

Human Rights and the Law: Your rights and the police

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WE have only one police force in this country. The police have wide-ranging powers provided in various laws. Yet, the increasing number of complaints against the police and the infamous nude-squat incident have raised the issue of the power of the police. To what extent may the police interfere with one's personal liberty and security in the execution of their powers and duties?

Under the Criminal Procedure Code (CPC), the police have powers to stop and search an individual who may subsequently be arrested. These powers are however not unlimited. As individuals, we have certain rights guaranteed under our Federal Constitution and laws made thereunder.

In 2006, a group of lawyers came together to draft a pocketbook titled Polis dan Hak-hak Asas Anda or commonly known as the Red Book.

This was aimed at informing and educating the public of their rights when "confronted" by the police.

It was very well-received, and a second edition is underway. The said book was eventually launched by the Minister in charge of law, Datuk Nazri and the then President of the Bar Council, Yeo Yang Poh, at the Bar Council Secretariat in April 2006.

Some of the essential information in the Red Book are as follows:

1. When the police stop you

» You may ask the police for identification if the officer is not in uniform. Take note of the identification card number. There are different types of identification cards. The difference is in the colour which will indicate the rank of the officer.

Blue : Rank of Inspector and above

Yellow : Below the rank of Inspector

White : Reserve police

Red : Suspended officer

(A suspended officer has no authority. You may walk away.)

» When stopped, you should provide your identification card, if requested by the police. Should the officer request for other documents or show any other items, you may ask the officer the purpose of the request. Do so politely.

» If you are not under arrest, you may walk away or refuse to follow the officer back to the police station or anywhere else, if asked.

2. Questioning by the police

Section 112 CPC statement

» The police may request you to go to the police station to answer some questions. If you are not under arrest, you may choose not to do so. You may however wish to cooperate

but by having a lawyer accompany you.

» The 112 statement is normally recorded if the police think you have information or knowledge about a case or offence. On most occasions, the police will make an

informal request for your 112 statement. If the place and time is convenient to you, co-operate. If not, tell the police you will do so at a convenient place and time.

» If you refuse to cooperate, the police may issue a formal order in writing signed by an investigating officer (known as a "police order") to ask you to cooperate. Should you disobey the order,

you cannot be arrested. However, it is an offence and the police may request a magistrate to issue a warrant against you to compel you to co-operate. In general, if you are merely a potential witness and not a suspect, you may not be arrested for the purposes of taking a 112 statement.

» In giving a 112 statement, you may refuse to answer any question and remain silent if the answer is likely to expose you to a criminal offence. You may request that a lawyer be present when you are being questioned. Note that a 112 statement may be used in court.

» Bring along a notebook or writing paper with you (personal notes). Make sure you understand every question asked. Write down every question asked in your personal notes. Take your time and think carefully. Then write your answer in your personal notes. Once you are satisfied with your answer, read your answer to the officer. Keep your personal notes for future reference.

» Upon completion, read the questions and answers written by the officer carefully, and compare them with those in your personal notes. Make any corrections or changes you wish. If you are satisfied with your statement, sign below the last sentence of your statement, at every page.

Section 113 CPC statement

» Should the police arrest you because you are a suspect in a case or offence, and subsequently record a statement from you, the statement is a 113 statement. Except for this difference, the safeguards mentioned above in relation to 112 statements apply.

3. Arrest by the police

» You must be informed of the reasons for your arrest. If you are not informed, you may enquire. You are advised not to resist an arrest. The police may use reasonable force to arrest you should you resist.

» The arresting officer must immediately take you to the nearest police station and

to no other place. You should ask the arresting officer for details of the police station.

» You are also advised to make a telephone call to inform your family, friends, lawyer or the Legal Aid Centre of your arrest.

» You may be detained for up to 24 hours to assist the police in investigations. Note the sequence of events and names of officers you come in contact with during this period.

4. Rights in detention

» Note the following:

i) You have the right to contact and meet with a lawyer.

ii) You are to be given proper and adequate food and water, and one set of clothing.

iii) You may take a bath two times a day.

iv) The police must record and keep all your personal belongings in safe custody. Your personal belongings must be returned to you upon your release.

v) If you are sick or feeling unwell, you have the right to receive immediate medical attention.

5. How long can you be detained?

» The police may only detain you for up to 24 hours. The duty of the police is to complete their investigations within 24 hours and to release you as soon as possible.

» If the police cannot complete their investigations within 24 hours, the police must bring you before a magistrate for a remand order to extend your detention beyond 24 hours (remand order).

6. Remand order by a magistrate

» The power to issue a Remand Order by a magistrate is found in section 117 CPC. Purpose of a remand order

» A remand order is to give more time to the Police to complete their investigations, and decide whether there is evidence to charge you for an offence. As you have the right of silence, the police cannot ask for a remand order only for the purpose of taking a statement from you.

Period of a remand order

» In total, you cannot be detained for more than 15 days. The police may make more than one application for a remand order.

What happens at a remand order hearing?

» When the police bring you before a Magistrate for a remand order, the police must give reasons to the magistrate why it is necessary to detain you for more than 24 hours.

» You have the right to request for legal representation at the hearing. Ask the magistrate for it. If the police have denied you this right or threatened or assaulted or treated you inhumanely in any way during detention, inform the magistrate.

» Alternatively, you may ask to be released or for a shorter remand order to be made. Give your reasons. e.g. "I will cooperate with the police in their investigations", "I will be available".

» The magistrate's duty is to consider carefully the reasons given by the police and your reasons why you should be released or for a shorter remand order.

7. Body Search without Arrest

When can this be done?

» If you are at a place (e.g. entertainment outlets) where the police are conducting a raid or looking for prohibited substances, the police may search your body or bags without arresting you.

» This must be done in the presence of an officer who is an Inspector or of a higher rank.

What is to be done?

» Do not allow the police to put their hands into your pockets or bags. Volunteer to empty your pockets or bags in their presence so that you are able to see all your belongings. Take out your belongings one by one. Each time, say "purse", "keys", "ID card" etc. When your pockets or bags are empty, turn your pockets or bags inside out.

» A woman may only be body-searched by a female officer. All body searches must be carried out with decency. There is no law requiring you to be stripped naked for a search.

8. Body Search on Arrest

» The police have the power to search your body for any object relating to a suspected offence.

» It is your right to have the body search conducted in a confined and private place.

» Even when arrested, there is no law allowing the police to force you to be stripped naked. Protest and thereafter lodge a report should you be forced to strip.

Recent amendments to the law through the CPC (Amendment) Act 2006 and CPC (Amendment) (Amendment Act) 2007 have been made but have yet come into force. We hope these amendments will greatly improve police services in Malaysia.

The Red Book amplifies the effort of the Bar Council

in looking out for the public's rights. There are however many more issues to look into – greater recognition of human rights such as right to counsel, right to a fair trial and greater accountability in police investigations. The Bar Council houses a Human Rights Committee, which looks into public complaints of breach and/or abuse of basic human rights. Through this Committee the Bar Council hopes to offer assistance to the public, within the scope of ability of the volunteer lawyers who sit in that Committee.

We however salute the courage of all those who have suffered at the hands of the police to have told us their stories and informed the struggle. Together, our hope is that we will build a better Malaysia.

Richard Wee Thiam Seng is a member of the Human Rights Committee, Bar Council Malaysia. For more information, see www.malaysianbar.org.my/hrc.

Complaints of rights violations may be forwarded to rezib@malaysianbar.org.my for consideration of the Committee. However, we make no assurance that all cases will be adopted for action.