

# REVIEW OF THE LEGAL FRAMEWORK OF MALDIVES POLICE SERVICE

January 2015



Commonwealth Human Rights Initiative

MALDIVIAN  
DEMOCRACY  
NETWORK

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## *Foreword*

The Commonwealth Human Rights Initiative (CHRI) advocates for and works towards democratic policing in the Commonwealth. It has slowly expanded and laid the foundations for civil society engagement on police reforms in various regions in the Commonwealth. The organization's work in the Maldives began in 2008, at first as part of its regular monitoring of reform initiatives in South Asia, which has slowly expanded into a larger area of work involving both research and advocacy. The Maldivian Democracy Network (MDN) has been working in the areas of human rights and democratic principles since 2004, and strongly advocates for the engagement of the people in governance. As such, MDN has facilitated for wider consultation in governance over different areas of the democratic process. The transition from the National Security Service into the Maldives Police Service took place shortly after the birth of MDN, and the organisation has taken a special interest in the processes of policing in the country. Working in partnership, CHRI and MDN have joined together to do research and advocacy on police reform.

The transition to democracy in the Maldives opened the space for a closer engagement in the creation of a reformed police service. When the Maldives police separated from the military in 2004, it set itself the goal of "gaining public trust and confidence" through "community responsiveness, improved transparency and accountability, respect for human rights, and equitable access to services" among others. The 2008 Constitution together with the 2008 Police Act put in place a strong framework of democratic policing. The Act incorporated several best practices including the establishment of the Police Integrity Commission as an independent oversight body. For a nation that had long suffered police high-handedness, harassment and abuse, these developments reflected a genuine promise, and hope, of accountable policing.

Through these years, CHRI and MDN are proud of the opportunities to collaborate with the Maldives Police Service on research on policing standards. In 2011, we reviewed the strategic planning process adopted by the police and suggested ways to make it inclusive and transparent. More recently, we interviewed women police across ranks to understand difficulties confronting them in performing their duties and how the organization can better respond to their problems.

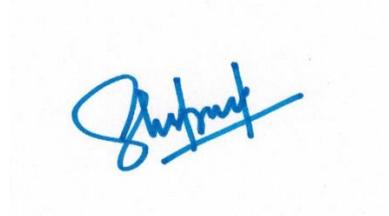
This report reviews the evolving legal framework on policing namely the Maldives Police Service Bill 2012, Police Regulations and relevant provisions of the Code of Criminal Procedure Bill. These documents bear worrying signs of an erosion of the democratic policing framework enshrined in the Constitution. The police are being vested with greater powers and discretion without the requisite checks. In a bid to insulate the police from illegitimate political control, even minimum government supervision that every public authority must be subject to in a functional democracy, is being diluted. Alarming, these dangerous trends are being written into law. This review puts forward challenges to these unhealthy trends.

The Maldivian people, indeed the police themselves, deserve better. The legal framework around policing must align with the highest constitutional aspirations of a democratic and progressive society. In defining police powers, the necessary safeguards must also be codified to prevent abuse. Operational independence is essential but must be subject to careful oversight and strong accountability mechanisms independent of the police and partisan politics must exist in tandem. It is dangerous to have one without the other.

CHRI is deeply appreciative of Maldivian Democracy Network, without whose knowledge and commitment, none of this work in the Maldives would be possible. MDN led research on this report for which CHRI is very grateful and fully endorses the recommendations put forward.



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## **Abbreviations and Acronyms**

CHRI	Commonwealth Human Rights Initiative
EU	European Union
FNF	Frederich-Naumann-Foundation
ICCPR	International Covenant on Civil and Political Rights
MDN	Maldivian Democracy Network
UDHR	Universal Declaration of Human Rights

## **Other Terms**

People's Majlis/Majlis	The Parliament
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## **Introduction**

As part of a regional project titled “Civil Society and Police Reform in South Asia”, the Maldivian Democracy Network (MDN) with the Commonwealth Human Rights Initiative (CHRI), led by Frederick-Naumann-Foundation (FNF) and funded by the European Union (EU), commissioned Muizzu &Co. LLP to conduct a comprehensive review of the following legal documents:

- a) Maldives Police Service Police Bill 2012;
- b) Regulations on Executing of the Constitutional Authority and Discretion Accorded to the Police; and
- c) The sections involving the police in the Draft Criminal Procedure Code.

This report highlights the key issues that were identified, possible impact, key recommendations and way forward for the legal sector and other relevant agencies involved.

Annexed to this report are the detailed review and comments on the above legal documents outlining areas and reasons for concern.

## **Methodology**

Muizzu & Co LLP reviewed the legal documents mentioned above by comparing it with the international best practices of policing, constitutional safeguards as provided by the Constitution of Maldives (2008) and internationally accepted human rights standards found in the conventions which Maldives are party to, namely International Covenant on Civil and Political Rights (ICCPR) and Universal Declaration of Human Rights (UDHR). Additionally, the review looks at the legislative projects from a gender perspective and identifies gaps that would affect gender equality.

After the initial draft of the commentaries, three consultative meetings were held with key stakeholders. Human Rights Commission of the Maldives, UNDP, Police Expert, Gender Expert and Transparency Maldives attended the three consultations. In each consultation meeting a summary of each documents was presented to the participants. The final product reflects comments received from the above including Commonwealth Human Rights Initiative (CHRI).

## **Objectives of the Review**

The main objective of the review was to thoroughly study the existing and proposed legislations concerning police powers and police practices in light of the constitutional safeguards and international best practices in policing and human rights, especially women’s rights. The review

also checks compatibility of these safeguards against international conventions that Maldives are party to.

Secondly, the review is designed to help the Government of Maldives and Maldives Police Service to identify legal gaps in the system and in turn, make legislative adjustments to ensure that the legal framework is compatible with the Constitution of Maldives and international standards.

It is hoped that this review will help researchers, law students, practicing lawyers, investigative officers, judges, magistrates and general public to better understand legal gaps that exist within the reviewed documents. It can also be used as reference material and as an important tool to advocate for police reforms and for better policing practices.

# POLICE BILL, 2012

## Introduction and Purpose

The bill was first introduced in the 18th session of the People's Majlis in 2012. The law was to be implemented on 11th of November 2013<sup>1</sup> with the new government that was scheduled to be sworn in on that day. However, the bill failed to pass through Majlis on time<sup>2</sup>.

The main purpose of the bill is to re-align the Maldives Police Service to the Constitution and international best practices.

## Main Issues

The Bill, if passed, will annul the current Police Act (Act Number 5/2008). The Police Act established an independent oversight body, the Police Integrity Commission in order to investigate police conduct issues. The Police Bill does not recognize Police Integrity Commission and therefore the Commission will dissolve should the Bill be passed and ratified. However, the Police Bill 2012 makes reference to Police Integrity Commission on several occasions. Section 51(c) of the Bill requires Police Integrity Commission to issue a report in relation to the nominee for the position of the Commissioner of Police.

Section 64(b) further requires the Maldives Police Service to inform the Police Integrity Commission upon appointment of an Executive Officer.

Part two (Chapter nine) of the Bill discusses key officeholders. Section 50 (a) prescribes that the Commissioner of Police shall be appointed by the President on the recommendation of the Minister. However, according to Section 51(a), the Minister shall announce the vacancy of the position to members of the Executive Service of the Police, giving them opportunity to apply for the post. Section 51(f) requires the choice of the Minister for the position of the Commissioner of Police to successfully win a majority of the total membership of the Executive Service of Maldives Police Service in a secret ballot.

