

HUMAN RIGHTS ADVISORY FOR POLICE OFFICERS CONDUCTING CUSTODIAL INVESTIGATION

(Revised POP December 2013, Rule 20 page 51)

"It is high- time to educate our law-enforcement agencies who neglect either by ignorance or indifference the so-called Miranda rights which had become insufficient and which the Court must update in the light of new legal developments (People vs. Mahinay GR no. 122485, Feb 1, 1999):

1. The person arrested, detained, invited or under custodial investigation must be informed in a language known to and understood by him of the reason of the arrest and he must be shown the warrant of arrest, if any; Every other warnings, information or communication must be in a language known to and understood by said person;
2. Ensure that the person placed under custodial investigation shall not be subjected to any physical, psychological or mental harm, force, violence, threat or intimidation or any act that impairs his/her free will or in any manner demeans or degrades human dignity (See Sec. 2 of Anti-torture Law);
3. Ensure and respect the absolute right of any person under custodial investigation to have immediate access to any form of communication available for him or her to inform his or her family, relative, friend, lawyer or any human rights organization on his condition or whereabouts and condition(See Sec. 6 of the Anti-enforced disappearance Law);
4. Ensure that the suspect must be assisted by competent and independent counsel preferably of the suspect's choice. If the suspect cannot afford the services of a counsel, he /she shall be referred to the Public Attorney's Office who will address the need for a legal counsel;
5. That whether or not the person arrested has a lawyer, he must be informed that no custodial investigation in any form shall be conducted except in the presence of his counsel or after a valid waiver has been made;
6. He must be warned that he has a right to remain silent and that any statement he makes may be used as evidence against him;
7. He must be informed that he has the right to waive any of said rights provided it is made voluntarily, knowingly and intelligently and ensure that he understood the same;
8. In addition, if the person arrested waives his right to a lawyer, he must be informed that it must be done in writing AND in the presence of counsel,

otherwise, he must be warned that the waiver is void even if he insist on his waiver and chooses to speak;

9. That the person arrested must be informed that he may indicate in any manner at any time or stage of the process that he does not wish to be questioned with warning that once he makes such indication, the police may not interrogate him if the same had not yet commenced, or the interrogation must cease if it has already begun;
10. The person arrested must be informed that his initial waiver of his right to remain silent, the right to counsel or any of his rights does not bar him from invoking it at anytime during the process, regardless of whether he may have answered some questions or volunteered some statements;
11. He must also be informed that any statement or evidence, as the case may be, obtained in violation of any of the foregoing, whether inculpatory or exculpatory, in whole or in part, shall be inadmissible in evidence; and
12. Provide the suspect with a copy of custodial investigation report;
13. Submit the suspect for medical, physical and psychological examination before and after interrogation by competent and independent doctor preferably of the suspect's choice and/ or of the suspect's same sex, and if he/she cannot afford to have a doctor, refer him/her any government hospital to address the need.
14. Provide the suspect with a copy of the medical, physical and psychological examination report;
15. Allow the suspect access to proper and adequate medical treatment while under detention;
16. Presume and treat the suspect as innocent unless proven guilty by the court;
17. Afford visitation at all times to the members of his immediate family, medical doctors, counsels, priests, imam, religious ministers and members of NGOs accredited by the CHR and the office of the President;
18. Allow the suspect to speak/consult with his/her lawyers at all times;
19. Explain adequately in a language known to the suspect in the presence of counsel, the consequence of waiving his/her rights to counsel and physical, medical and psychological examination;
20. Observe the reglementary period during the conduct of custodial investigation;

- 21.If the offense falls under RA 9262 (Violence against women and children) the investigation should be handled by WCPD; and
- 22.Inform the suspects that they have the right to claim all the aforementioned rights.