement

Transport on the Northern Corridor is governed by a number of different protocols anchored in the Northern Corridor Transit Agreement (NCTA). The Agreement was originally concluded in 1985. In 1996, a decision was taken to review and update the Agreement. A revised version was adopted in 2007.

The NCTA establishes the principle of a right of transit for transporters and their vehicles between the territories of the parties (Burundi, DRC, Kenya, Rwanda and Uganda). The basic objective is that member states have agreed to grant each other the right of transit through their respective territories. This objective includes a commitment not to discriminate with regard to the country of original consignment or destination of the goods, or the country of registration of the vehicle.

The Agreement imposes a duty on Kenya to provide the necessary port facilities within its capabilities to facilitate the use of the corridor and to ensure that the port remains a competitive facility. Provision is made for specific transit routes to be agreed in Protocol n° 2 and the parties commit to providing the necessary facilities such as storage and stopover facilities. The Agreement commits the parties to ensure that transit goods are cleared expeditiously at frontiers and to establish adjacent joint customs posts so that repeated loading and off-loading can be avoided and to introduce other facilitation measures such as joint customs controls, adequate manpower, coordinated working hours, etc. The Agreement also contains a commitment to limit the use of document and procedures associated with transit transport, to harmonize documents according to the UN Layout Key for Trade Documents, to review documents and procedures periodically and to eliminate superfluous documents and procedures.

The Agreement contains several commitments relating to transport operations. The parties agree that one party must permit trucks and other transport equipment registered in the territory of another party to undertake both interstate and transit transport. Cabotage is expressly prohibited, unless this is permitted by the authority in the state concerned. The parties commit to harmonizing vehicle technical standards, dimensions and load limits. Other important undertakings include: equal treatment of nationals of the parties in allocating services and transport; non-discrimination in charges, the right of transport companies of one party to open offices in the territory of another party. The parties also agree to implement the COMESA Yellow Card to cover third party liability in their territories.

Various protocols contain detailed provisions to further implement the commitments made in the main agreement. These protocols are:

Protocol nº 1: Maritime Port Facilities

Protocol nº 2: Routes and Facilities

Protocol nº 3: Customs Control and Operations

Protocol nº 4: Documentation and Procedures

Protocol nº 5: Transport of Goods by Rail

Protocol nº 6: Transport of Goods by Road

Protocol nº 7: Inland Waterways Transport of Goods

Protocol nº 8: Transport by Pipeline

Protocol nº 9: Multimodal Transport of Goods

Protocol nº 10: Handling of Dangerous Goods

Protocol nº 11: Measures of Facilitation for Transit Agencies, Traders and Employees

PROTOCOL Nº 1: MARITIME PORT FACILITIES

This Protocol requires Kenya to provide the necessary port facilities, including sheds and warehouses, at Mombasa. The Protocol governs the use of these facilities. Ships registered in or chartered by one of the parties to the Agreement must be treated equally. Fees and charges on vessels and cargoes may also not be discriminatory.

PROTOCOL Nº 2: ROUTES AND FACILITIES

This Agreement specifies transit routes to allocate traffic to routes capable of carrying such traffic, or to avoid routes that are not. The aim of the Agreement is also to permit customs control, and to distribute the costs for construction, maintenance and repair of the road network between the parties. The Protocol affirms that roads should be safe, secure and in good condition. On these routes, parties are required to provide facilities and services such as first aid services, repair facilities, fuel filling stations, storage areas, buildings, etc. Tariffs for the use of facilities or the delivery of services should be at the rates that apply to nationals of the country in

which the facility is located or the service rendered. During repair work and in case of emergency, transit traffic may be prohibited by any party.

PROTOCOL Nº 3: CUSTOMS CONTROLS AND OPERATIONS

Protocol nº 3 has a main text and three Annexes setting forth: (a) the format of the COMESA Common Market Transit document, (b) the minimum requirements to be met by customs seals and fastenings and giving the list of international instruments providing for the conditions and procedures for the approval of transport units.

The Protocol binds the parties to limit their customs control to the minimum required to ensure compliance with applicable laws and regulations. Joint Customs control at border crossing (frontier points) shall be facilitated. Procedures for transit traffic are detailed in the Protocol, which also specifies rules regarding customs security and guarantees for transit operations. The Protocol also commits the parties to adopting the use of the Common Market Transit document and the COMESA Regional Customs Bond Guarantee Scheme. Annex I contains the format of the Transit document. Annex II to the Protocol sets the minimum requirements to be met by customs seals and fastenings. Annex III gives the list of international instruments providing for the conditions and procedures for the approval of transport units.

PROTOCOL Nº 4: DOCUMENTATION AND PROCEDURES

The aim of this Protocol is to reduce the number of documents needed for transit of goods and the simplification of procedures. For the purposes of the Northern Corridor transit operations, documents are required to comply with ISO standards, UN Layout Key for Trade Documents, the UN Convention on International Multimodal Transportation of Goods, etc. Standard formats of documents such as the Standard Rail waybill and the Road waybill are attached.