Furthermore, section 56(b) limits the circumstances in which the Minister may recommend the President to dismiss the Commissioner of Police. Section 56(b)(7) requires three quarters majority of the total membership of the Executive Service by secret ballot, if the Minister wants to dismiss

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<sup>1</sup>Police Bill 2012, Article 4(a).

<sup>2</sup> When the Bill was referred to the Parliamentary Committee on National Security, MDN together with CHRI met with members of the Committee and urged a consultative process.

the Commissioner of Police on the grounds of incompetency to perform the functions prescribed in this Bill.

The stringent procedures set out in the Bill for the nomination and dismissal of the Commissioner of Police, influenced by the Executive Service will hinder accountability of the Commissioner to the government of the day. It also means that as long as the Commissioner enjoys the majority of the Executive Service, the competency and the ability of the Commissioner to implement the policies of the government or lack of it, cannot be grounds for dismissal of the Commissioner. In reality, it means that it will be the Executive Service (or rather, a simple majority of the total membership of the Executive Service) who will have absolute powers over the nomination, appointment and dismissal of the Commissioner of Police. This could seriously hinder the capacity of the government of the day to successfully implement its public order policies.

Additionally, Section 62(l) provides that the Commissioner has the power to transfer an officer serving in the Executive Service to another post within or outside the Executive Services prescribed in his contract of employment. Therefore, in the event that a vote of no confidence is taken against the Commissioner, the Commissioner has the power to remove and reassign members of the Executive Service to suit his needs. There seems to be room for manipulation.

Part Three (Chapter Sixteen) of the Bill outlines the powers and responsibilities of the police. Section 76(a) requires that in the event that there is any inconsistency between another statute and this Bill regarding a provision that confers a power or imposes a responsibility on the police, this Bill shall prevail over the provision notwithstanding whether the said statute was enacted before or after this Act. This provision is against the basic principle that a current parliament cannot tie the hands of the succeeding parliament. This provision is unnecessary and against the spirit of law-making. For instance, should any situation arise where the parliament wishes to introduce a special law to address a special situation, this law could still be amended or made obsolete.

## **Key Recommendations**

1. Revise the procedure for the nomination, appointment and dismissal of the Commissioner of Police.
2. Revise the composition and powers of the Executive Service of Maldives Police Service.
3. Review the Bill or make arrangements for the continuation of the Police Integrity Commission.
4. Harmonize the Bill with the Penal Code and other relevant laws passed by the Majlis.

# REGULATIONS ON EXECUTING THE CONSTITUTIONAL AUTHORITY AND DISCRETION ACCORDED TO THE POLICE

## Introduction and Purpose

The Regulations on Executing the Constitutional Authority and Discretion Accorded to the Police (hereafter the Regulation) Regulation is made under Section 17(c) (13) of the Police Act (Act number 5/2008). The purpose of the Regulation was to set out rules and procedure for the use of power by the police. More specifically, powers relating to arrest, detention, search and seizure.

The Regulation came into force on 2<sup>nd</sup> November 2008, almost three months into the ratification of the new rights-based Constitution of 2008 on 7<sup>th</sup> August 2008.

## Main Issues

The 2008 Constitution brought about major changes to the administration of criminal justice. Article 46 outlines general situations/circumstances that would allow the law enforcement officials to arrest a person. Article 49 explains the circumstances in which a person can be held in remand for over 24 hours upon arrest. Article 48 introduces a range of procedural rights for the defendant in a criminal trial. The purpose of this Regulation was to prescribe rules and procedures for the police to ensure that the use of power by the police respects Constitutional safeguards that are to be observed in criminal procedures.

Generally, however, since the Regulation was passed shortly after the ratification of the new Constitution, there was a lack of practice or practical experience among the law enforcement agencies relating to implementation of these procedural rights and the boundaries of such rights. Hence, the provisions in this Regulation do not adequately address and protect the constitutional rights of the citizen.

Section 4(c) of the Regulation states that the police have the authority to search and check if they have the conviction that the vehicle contains an item that necessitates checking or that the item that necessitates checking has been stolen or is an illegal item. It is suggested that different drafting be adopted to stipulate the justifications for the police to be able to search and check vehicles, for the police to have “conviction” before they have even conducted the search does not align, and this questions the very basis of the stop and search. The section could be re-phrased like “Police have the authority to search and check a vehicle on the basis of a reasonable complaint received, or credible information received, or a reasonable suspicion exists that the vehicle contains an item that necessitates checking”.

Procedures in this Regulation relating to the powers of the police to arrest and detain with and without a court warrant are highly problematic and contradict Articles 46 and 49 of the Constitution. For instance, Section 4(f) provides that in the instance that the police have no appropriate reason to believe that a person is carrying a stolen or illegal item, they do not have the authority to arrest that person. However, Article 46 of the Constitution is clear that if the arresting officer observes the offense being committed, or has reasonable and probable grounds or evidence to believe the person has committed an offense, the officer can arrest that person even if the person does not carry on him any stolen items.

With regard to Sections 4(g) and 4(h), both of these are inconsistent with Section 8(a) under which police search of people's homes, property, and residences without a court order can be done only in case of instances prescribed in Section 10 (a). Section 8(a) implies that in every other instance, a court order is required. But 4(g) also gives police the discretion to enter without authorization. All of these layers of inconsistency must be addressed.

With regard to Section 5(d), if it is found that there is no possibility of complying with 5(b), there is no need to comply with Section 5 (c), (e) or (f). The caveat allowed essentially nullifies almost all the safeguards provided in the course of a vehicle search and check. Police officers who conduct these searches should be duty-bound to ensure that they have all the needed identification, information, and writing material required of them at all times. This single caveat could ensure that the majority of vehicle searches are conducted in the absence of the important procedural safeguards laid down. We strongly suggest that this particular sub-section be deleted.

Section 6(a) reinforces the caveat given in 5(d) "...except for the instances where a written record cannot be made..." we strongly suggest this also be removed.

With regard to Section 6(e), we suggest the record to also include name, rank and service number of the police officer who conducted the search, and name of the supervising officer, if any. A copy should also be dispatched to the supervising officer.

As a general comment on Section 9 where the search and check is required to be conducted in accordance with the court order, we suggest the addition of a section which gives some guidance to the need for the police to maintain strict regard for decency if women are present in the place to be searched (particularly those uninvolved).

With regard to Sections 9(a) 10, while search and check under a court order can be exercised by any police personnel, the Regulations do not specify the rank(s) of officer authorized to conduct search and check without a court order.

Section 9 (i) requires the police to make a written record of what or who was found in the place of a search and/or of all seized items, it must be expressly stated that a copy of the written record

is provided to the owner/responsible person of the place searched. It is suggested that the drafting of this section be made more precise.

With regard to Section 11(g) where the officer who authorized a search and check or an officer to whom the information of a search and check was given to as per (e) and (f) of this section, the officer should record in writing the reasons for the search and check and the information of item of evidence found in the search and check where search and check does not lead to recovery of any evidence or arrest of the suspected person. It is suggested that those instances also be included in the record. The current language seems to indicate the requirement to record the information of item of evidence found in the search and check only.

With regard to Section 13, any substantive procedure laid down in these Regulations must be in total compliance with the Constitution and the Criminal Procedure Code. Any procedure which is outside this framework should be deleted from these Regulations.

