

Police Do's and Don'ts

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While for obvious reasons the letter of the law gives sweeping powers to the police to do virtually anything they wish, the intent of the law is that they should use those powers only when it is essential or clearly appropriate - in legal terms, when there is reasonable cause. This means the police are empowered to stop your car, to inspect your car, to drive your car or to order it driven. But that does not mean they can do these things whenever they feel like it. They must have reasonable cause and that means a lot better reason than curiosity or speculative checking.

Any of those powers, formal or random, is a monumental and potentially monstrous invasion of your right to privacy and your right to go about your law abiding business without being harassed. To stop your journey, even briefly, to check whether your road licence is up-to-date, the police should have reasonable cause to believe that it is not. They have ample opportunity to discreetly check licence discs when cars are parked. Generally speaking, the police should not stop you - anywhere, anytime - unless they have good reason to believe that you are actually in the act of breaking the law.

If they set up a roadblock in order to intercept a runaway criminal, it may be reasonable to bring you to a halt - but only to establish whether or not you are the person they are hunting. By policy and long-established pattern, the police also operate a system of routine checks (the usually ill-lit and ill-marked zig-zag between bars or spikes). These might be deemed reasonable if the process clearly and effectively defended the innocent.

Most traffic violations are classified legally as minor offences, the exception being dangerous driving. It must be first pointed out that you cannot be arrested for a minor offence. You should be detained only on-site and for only as long as is reasonably necessary to issue you with a ticket under Section 117. You are then free to go on your way.

There should be no question of a policeman entering your vehicle, or ordering you to drive to the nearest police station, or charging you a bond, or ordering you to appear in court. For Section 117 you have a legal right to choose whether: to appear in court in person, or to send a representative; or to plead guilty in writing without attending court at all.

This is not a discretionary privilege. It is your right, under the law. Even more disturbing is that the courts convict and impose heavy fines when in fact they

should be throwing the cases out of court, admonishing the police for harassment, and recommending that the victim be paid compensation.

For everyone's edification:

- a) The national open road speed limit is 100 kph and 110 kph on dual carriageway, unless there is clear signage specifying otherwise. That does not mean one sign in Nairobi and another in Mombasa. It means a sign at every intervening junction, where a vehicle is able to enter.
- b) You are entitled to fit customised number plates, but you must have type approval from the Registrar of Motor Vehicles (for colour, size, reflectivity etc.) and they must carry the sticker that certifies this.
- c) Tinted windows are not illegal unless they obscure the driver's clear view of the road ahead.
- d) There is no specific prohibition on bush/bull bars, and the only general proscriptions that might apply (with a huge stretch of imagination) demand only that attachments be maintained in a safe condition.
- e) The fitting of auxiliary driving lamps is perfectly legal - there are even unequivocal laws about how they may or may not be used. The law prohibits their use in a manner which might dazzle (impede vision or cause annoyance.)
- f) You are entitled to carry passengers in the back of a pick-up or truck

In addition to this sampling of laws which are often wrongly enforced (and yet successfully prosecuted), there are many that are unclear or bizarre or generally unknown. For example, the fitting of safety belts, front and rear, is required, but whether it is compulsory for all people in all seats in all vehicles to wear them remains uncertain. Similarly, formal statutes governing the use of recent technological advances like the mobile phone are also hard to find. Surely this warrants very specific legislation and extensive public education if the law is to be good, clear, formally written and reasonably enforced.

On the bizarre front, it is difficult to believe there is no law restricting the power (watts) of headlamps. The one law on headlamp that is cited is that they must illuminate to a distance of 100 metres in front of the vehicle.

While no one contests the universal legal principle that ignorance of the law is no defence, again the words 'reasonable' and 'intent' need to be kept front-of-mind by all concerned. Laws are conveniently made only by Parliament after due debate, vote and gazettment, all in full public knowledge (how could MP's know how to vote, or represent the wishes and interests of their

constituents, without informing and consulting them?) There are provisions for law by decree (intended to cover conditions of national emergency) and limited powers to make laws (subject to later ratification) are delegated by Parliament to certain officials.

But in any of those instances, the obligation of the public to know the law must, axiomatically, be matched by an obligation on lawmakers to give the public ample time and opportunity to acquire that knowledge and respond to it. Public respect and co-operation - those fundamentals of compliance - will be determined to a significant extent by how clear and full that information flow is. The public also knows, through access to the rest of the world, through the internet, that places with the very best regulated traffic systems and highest levels of compliance have got there by putting public education before formal legislation.

If the State, the police and the people want law and order, first we must put the law in order.

Kindly submitted by Jan Carmony