PROTOCOL Nº 5: TRANSPORT OF GOODS BY RAIL

This Protocol deals with transport by rail of goods in transit. Border stations and traffic interchange stations where connecting and transit services are to be undertaken are specified. The parties agree that the inspection of goods carried in transit must be conducted so that wagons in transit are not unduly detained. Lastly, the Protocol sets the rules regarding liability of the respective rail carriers involved in transit operations.

PROTOCOL Nº 6: TRANSPORT OF GOODS BY ROAD

This Protocol provides for the interstate and transit transport of goods by road. It provides that the parties shall mutually recognize each other road transport licenses and that a license issued by one party grants the right of entry into the territory of the other party for the purposes of interstate or transit transport. The parties also further agree to respect the COMESA Carrier License regime.

It lays down rules regarding (a) road transit transport, (b) technical requirements of vehicles, and (c) transport contracts and the liability of road carriers. The basic rule is that national laws and regulations of the Contracting Party on whose territory the operation is being carried out are applicable.

Road transport permits may be issued by states on the territory of which transport takes place, provided the vehicle carries a certificate of fitness and complies with the technical requirements for road vehicles as specified in the Protocol.

A consignment note (bill of lading) is evidence of a contract if carriage and must contain the particulars specified in the Protocol as well as any particulars agreed by the parties to the contract.

The Protocol introduces a liability regime which holds the carrier liable for loss, damages and delays. Burden of proof shall rest on the carrier, who may be relieved from liability by the wrongful act or neglect of the claimant and in a number of circumstances listed in the Protocol, such as defective condition of packing, carriage of livestock, etc. The Protocol also lays down rules regarding liability in case of delay in delivery; goods should be delivered within thirty days. Rules on compensation in case of loss or delay in delivery are also laid down. Compensation is based on market value of goods at the place and time where and when they were accepted for carriage, with a ceiling calculated in special drawing rights (SDR), applicable except when a special declaration of value has been entered in.

PROTOCOL Nº 7: INLAND WATERWAYS TRANSPORT OF GOODS

The Protocol commits the parties to equal treatment of their nationals and flagged vessels. The parties agree that no one carrier will be granted exclusive rights to navigation or carriage of inter-state or transit traffic. The parties also commit themselves to take measures to ensure the navigability of waterways.

PROTOCOL Nº. 8: TRANSPORT BY PIPELINE

The Protocol contains the basic commitment to ensure the uninterrupted flow of petroleum products through the pipeline.

PROTOCOL Nº. 9: MULTIMODAL TRANSPORT OF GOODS

The Protocol governs procedures for the multimodal transport of goods on the corridor. It details procedures for the conclusion of a multimodal contract and specifies the contents of the multimodal transport document. It regulates out the liability of the multimodal transport operator and sets out his duties in delivering goods to the consignee.

PROTOCOL Nº 10: HANDLING OF DANGEROUS GOODS

This Protocol regulates the carriage of dangerous goods. These are handled and transported "in accordance with accepted international recommendations which are identified in the Protocol as including the International Maritime Dangerous Goods Code.

PROTOCOL Nº 11: MEASURES OF FACILITATION FOR TRANSIT AGENCIES, TRADERS AND EMPLOYEES

This Protocol addresses the provision of facilities and arrangements for transit employees. Each party is required to permit duly recognized carriers of another party to set up agencies within its territory. Multiple entry visas are to be issued to employees of transport enterprises and their travel facilitated. The parties also agree to issue a laissez-passer to transit and transport operators and their staff and regulates the manner in which employees of agencies are to be identified by means of service cards.

Central Corridor Transit Transport Facilitation Agreement

Corridor operations on the Central Corridor are guided by the Central Corridor Transit Transport Facilitation Agreement (CCTTFA).

The main objectives of the Agreement are:

- To make the Central Corridor available to shippers from landlocked states as an efficient and economic trade route and encourage cost reduction;
- To market the corridor to increase its use;
- To support planning by member states through collection and analysis of traffic data,, business information and comparative corridor data;
- To promote infrastructure maintenance and upgrading;
- To maintain and open and competitive environment and encourage business partnerships;
- To encourage intergovernmental co-operation;
- To promote harmonization of bilateral transport agreements and national laws and standards; and
- To encourage improved customs transit procedures and joint customs controls.

Arts 4 – 11 of the Agreement mirror verbatim the provisions of the 1986 version of the Northern Corridor Transit Agreement. Similarly, the Agreement also provides for implementing provisions to be detailed in Protocols to the main agreement. However, the CCTTFA lacks the implementing protocols that support the implementation of the NCTA. These are in the process of development.

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Northern Corridor Protocol 6: Transport of Goods by Road

Northern Corridor Protocol 7: Inland Waterways Transport of Goods

Northern Corridor Protocol 8: Transport by Pipeline

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