The Regulation in several provisions recognizes 'arrest-able and non-arrest-able offences', a term which is archaic and does not have any relevance to the pre-2008 Constitutional era.

With regard to Section 17(a) (1), Article 48(d) of the Constitution lays down the right of all arrested persons "to be brought within twenty four hours before a Judge", with no caveats or exceptions. Carving out any exception to this constitutional mandate would require an exceptional need. It is our view that cases in which the health condition of arrested persons is so dire that they cannot be brought before a Judge will be very few. The reason of health conditions does not warrant laying down a blanket provision which carves out an exception to a constitutional right. We suggest this be deleted from this section.

With regard to Section 17(b), even in the instances stated in (a) of this section the arrestee should be brought without delay before a judge and a decision made on the matter of the person being kept for a duration more than 24 hours, again, with reference to Article 48(d) of the Constitution, the instances referred to in this section are being established as exceptions to the constitutional guarantee. The language "without delay" is absolutely insufficient. The shortest time period possible within which these arrestees should be brought before a judge should be specified.

With regard to Section 18(a), apart from the information to be provided under the section, other constitutional rights, including the right to be released subject to conditions of bail (Article 49 of the Constitution), right to an interpreter to be provided by the State where he does not speak the language in which the proceedings are conducted, or is deaf or mute (Article 51 (d) of the Constitution), and in serious criminal cases, to receive legal assistance on behalf of the state in case the accused person cannot afford to engage a lawyer (Article 53 (b) of the Constitution) must also be informed to the person at the time of arrest.

Section 18(b) lays down what will be considered an illegal arrest but it does not specify the action to be taken against the arresting officer in case an arrest does not meet the requirements laid down in 18 (a) of this section.

Section 20 (e) could be read as inconsistent with Article 45 of the Constitution. The section must specify a time period within which the police will have to take the person to a police center, and abide by the mandate to produce all arrested persons before a Judge within 24 hours.

Section 21 (h) states the instances under which a person released on condition at a road site under this section can be arrested without a court order. This is inconsistent with Article 46 of the Constitution. This is also inconsistent with Section 13 of these Regulations, which does not recognize the two conditions mentioned in 21(h), though it has been pointed out that Section 13 itself is also inconsistent with Article 46 of the Constitution.

Sections 22 to 25 introduce “stopping and arresting people for investigation”, which is not recognized in the new Constitution. It is a concept that was used pre-2008 Constitution and has found its way into this Regulation. The new Constitution mandates that a person can only be arrested if the conditions mentioned in Article 49 are satisfied. Supreme Court decision number 19/SC-A/2010 further elaborates on the use of Article 49. This Regulation does not reflect the interpretations provided by the Supreme Court. The Regulation has never been reviewed to make it up to date with court’s interpretation of Articles 46, 48 and 49 of the Constitution.

An independent Prosecutor General has been appointed pursuant to the new Constitution to oversee police investigation and to make decisions to prosecute on behalf of the state, among other things. The Prosecutor General is guided by general policy guidelines provided by the Attorney General pursuant to Article 133 of the Constitution. Section 27(b) of the Regulations states that if a person is arrested for suspicion of a crime, and if the officer in charge of that investigation unit or the highest ranking officer in charge of the place of the person’s confinement is of the opinion that there is not enough evidence to prosecute the arrestee, then he/she should be released. This is a direct contradiction with Article 223 (a) and (b) of the Constitution where the mandate to decide whether to prosecute or not is for the Prosecutor General and the law require the Prosecutor General to be independent in performing his functions.

It appears from Section 30 (a) that only details of persons detained beyond 24 hours is to be recorded at the police center. It is suggested that a separate record be maintained in each police center to record arrests at the time of arrest before the first production before the Judge, details such as name of arrested person, date and time of arrest, reason for the arrest and the suspected crime, name, rank and service number of the arresting officer. These details are to be given in writing to the person arrested as per Section 18(a) of these Regulations. In addition, record must also be maintained at each police center, preferably in a specified register for the purpose.

Section 32 (a) lays down procedure to conduct search and check of an arrested or confined person. We would suggest that it is stipulated that any search of a female conducted under this section be done by a female police officer. We recognize that it is stipulated for body searches in section 33, but we strongly suggest that it also expressly be mentioned in this section. Even though this section deals with search for items carried by an arrested person, it may involve physically handling the person and could also be invasive like conducting a body search (particularly under the discretion provided under (d) and (e).

Under Section 32 (c), it is not obligatory to act in accordance with (b) (3) of this section if the person being confined is being defiant, or might be defiant, or if the confined person is a person who does not understand, or is in a state in which he/she cannot understand what he/she is being told. This section exempts the police from their duty of informing a person arrested or confined of any item removed or taken from them in two instances. Both of these do not constitute reasonable grounds for the police to not provide reasons as to why an individual's personal items are being taken from them, which is in essence a procedural safeguard. These should be deleted. "Being defiant" is not legal language and has no precise definition; and "might be defiant" has not even occurred. Section 32(c)(2) is similarly very vaguely drafted, which provides no justification for the police to not to adhere to a procedural safeguard, and in fact a scenario like this should put the onus on the State to ensure that a person is given the help they need.

As per Section 32(d), in order to comply with (a) of this section, a person who is being detained can be searched and checked to an appropriate degree that is believed to be of necessitation. The language here should be made more precise, particularly to establish what is "an appropriate degree". Search can be invasive and what is allowed and what is prohibited must be clearly stipulated.

According to Section 32 (e), if a person who is confined or held in custody at a police center has or is recognized to have on him/herself or under his/her care an item that is stated in (1) of (b) of this section, the person can be searched and checked at any time or for any amount of times. We feel that it is excessive to subject a person to search "any amount of times", particularly when that person is being held in police custody and is under the close watch of the police. Search can be invasive and it should be done once thoroughly. This equally applies to both men and women. We strongly suggest this is deleted from this section.

According to Section 32 (g), if an item is found during a search and check of a person who is confined or under police custody and that item removed and taken from him/her the police should give to that person a **written document including the detail of that item**. It is suggested that, in addition to the detail of the item removed, the written document also specify the reason for removing the item and name and service number of the officer who conducted the search. In

addition, the written document should be signed by the arrested person to make sure everything is properly recorded and no detail is missed out.

According to Section 33 (d), **a body search and check of a woman should be conducted by a woman police and that of a man by a police man.** In the instance there is no woman police, then any woman who is designated by the Duty In-Charge must be allowed to carry out the search and check. In addition to this, it can also be specified in this section that a body search of any arrested person cannot be conducted *in front of* a police officer of the opposite gender. Furthermore, a general provision is suggested to be included in Section 9 to provide some guidance for the police to maintain strict regard for decency if women and children (particularly those uninvolved) are present in the place to be searched.

Section 33 (g) states that, in the event that a search and check has been conducted on a person and it is believed that any type of item stated in (a) (1),(2), (3) and (4) of this section is found inside his/her body then that item should be removed under a specified procedure by a medical personnel. We strongly suggest that it be clearly specified in the section that in case of removal of an item from a person's body, the removal should be made not only on the advice of medical personnel but also in the presence of a medical personnel.

Section 34 (a) states that if a person who is confined by the police has been body searched and checked, then a record should be made of that body search and check and the **person should be given in writing which part of his/her body has been checked and the reason for his/her body check.** The written record on body search to be given to the arrested person should also include the name and service number of the officer who conducted the search, a copy of the consent order given by Duty In-Charge as per Section 33, and if an item was removed from the arrested person's body, a brief report from the medical personnel involved should also be appended to the written record.

