



Rights and Obligations when stopped by a Traffic Officer

Introduction

This article constitutes an outline in respect of roadblocks and so-called “roadside checks”, as they are catered for in law and implemented in practical application. Although it contains quite a bit of information, it is not a comprehensive guide and does not encompass everything there is to know about such operations.

Definitions and legalities

Roadblock

A “roadblock”, as its name suggests, is recognisable by the blockage of the road by law enforcement officials. These may be police or traffic officers, or a combination thereof. The road is physically **blocked** in one or both directions. Roadblocks actively impede the flow of traffic.

Roadblocks are regulated by Section 13(8) of the South African Police Service Act, No. 68 of 1955.

Section 13(8)(a) provides:

“The National or Provincial Commissioner may, where it is reasonable in the circumstances in order to exercise a power or perform a function referred to in section 215 of the Constitution, in writing authorise a member under his or her command, to set up a roadblock or roadblocks on any public road in a particular

area or to set up a checkpoint or checkpoints at any public place in a particular area.”

However, it is important to note that it appears that the powers of the National or Provincial Commissioner in terms of subsection (a) have been delegated to Station Commanders.

I am not going to regurgitate the entire provisions of Section 13(8) of the SAPS Act. Instead, its important points are briefly **paraphrased** below:

- The written authorisation **must** specify the date, approximate duration, place and object of the proposed action.
- Proper signage, traffic cones, barriers, etc. **must** be placed near and at the roadblock.
- Failure to stop for a roadblock is a criminal offence.
- Search and seizure without a warrant is authorised. You **must** cooperate and submit to such search and seizure. Evidence may be summarily seized.
- Anyone whose constitutional rights and/or rights in terms of the Criminal Procedure Act, No. 51 of 1977 are affected by a roadblock may demand to see the written authorisation for it. Any law enforcement official **must immediately** produce and present that authorisation. In practice, such people comprise anyone caught up in a roadblock.

Exceptions to the rules above

Notwithstanding the above, a roadblock may, however, be set up and search and seize property or persons without obtaining prior authorisation, if there are **reasonable grounds** to suspect that:

- a person who has committed an offence in terms of Schedule 1 to the Criminal Procedure Act who has been involved in the commission thereof is, or is about to be, travelling in a motor vehicle in a particular area;
- a person who is a witness to such an offence is absconding and is, or is about to be, travelling in a motor vehicle in a particular area and that a warrant for his or her arrest has been issued 1977, or that such a warrant will be issued if the information at the disposal of the law enforcement official is brought to the attention of the magistrate, regional magistrate or judge referred

to in that section, but that the delay in obtaining such warrant will defeat the object of the roadblock;

- a person who is reasonably suspected of intending to commit an offence and who may be prevented from committing such an offence by the setting up of a roadblock is, or is about to be, travelling in a motor vehicle in a particular area;
- a person who is a fugitive, after having escaped from lawful custody is, or is about to be, travelling in a motor vehicle in a particular area;
- any object which -
 - is concerned in;
 - may afford evidence of; or
 - is intended to be used in the commission of an offence and which is, or is about to be, transported in a motor vehicle in a particular area **and** that a search warrant will be issued by a Court **and** that any delay in obtaining one will lead to the loss of the opportunity to take action.

What if no written authorisation is produced?

If the written authorisation cannot be or is not produced, do not try to take it up at the roadside. Rather report the matter to the Station Commander at the SAPS station with jurisdiction later, and if you don't gain satisfaction, to SAPS provincial or National Headquarters. You may also be entitled to take civil action, so consult with an attorney.

“Roadside checks”

So-called “roadside checks” differ considerably from roadblocks in that at such operations the road is not blocked. Instead, traffic officers park at the side of the road and pull random vehicles off to check vehicle and driver fitness. They do not actively impede the flow of traffic.

Amongst other things, Section 3(I) of the National Road Traffic Act, No. 93 of 1996 provides:

“a traffic officer may, subject to the provisions of this Act or any other law - ... (b) when in uniform, require the driver of any vehicle to stop such vehicle...”

It is important to note that, together with traffic officers employed by local and provincial authorities, SAPS members and Metro Police are, by legal definition, “traffic officers”.

Section 3I (that’s the number “3” and the letter “I”) of the National Road Traffic Act **does not** authorise search and seizure without a warrant, however, this does not mean that search and seizure is strictly forbidden:

- traffic officers are authorised to demand that you produce any document in terms of road traffic and transport legislation and such document/s **may be** seized if they are defective or fraudulent;
- such documents include:
 - a learner’s and/or driving licence;
 - a professional driving permit;
 - a vehicle licence disc;
 - an operator card (where required); and
 - an operating permit in terms of road transport legislation (where required).
- your person or property may be searched if any of the reasonable grounds detailed in the “exceptions to the rules” in respect of roadblocks exist; or
- if you consent to a search.

Note in respect of “roadside checks”

Despite the term being widely used and operations being mounted ad nauseum by law enforcement officials, no legal definition for a “roadside check” exists. Regrettably, this has led to widespread abuse by Metro Police and traffic authorities that establish what are effectively roadblocks, without authorisation in terms of the SAPS Act, and call them “roadside checks” to circumvent the law and the Constitution.

The legal and constitutional validity of so-called “roadside checks” has been called into question by numerous individuals and organisations, however, at this juncture, I am not aware of any legal challenges that have been mounted.