Section 38(d) states that the police can withhold an arrestee the right to access a lawyer for a period not exceeding 96 hours. The fundamental right to appoint a lawyer cannot be limited in a Regulation. It has to be through a law passed by the Majlis, as mentioned in Article 16 of the Constitution.

Section 49 states the instances in which the police have the discretion to collect, analyze and act on intelligence. We are of the opinion that intelligence-gathering is a necessary part of policing, particularly crime investigation and prevention, and this can involve surveillance (including electronic) and interception of personal conversations and information. We also emphasize that the Right to Privacy is enshrined in Article 24 of the Constitution, and this must be balanced against intelligence-gathering. The police have the discretion to carry out certain functions to gather intelligence in 49(b) of these Regulations on obtaining a court order. We would strongly

suggest that checks and balances are established in this section to balance the imperatives of intelligence-gathering while upholding the right to privacy.

### **Key Recommendations**

1. Review the Regulation and rewrite it to ensure safeguards in the Constitution are maintained.
2. Review the provisions relating to arrest and detention in light of Supreme Court's decision number 19/SC-A/2010 and other relevant interpretations provided by the judiciary.

# CRIMINAL PROCEDURE BILL

## Introduction and Purpose

The Bill subject to review was the Criminal Procedure Bill that was submitted to 18<sup>th</sup> session of the People's Majlis. For the purpose of the Police Reform Project, the review was limited to the powers of the police mentioned in this Bill.

The Criminal Procedure Bill was initially drafted in 2005 along with the Penal Code. Since then, no major changes have been brought to the bill. Prior to the ratification of 2008 Constitution, the Bill was revised to conform to the new sets of procedures and guidelines introduced by the new Constitution. However, this review revealed that there are still some provisions that need to be adjusted to ensure conformity with the new Constitution.

## Main Issues

Section 15(a)1 and 15(a)3 implies that a person can be arrested and held in remand 'for the purpose of investigation' and while 'the prosecution reviews the file' respectively. Both these circumstances contradict Article 49 of the Constitution. A person can only be held in remand for the reasons specified in the said Article and it does not include above-mentioned circumstances. The section further states timelines for criminal cases to be processed. However, it does not come with any exceptions and the rigidity could cause practical problems.

Section 15(a)6 states that the judge, while deciding on extending the remand of the arrestee should consider availability of sufficient evidence to convict him/her during trial. This process would require the judge to look at the evidence of the case before the trial. This could influence the impartiality of the judge during trial, as the evidence has already been evaluated at the remand hearing.

Section 28(a)2 provides that the police has power to search if the person subject to search has a court warrant issued to arrest him. A court warrant for an arrest doesn't necessarily warrant permission to search his belonging.

## Key Recommendations

1. Review the Bill in light of other legislations that has been ratified since the Bill was drafted to harmonize with other laws.
2. Review and revise provisions relating to arrest and detention in light of the interpretations provided by the Supreme Court and the High Court.

## ANNEX I: Review of the Police Bill, 2012

15 (a)	This provision gives power to the CP to appoint police officers to rank and to make necessary regulation to the effect. This power includes assigning ranks to Superintendent of Police.	<p>Article 61 (e) provides that a member of the Executive Officer shall be members of the Police Service ranked Superintendent of Police of higher. Article 51 (g) prescribes that an officer nominated to be appointed as CP should enjoy a simple majority of all the members of the Executive Service. When the members of the Executive Service is also appointed by the CP, this makes it possible for the incumbent CP to control the process through appointments to the rank of Superintendent of Police and to the Executive Service.</p> <p>The provision is silent on the regulation to assign ranks to posts above the rank of Superintendent of Police.</p> <p>Generally, the power to make regulation should be vested with the Minister. This could be done in the recommendation of CP.</p>
15 (b)	In assigning positions within the police service, the commissioner shall open the opportunity for representation of women in the police service in their fullest capacity.	How to achieve this and the manner by which this could be attained is unknown.
18	Where any of the qualifications are found lacking while being a police officer, such person is thereby dismissed from the position of a police officer with immediate effect.	The term 'immediate effect' could be problematic in practice. The qualifications outlined in this provision is subjective and there needs to be a process through which a decision on these issues be made.
18 (e)	Shall not be a person charged with a drug use offense	The limitation is only for 'drug use offenses' and does not include drug trafficking or drug paddling offenses which are outlined in the new Narcotics Act (17/2011)
19(d)	Shall not be a person charged with a drug use offense.	The limitation is only for 'drug use offenses' and does not include drug trafficking or drug paddling offenses which are outlined in the new Narcotics Act (17/2011)
20	"any person"	Should it not include 'people'?
27(i)	Where a policeman is acquitted from charge made against him, to gain damages for loss suffered.	This contradicts articles 17 and 20 of the Constitution. A non-police officer is not entitled to claim damages in the event he/she is acquitted of a criminal charge. Why would a policeman be entitled for this? Furthermore, this provision does not specify if these charges are of criminal or administrative nature. Therefore, it is impractical that a person when acquitted stand to claim damages.

31	Police values	Police values as described in this bill does not have any mentioning of human right or gender equality.
34(c)	It is also the responsibility of the Minister to provide necessary facilities to the training center.	Article 32 states that the Minister shall provide the services mentioned in the articles, in relation to state affordability. The services/facilities mentioned in this articles includes training facilities and other related facilities and resources. Article 34 (e) however makes it mandatory for the Minister to provide necessary facilities to the training center. There seems to be an evident contradiction.
36(b)	The budgetary allocations of the police passed by the state shall be placed at the disposal of the commissioner, who shall not be obstructed by any party to spend within the ambit of the Public Finance Act and other laws, the amounts so earmarked.	Strategic Policing Requirements as prescribed in 33(a) and the Strategic Action Plan in 33(b) of the bill, shall be taken into account while preparing the budget.
40(a)	A person discharged with honour according to sections 38 and 39 of this Act, where he had remained in the police service employment for 15 consecutive years, is entitled for employment privileges in accordance with the Retirement Regulation made pursuant to this Act and with reference to this section.	Civil Service require a person to spend 20 years in service to be able to retire.
42(a).2	Surviving children of the deceased until they attain the age of 18.	This section does not include unborn babies of the deceased.
49	General responsibilities of the Commissioner	It is stated here that the Commissioner shall be responsible for the operation of the police service. Section 68(b) provides that the Minister is made responsible for the Police Service through the Strategic Policing Requirements. However, the section on general responsibilities of the Commissioner does not make reference to the Strategic Policing Requirement.
51(c)	Requires a report from Police Integrity Commission	Pursuant to section 154, the Police Act of 2008 will resolve. With it, the composition and function of the Police Integrity Commission will also resolve. Therefore, requiring a report from Police Integrity Commission contradicts the results of this law.
51(e)	Where the Minister finds, in view of the Police Integrity Commission or the Professional Standards Command regarding a nominee for the Office of the Commissioner to be recommended to the President, is suitable for the post, he shall propose the name for an opinion by secret	The fact that a Commissioner can only be appointed with the blessing of the majority of the members of the Executive Service is practically problematic. The members of the Executive Service (who are appointed by the Commissioner of Police) have the power to appoint a new Commissioner. It also makes it

	ballot among members of the Executive Service of the Police.	possible for the majority of members of the Executive Service to hijack appointment of the Commissioner against the will of the political masters. The government/President has a mandate to provide public safety through Maldives Police Service and other public order institutions. It is against the spirit of the Constitution for the President to not have power to appoint public officials to public institutions. Especially, institutions that are related to executive branch of the government such as institutions of public order and safety.
51(f)	The Minister shall recommend to the President the nominee to be appointed as Commissioner, where there is majority support of more than half of the total membership of the Executive Service of the Police.	Power of the Minister to nominate a name to be appointed as Commissioner of Police is limited to the support of the members of the Executive Service. This is against the spirit of the constitution where it is the mandate of the executive and the government of the day to provide public order and safety.
52	Wherever role of members of the Executive Service is prescribed in section 52 of this Act in connection with the appointment of the Commissioner, such reference shall mean the total membership of the executive officers.	Again, the power to nominate a Commissioner of Police is delegated by law to the executive officers. Which means, the executive officers can override the will of the political masters by nominating and voting for someone against the will of the government of the day. This may lead to a stalemate between the government and members of the Executive Service of Maldives Police Service.
53(a)	Must not be someone who had committed an offence punishable by a Hadd, as per Shariah.	The Dhivehi text is unclear as to the requirement of this condition. Does it mean someone not charged for a <i>Hadd</i> offence or someone not convicted of a <i>Hadd</i> offence?
53(i)	Must not have been identified by any state office in association with an act of corruption or any act of disrepute.	The requirement when limited to only 'not be identified' is ambiguous. Does it mean not charged, or not investigated or convicted or would it include disciplinary actions?
54	The term of office of the Commissioner who is appointed shall be a term of 4 years. The appointment can be renewed for an additional term of 4 years.	The tenure of the Commissioner of police does not follow the presidential term. This may lead to practical difficulties as policies of the government may change with the change of the government and it will be difficult for the government to implement those policies with a Commissioner of police appointed by a previous government.
56 (b)	The Commissioner may be dismissed from office by the President on a submission based on the Minister's recommendation.	It is against the principles of a presidential system of governance (and Article 115 (f) of the Constitution of Maldives) that the president be barred from appointing executives to run government functions. The powers of the president shall not be limited to a

		recommendation by the Minister of Home Affairs.
56(b).7	<p>The Minister may only propose to the President for the dismissal of the Commissioner under the following circumstances:</p> <p>7. where it is decided by three quarters majority of the total membership of the Executive Service by a secret ballot, that he is incompetent to perform the responsibilities of the post, or that he carried out an act unsuitable to the position of Commissioner, and duly notified to the Minister.</p>	<p>This provision bars the power of the Minister to recommend to the President for the Commissioner be dismissed from his position, unless the conditions in this section of the bill is met. This again unreasonably limits the power of the executive to appoint and dismiss individuals to operate and provide public services.</p> <p>Subsection 7 of this section gives the power to three quarters majority of the Executive Service to nominate to the Minister that the Commissioner be dismissed from his position. The reason as described in subsection 7 is that he is 'incompetent to perform the responsibilities of the post, or that he carried out an act unsuitable to the position of the Commissioner'. It is unclear if an investigation into the allegations be carried out and the incumbent Commissioner be provided an avenue to respond to these allegations. The design of this subsection gives way for a mutiny to happen within the Executive Service. It also does not have necessary checks and balances to minimise abuse of power by individuals.</p>
59	The appointment, dismissal, term of office, resignation, and dismissal shall be undertaken according to same procedure exercised on the Commissioner under this Act.	Same comments to the process of appointment and dismissal of the Commissioner.
60	<p>(a) During a vacancy in the Office of the Commissioner, or during his suspension, or when he is on a long vacation, or during the lapse in the appointment of a commissioner, the <u>Minister in writing shall appoint the Deputy Commissioner to the post of Acting Commissioner.</u></p> <p>(b) Pursuant to subsection (a) of this section, a person in the position of the Acting Commissioner shall remain in office, up until the date of his term of office as prescribed in the letter of appointment. The letter of appointment of the Acting Commissioner may be <u>annulled by the Minister whenever he sees fit.</u></p>	Subsection (a) provides that Minister shall appoint the Deputy Commissioner to the post of Acting Commissioner. Subsequently, subsection (b) states that the letter of appointment of the Acting Commissioner may be annulled by the Minister whenever he sees fit. There is an evident contradiction. The minister has no choice but to appoint Deputy Commissioner as Acting Commissioner, yet he has the power again to annul the appointment whenever he sees fit.
61(b)	The positions mentioned in subsection (a) of this section shall consist of heads of Directorates and Commands.	Subsection (a) of this section provides that there shall be 13 positions in the Police Executive Service. The positions must be filled with heads of Directorates and Commands. In the event

		that the number of directorates and commands be increased to over 13, it is unclear if the heads of those directorates have a legal right to be a member of the Executive Service or not? Can this be increased? Or is it fixed pursuant to subsection (a) of this Section?
62 (a)	Save the office of the Deputy Commissioner, the Minister, on recommendations of the Commissioner shall appoint persons to the positions in the Executive Service.	The Commissioner has the power to recommend to the Minister the individuals who is appointed to the Executive Service. The Executive Service has the power to nominate a person to the position of Commissioner of Police. The Executive Service also has the power to recommend to the Minister to dismiss the Commissioner of Police. There seems to be an obvious conflict of interest.
62(l)	Notwithstanding subsection (k) of this section, the Commissioner has the power to transfer an officer serving in the Executive Service to another post within or without the Executive Service, on a basis prescribed by his contract of employment.	Security of tenure of the members of the Executive Service is jeopardized by subsection (l) because it gives power to the Commissioner to remove an officer from the Executive Service. This will be more evident in the event that the Executive Service is considering a vote of no confidence of the Commissioner of Police for a misconduct unbecoming of a police officer or a similar disciplinary issue.
64(b)	Having appointed a person to the post of an executive officer, the commissioner shall inform the assignment to the Police Integrity Commission as soon as possible.	Save few sections, the bill does not recognise the Police Integrity Commission. The law when passed, it will resolve the Police Integrity Commission. Therefore, the purpose of making a reference to PIC is unclear.
68(a)	It shall be the responsibility of the Government to set up an efficient, effective, responsive and accountable Police Service for the entire country. On behalf of the Government the Minister shall be accountable for this responsibility	It the responsibility of the government to provide security, however, the Minister have very limited powers in the appointment process of the Commissioner of police who will be in charge of delivering this responsibility on behalf of the Minister. It is unfair to make the Minister responsible for the Police whilst he has no power to ensure he has the right people to do the job.
74(h)	to identify the procedures enforced for those <u>detained for investigation</u> ; and where the Committee finds that changes are required for these, to inform the Minister and the Police accordingly;	Detaining alleged <u>criminals for investigation</u> contradicts Article 49 of the Constitution. Article 49 states that 'no person shall be detained in custody prior to sentencing unless the danger of the accused absconding or not appearing at trial, the protection of the public, or potential interference with witnesses or evidence dictate otherwise.
76(a)	Where there Is any inconsistency between another statute and this Act about a provision that confers a power or imposes a responsibility on the police, this Act shall	This provision may cause difficulties in practice, both on the side of legislature and police. Should there be an event or incident where the parliament wished to introduce law to regulate such incidents, and give certain powers or