I share their concerns, but such concerns did not fall within the scope of my personal constitutional litigation before the Pretoria High Court in respect of, amongst other things, the constitutionality of certain provisions of the Administrative Adjudication of Road Traffic Offences (“AARTO”) Act and the National Road Traffic Regulations.

What may and may not be done at roadblocks and “roadside checks”

- Law enforcement officials may:
 - search your person and/or property without a warrant at a properly authorised roadblock;
 - search your person and/or property at a “roadside check” without a warrant if you consent to a search or they have **reasonable grounds** to do so;
 - seize any “contraband” or evidence without a warrant at a roadblock or a “roadside check”
 - issue an infringement notice (“fine” in terms of the Criminal Procedure Act or the AARTO Act, as applicable) in respect of vehicle or driver fitness, together with passengers’ compliance with provisions of law;
 - issue a notice to discontinue use of a motor vehicle if it is suspected of being unroadworthy, or impound it if it is clearly unroadworthy;
 - arrest any person who has been, or they **reasonably suspect** has been involved in, or is about to commit an offence contemplated in Schedule 1 of the Criminal Procedure Act, without obtaining a warrant of arrest;
 - arrest any person in respect of whom a warrant of arrest has been issued by a Court;
 - arrest any person who commits any offence in his or her presence;
 - drive or ride any class of vehicle if they consider it necessary to do so, even if he or she only possesses a code B driving licence; and
 - **inform you** of your outstanding traffic fines.
- Law enforcement officials **may not**:
 - physically or verbally abuse you or damage your property;

- search your person or property without a warrant **except** at a roadblock or where **reasonable grounds** to do so exist, or you consent to a search;
- merely **threaten** to arrest you;
- solicit a bribe;
- force you to pay traffic fines at the roadside, even if a facility such as a bus is there for you to do so;
- withhold the prompt return of your driving licence in order to coerce you into paying outstanding traffic fines where no warrant of **arrest** exists or your driving licence card is not fraudulent; or
- discontinue or impound your vehicle without reasonable grounds.
- You **may**:
 - demand to have sight of his or her certificate of appointment (a card authorising him or her to act as a peace officer);
 - demand that any law enforcement official shows you written authorisation as is contemplated in Section 13(8) of the SAPS Act at a **roadblock**;
 - demand to see proof of a warrant of **arrest** if one is claimed to exist;
 - refuse to submit to arbitrary searches of your person or property at a “roadside check”, unless **reasonable grounds** therefor exist.
- You **may not**:
 - physically or verbally abuse them or damage their property;
 - refuse to provide a breath alcohol or blood sample;
 - resist arrest; or
 - offer or pay a bribe.

What the Constitution holds

The Constitution of the Republic of South Africa, 1996 (“the Constitution”) is comprehensive and is one of the best in the world. It is the Supreme Law of the Land and affords rights to **all**

persons (citizens or not) in South Africa. These rights are contained in the “Bill of Rights” in terms of Chapter 2 of the Constitution. Any law or action that is inconsistent with the Constitution is invalid and illegal.

Many of your rights are **not** absolute and may be restricted if there is a reasonable reason therefor. This is contained in Section 36 of the Constitution.

You are strongly advised to obtain a copy of the Constitution and specifically, to read and fully comprehend Chapter 2 of it, so you may be properly informed of your constitutional rights. You may obtain a free copy from the Constitutional Court, by downloading it [here](#), or downloading a slimline version of the Bill of Rights [here](#).

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Practical advice

Without derogating from any of the provisions of the Constitution, the Bill of Rights therein, or any other laws, there is what is provided for in the Constitution and other laws, and what happens in practice.

The very worst thing one can say to a law enforcement official is “I know my rights!”, or to try and tell them how to do their job. Although it should not be so, doing so can, and often does trigger abusive behaviour.

If your rights in terms of the Constitution or any other law are or are about to be infringed on, do not try and have it out at the roadside, at police cells, etc. Law enforcement officials are not judicial officers and the roadside is not a Court.

Rather do the following:

- be specific in terms of what right/s you feel are being, or are about to be infringed - e.g. “I do not consent to a search without a warrant and would like to know what Schedule 1 offence you have reasonable grounds to suspect I have committed or am about to commit”;

- note as many details as you can - e.g. vehicle registration numbers, officers' names, date, time, location, etc.;
 - you are **not** prohibited by law from taking photographs or videos in public places, including at roadblocks or “roadside checks”;
 - however, you should be sensible and refrain from showing cell phones at law enforcement officials because they tend to become irate;
 - if you don't take photographs or videos, write things down as soon as possible since human memory tends to diminish and/or become clouded over time.
- ask for a printout of your outstanding traffic fines, if that is the purpose of the operation, and politely say “I will take the appropriate action in respect of them in due course”;
- promptly take the appropriate action in respect of any traffic fines you may have, especially if you are aware of them before you are caught up in a roadblock or “roadside check”;
- report abuses to the appropriate authorities; and
- report any attempts at the solicitation of bribes or other forms of extortion to the SAPS 24/7/365 anti-corruption hotline on **(082) 820 6467**; or
- call the SAPS emergency call centre on **10111** if necessary.

Remember that where your constitutional rights are infringed, you may well have recourse through civil litigation. Consult with your attorney if you feel that any of your constitutional rights have been infringed.