	prevail over the provision, where the said statute was enacted before or after this Act.	<p>remove certain powers from police that Act of parliament will contradict this provision and there will be an issue of interpretation of laws. For instance, if the parliament decided to introduce law about torture within the police, the law will inevitably have some powers removed from the police because of the nature of the Act. This provision could be used to interpret that the parliament will have no right to introduce such laws.</p> <p>Generally, a parliament's hands shall not be tied by an Act of another parliament. This provision does not sit well with this basic principle. Having said that, should the will of the parliament be to maintain this provision, the parliament should review all existing legislations that contradict with this provision and introduce a provision later in this Act to the effect that those particular provisions of other legislations be annulled upon introduction of this Act.</p> <p>Either way, this provision if maintained in this Act will pose practical difficulties at multiple levels.</p>
77(a)	The police have the right when necessary, in order to carry out the role and functions of the police pursuant to this Act, to request the assistance of the general public and to make use of the property, vehicle or other items belonging to the general public.	There must be a regulation outlining the situation and circumstances that could give rise to police to use this power.
79(a)	Where it is necessary for the police to enter a private place without the permission of its owner, in the course of exercising the powers mentioned in this Act, save that prescribed in subsection (b) of this section, the police may do so only under a court order.	In Dhivehi text, the word ' <i>e meehegge</i> ' does not truly reflect the owner of the premises.
80(b).4	Where the police believe that a person in a public place has in his possession an item that may be evidence of the commission of an offence; to seize the item from him and bring it under police custody.	This provision allows police to search an individual found in a public place without following the due process as described in Section 83(b) of this Act.
80(b). 7	To search a building located in a public place	This provision allows police to search a private building in a public place without the permission of the owner of the building.
80(b).9	To search inside anything that is locked, having opened it forcefully or otherwise.	Does this include locked vehicles? If so, this provision could mean that it allows police to search locked vehicles that are parked in public space without following the due process as described in Section 84 of this Act.

81(a)	Where an item that may be evidence of the commission of an offence, is deemed to be in a private place and the said item may be useful as evidence to be produced in court, entry by the police into the place without the permission of the owner shall be conducted under a court order.	This provision limits the power of police to request for a court order to enter a private place only 'when an item that may be evidence of commission of an offence' or "the item may be useful as evidence to be produced in court". The provision does not allow police to request for a court order to reclaim or search for stolen items or proceeds of crime.
81(b).6	Where it is necessary to search any person in the place	If the court order obtained to search the entity (private place) does not include searching of individuals in the said place, it should be construed that the police has the power to search individuals without following the due procedures as prescribed in Section 83 of this Act.
82(a)	The power of the police to establish roadblocks.	The circumstances listed in this Section do not include collecting of evidence or preserving evidence for a possible criminal offence.
82(b)	Any measures taken by police according to subsection (a) of this section can only be continued for a maximum of twenty four hours.	Would this be enough time for police? Especially, if the purpose of blocking the road is for gathering of evidence, etc.
83(b).6	On suspicion that a person has in his possession evidence of the commission of an offence that would attract a punishment of seven years in prison.	Why seven years? To maintain consistency, suggest using a list of offences that this Act defines as serious offences.
83(c).1	To bring him under police custody without arresting him.	To place someone under police custody should be defined as arrest/detention. The detainee does not enjoy his/her right to freedom of movement and hence should enjoy the rights inferred to him for being placed under detention.
84(c)	This section herein confers the police, without court order, to bring under police custody a vehicle and search the vehicle and those in the vehicle where the police reasonably suspect there exist a circumstance prescribed in subsection (b) of this section.	Section 79(d) of this Act states that in a dispute created due to the police entering a private place, the onus shall be on the police to prove the reasonableness of the decision of the police to enter the private premises. To maintain consistency, a similar protection (and a presumption) shall be provided for private vehicles that are subjected to police search without a court order.
84(d)	This section herein confers to police the power to search a vehicle, where a person in the vehicle is arrested for an offence, for the purpose of finding out if any evidence connected to the commission of the offence is in the vehicle.	Arresting a person in a vehicle should not automatically trigger a right for the police to search the vehicle without the permission from the owner of the vehicle. The law provides certain procedures for a person to be arrested (with or without a court order) and a different set of rules for searching of vehicles without a court order. Both should not be mixed.

88(a)	This section herein confers the police the power to take the steps the police consider reasonably necessary, that are not expressly forbidden by law, to prevent the breach of the peace happening or continuing, or again happening.	Should there not be a regulation outlining the possible steps police can take to prevent breach of peace under this section?
89(a)	This section herein confers the police the power to enter a place or vehicle without a court order, where the police reasonably suspect there exist circumstances to believe that alcohol is kept in the place or in the vehicle under the custody of a person or that alcohol is being consumed by a person. The police also have the power to search the place or the vehicle for alcohol and to bring under police custody, any alcohol being consumed or unconsumed.	Does this mean that the police should search and confiscate alcohol consumed on resort islands? Does this also mean that consuming alcohol gives permission for police to override all other due procedures prescribed in this Act for search and seizure? Why would the crime of consumption and possession of alcohol justify special procedures that nullify all other safeguards of procedural rights?
93	This section herein confers the police power to stop a vehicle on the road or a vehicle travelling on the road under the following prescribed circumstances.	There shall be a limit for the use of this power without a court order.
94	This section herein confers the police the power to stop a seaborne vessel at sea or a vessel sailing at sea under the following prescribed circumstances.	There shall be a limit for the use of this power without a court order.
95(a)	Where there was a commission of an offence in a certain place, for the purpose of ensuring whether the place possesses anything that may be used as evidence for proving the offence and where the police believe the said place needs to be established as a crime scene in order to search and examine what remains to be searched and examined, this section herein confers the power to the police to establish the said place as a crime scene.	As there are certain legal consequences resulting from declaring a certain place as a scene of crime, an order from a senior ranked officer (Superintendent of Police) shall be vested with the power to declare a scene of crime.
95(e)	This section herein conveys the police the power to search a place established as a crime scene, without a court order. And this section herein conveys to the police all powers given to the police to search a place under a court order pursuant to section 81 of this Act.	It is questionable that, should the police officer declare a crime scene, the declaration itself gives power to police to override obtaining a court order to search a private place.
95(h)	None of the paragraphs of this section convey to the police the power to establish a crime scene save for an offence that has already been committed.	Would this be practical? What would happen if the police declare a crime scene only to find out later that the crime did not occur at the declared scene? Would that result in the proceedings and searches conducted at the crime scene as illegal?

96(a).3	A person on suspicion of the commission of an offence that would attract a 10 year imprisonment if convicted; or a person who is about to benefit from such a crime.	Why ten years? To maintain consistency, suggest using a list of offences that this Act defines as serious offences.
97(a)	Where the police reasonably suspect there exists a circumstance prescribed forthwith, this section herein confers the police the power to arrest a person without a court order.	<p>This section details the circumstances in which a police officer can arrest a person without a court order. Article 46 of the Constitution states that “everyone has the right not to be arbitrary detained, arrested or imprisoned except as provided by law enacted by the People’s Majlis in accordance with Article 16 of this Constitution”. Furthermore, Article 46 of the Constitution states that “No person shall be arrested or detained for an offence unless the arresting officer observes the offence being committed, or has reasonable and probable grounds or evidence to believe the person has committed an offence or is about to commit an offence, or under the authority of an arrest warrant issued by court”.</p> <p>This provision could be interpreted as an extension to Article 45 mentioned above. However, it is questionable if this section is justified in conveying such powers to the police. For example, subsection 97(a).2 provides that police can arrest a person without a court order “to make inquiries to establish the person’s identity where the person refuses to do so”. In this instance, if the police arrests the person, but cannot maintain the person in detention for a period extending 24 hours because the circumstances provided for extension of detention as prescribed in Article 49 of the Constitution does not include establishing a person’s identity. Similarly, pursuant to subsection 97(a)3, police can arrest a person without a court order “to ensure the person’s appearance before a court where he failed to comply to court summons”. In this circumstance, there doesn’t seem to be any urgency as in the event a person failed to appear in court, the court can issue a court order to arrest such persons without resorting to police arresting him without a court order. Every subsection of this section needs to be reviewed carefully in light of the Constitutional provisions mentioned above.</p>
97(a)		In the event a dispute arises due to police arresting a person without a court order, pursuant to Section 97 of this Act, the onus to prove that the person was indeed in a circumstance prescribed in subsection 97(a) of this Section shall fall on the police.

99(a)	Where a person is arrested with or without a court order, having informed him orally that he is under arrest and the reason for his arrest, the person shall be provided in writing, promptly and within a maximum of 4 hours, that he is under arrest, the reason for his arrest and information in relation to the offence to which he is suspected.	Supreme Court ruling 19/SC-A/2010 requires the police to provide information to the arrestee about possible punishments prescribed for the suspected offence. This is not included in this Section. Furthermore, Section 101 prescribe further information to be shared with the arrestee and it is unclear why this section cannot be included in Section 101 below.
100	Where a person is brought under police custody without arresting him, in order to question him suspecting an offence, he must not be kept under police custody for more than 4 hours.	There needs to be a definition as to what an arrest is. Would the police allow the person being questioned to leave police custody as and when he/she wished? If not, would that not amount to an arrest? This needs to be clearly addressed.
104(b)	Notwithstanding subsection (a) of this section, a person to be searched must be touched by those of the same sex as the person to be searched, and only those of the same sex must be present while the searching is carried out.	For practical purposes, there needs to be an exception for this rule. For example, in an island where there are no female police officers, if a person is to be searched for drugs?
106(a).5	To take a polygraphy test	A polygraphy test of an accused cannot be used in a court room.
106(b)	For the purpose of undergoing forensic procedures or DNA sampling, the following may be conducted under a court order and according to what is prescribed in that order.	The word "sexual organ" is used in multiple occasions in this provision. However, the term 'sexual organ' is not defined in this Act which may lead to practical difficulties.
113	The police may only use special investigatory tactics for the investigation of the following offences:	The offences listed in this Section does not include drug trafficking, trafficking in persons, money laundering related offences and other serious offences. Consider revising in light of the new Penal Code.
114(d)	To inspect, monitor and listen to his transactions through the means of communication facilities, letters, documents, electronic mail and telephone.	Will the police be conducting this inspection without a court order? If so, there needs to be a justification for this.
115(b)	The minister shall compile and implement by way of the Commissioner, a Regulation detailing the principles and standards to be used in undertaking special investigatory tactics and standards safeguarding rights of individuals and prevention of their abuse, and detailing steps to be taken in the event of their violation during the said investigations. The Regulation shall be constituted pursuant to this Act and with reference to this Section.	Lack of consistency in who gets to make Regulations under this Act. Should there not be a role for the Supervision Committee in formulating this Regulation?

118(c)	The President of the Police Integrity Commission.	This Act does not recognize a Police Integrity Commission and with the ratification of this Act, the Police Integrity Commission shall be abolished, however this Section requires the Supervision Committee to consist of the President of the Police Integrity Commission.
117	Application for a court order for the utilization of any special investigatory tactic shall be sought at the courts through the Prosecutor General, upon written request to him by the Police.	This Section does not indicate the rank of the police officer who request to the Prosecutor General to obtain the necessary court orders. Since these investigatory tactics are of special nature, only a police officer with a certain rank shall have the authority to request the Prosecutor General to obtain a court order.
119(b)	Where the Committee cited in section 118 of this Act finds a certain person has been subject to such <i>ultra vires</i> investigation, the High Court shall issue an injunction to stop the operation. The injunction shall be sought at the High Court by the Prosecutor General upon request to him by the Committee.	Section 117 requires that the application for a court order to be sought through the Prosecutor General. Section 119 requires the Prosecutor General to apply to the High Court to annul a court order that was initially approved through a process where the Prosecutor General was involved (and convinced). This may compromise the independence of the Prosecutor General. Furthermore, the Prosecutor General is not a party to the Supervision Committee and the process through which the Committee found the court order to be <i>ultra vires</i> .
120(a)	Instead of entrusting the issuance of court orders to a certain court, to determine that a minimum of 15 judges selected from various courts shall have the authority to issue court orders in Male'.	This section defeats the purpose of specialized courts. The judges of Drug Court for instance would not necessarily have skills or knowledge in issues surrounding issuance of court orders. Same applies to judges of the Family Court and the Civil Court in Male'.
121(b)	The following types of grievances may be filed against policemen.	Does this mean that the list is exhaustive? There is no other provision allowing other kinds of grievances. For example, a policeman committing an act unbecoming of police code of conduct?
122(a)	The Commissioner has the power to take disciplinary measures against individual policemen in order to prevent abuse of police power and neglect of police duties.	Does this mean that the Commissioner may only exercise his power to take disciplinary actions to; <ol style="list-style-type: none"> <li>1. Prevent abuse of police powers; and</li> <li>2. For neglecting police duties?</li> </ol> Should there be any other kinds of disciplinary issues that does not fall within the two categories mentioned above, would the Commissioner not have the power to take disciplinary actions?
133(b)	The punishment for the offence stated in subsection (a) of this section, is a fine not exceeding 10 thousand Rufiyaa or imprisonment for a term not exceeding 1 month or imprisonment with fine.	Consider reviewing in light of the new Penal Code.

134(b)	The punishment for the offence stated in subsection (a) of this section, is a fine not exceeding 10 thousand Rufiyaa, or imprisonment for a term not exceeding 1 month.	Consider reviewing in light of the new Penal Code.
135(b)	The punishment for the offence stated in subsection (a) of this section, is a fine not exceeding 10 thousand Rufiyaa, or imprisonment for a term not exceeding 1 month.	Consider reviewing in light of the new Penal Code.
136(b)	The punishment for the offences stated in subsection (a) of this section, is a fine not exceeding 100,000 Rufiyaa, or imprisonment for a term not exceeding 3 years.	Consider reviewing in light of the new Penal Code.
137(b)	The punishment for the offences stated in subsection (a) of this section, is a fine not exceeding 50 thousand Rufiyaa, or imprisonment for a term not exceeding 1 years.	Consider reviewing in light of the new Penal Code.
139(c)	The punishment for the offences stated in subsection (a) of this section, is a fine not exceeding 50 thousand Rufiyaa or imprisonment for a term not exceeding 1 year.	Consider reviewing in light of the new Penal Code.
141(b).7	To provide appropriate legal facilities for defence of police officers facing court proceeding in matters determined by the Professional Standards Command as bonafide discharge of duty.	Would the Police Welfare Office be providing legal assistance in the event that the decision of the Professional Standards Command is reviewed at a court of law? Wouldn't this mean that the police institution will defend all of the cases against it as long as the Professional Standard Command has declared bonafide discharge of duty? What if the issues were never submitted at the Professional Standard Command?
142	Principles governing arrest and detention	It seems there is a lot of repetition of the content of this section in sections 98 to 101.
142(e)	A person may be taken under police detention without arresting him under suspicion of an offence or without the purpose of obtaining evidence from him.	As soon as the person is in police custody and restricted of movement, s/he should be considered as arrested and hence the rights of an arrested person under the Constitution shall be granted.
142(f)	Where a person under policy custody is not released or returned to freedom within 4 hours, for the purpose of this Act, the person shall be deemed under arrest. And all protective rights he enjoys under arrest shall be exercised therein. And where the	This section allows police to retain a person in police custody for 4 hours without him enjoying the protective rights assigned to an arrestee under the Constitution. For all practical reasons, a person remanded in police custody without freedom of movement shall be considered as

	police, therein, fail to conduct his arrest according to the prescribed principles of arresting a person, the arrestee shall be deemed to be under false imprisonment.	arrested and shall enjoy constitutional rights. This section could be interpreted to mean that police can hold and question a person for as long as 4 hours refraining him from enjoying his constitutional rights.
144(a). 1	The following rights are enjoyed by the members of the police service, within the provision, principles and scope of a given basic right prescribed under a statute governing implementation of employee rights. 1. Freedom of expression under Article 27 of the Constitution. 2. The right to form associations and societies under Article 30(a) of the Constitution.	Right to freedom of expression and right to form associations and societies could be limited to the extent of performing police duty without prejudice or favor. Apart from that, limiting freedom of expression and right to form associations seem unreasonable.
148(b)	The Executive Service of the Police shall undertake all matters relating to badges of honour awards and advise the Commissioner accordingly, as prescribed under subsection (a) of this section.	Should there not be a regulation to regulate matters relating to badges of honour awards?
152(a)	The Maldives Police Service shall formulate and enforce the regulations necessary for the functioning of responsibilities prescribed under this Act. The Commissioner shall formulate, operate and enforce the regulation on behalf of the Service.	This section contradicts other sections of this Act. For example, section 115(b) states that the Minister shall make regulation under that section.
152(d).2	Regulation covering criminal investigation	Regulations covering criminal investigations shall be regulated via criminal procedure acts passed by the Parliament and not a regulation passed by the police.
152(d).11	Regulation relating to disciplinary and administrative misconduct and penalties for such misconduct.	Dhivehi word used in the Act is ' <i>ibthidaae</i> ' which translates into 'preliminary' offences. The term is unclear. Suggest redrafting to make it increase certainty and avoid ambiguity.
154	Upon enforcement of this Act, Act number 5/2008 (Police Act) shall be repealed.	The Police Integrity Commission derives its powers from the Police Act (5/2008) and in the event the Police Act is repealed, the Commission will cease its existence. Consider finding an alternative solution for this.
155	"arrest" means termination of the voluntary exercise of freedom entitled to an individual, and a commencement of a legal circumstance where he is under police detention without his consent and own accord.	The definition of arrest is inconsistent with the definition provided in section 99 of this Act.
155	"under arrest" means the termination of the voluntary exercise of freedom entitled to an	"arrest" and "under arrest" is defined in same language and it contradicts with the general

	individual, and the commencement of a legal circumstance where he continues to be under police detention without his consent and own accord.	language and content found in section 99 of this Act.
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## ANNEX II: Regulation on Executing the Constitutional Authority and Discretion Accorded to The Police

Section 4 (f)	<p>In the instance that the police have no appropriate reason to believe that a person is carrying a stolen or illegal item, then they do not have the authority to arrest that person.</p>	<p>Limiting the power of police to arrest a person in the situation mentioned in this section contradicts with Articles 46 and 49 of the Constitution. It also suggests that police cannot arrest a person for committing an offense or when the person is about to commit an offense, unless the person is carrying stolen or illegal item.</p> <p>This section also contradicts with section 13 of this Regulation which states that the police have the authority to make arrests of people without a court order in the instances stated in that section.</p> <p>Further, the relationship between this section and section 14 which states that the police should obtain a court order if it wants to arrest a person, save the instances stated in section 13 of this Regulation in unclear and vague.</p> <p>Article 46 of the Constitution provides that “no person shall be arrested or detained for an offense unless the arresting officer observes the offense being committed, or has reasonable and probable grounds or evidence to believe the person has committed an offense or is about to commit an offense, or under the authority of an arrest warrant issued by the court.”</p> <p>Article 49 explains the reasons justified to keep a person in remand after a period of 24 hours.</p>
Section 4(g)	<p>In the instance a person who needs to be searched and checked is in a residence or in a place which needs a permission of entrance the police has the discretion to enter the place for the search and check in the instances stated below.</p> <p>(1) That the person is not a resident of that place.</p> <p>(2) That the person is residing in the place without permission of the owner.</p>	<p>This means that the police can only enter a residence in the instances described in this section, and in any other event (except for the two instances provided in this section), the police would not have the power to enter a private dwelling. It could be assumed that the police would require a court order to enter a dwelling (except for the instances described in this section) and the process to obtain a court order is prescribed in section 9 of this Regulation. However, only section 9(i) has a reference to a person while the whole of section 9 speaks about obtaining a court order to enter a private dwelling.</p> <p>This could create confusion in practice as one could argue that according to section 4(g), a person cannot be apprehended and remanded</p>

		<p>except for the procedure detailed in that provision. The lack of reference in this section to section 9 support this argument.</p> <p>Suggest to elaborate this language and use more clear and definitive language as the code discuss criminal procedures and it is vital that all the law enforcement officials understands the code in a similar fashion.</p>
Section 4(h) and Section 8(a)	<p>The police have the discretion to search and check a vehicle kept in a person’s home or place in the below stated instances.</p> <p>(1) The owner of the vehicle is not a residence of that place.</p> <p>(2) The vehicle has been kept in that place without the permission of the owner.</p> <p>8. (a) Except for the instances stated in Article 10 of this Regulation, the police can enter and search and check people’s homes property and residences only subsequent to the police submitting the relevant form(s) requesting for a court order to do so and obtaining a respective court order to do so.</p>	<p>Pursuant to this section, police does not have power to search and check a vehicle as long as it is parked or placed in one’s home or if the vehicle was placed in that place with the permission of the owner of that place.</p> <p>Furthermore, there is no mentioning of any other exceptional circumstances or a requirement to obtain a court order to conduct check and searches. Therefore, this regulation does not permit police to conduct search on a vehicle in instances other than that is listed in this section.</p> <p>Section 8 mandates the police to obtain a court order to search and check ‘people’s homes, property and residences’. The section does not include vehicles which supports the argument stated above in this column.</p> <p>Section 5 (a) discuss instances where police is stops a vehicle carrying a driver/passenger. It does not answer the question of a vehicle placed inside a home or a person or parked in a place with the permission of the place’s owner. Practically, this could create numerous practical difficulties as this makes the position of law relating to check and search of vehicles unclear.</p>
Section 5(c).1	(1) The name of the police personnel and the name of the police center he is stationed in.	Suggest including the service number of the police officer conducting the search.
Section 6(c)	(c) Subsequent to the search and check of a person if the name of the person is known it should be written in the record and if the name is not known the police is at discretion to hold or not to hold that person in order to clarify his/her name.	Should the action of the accused amount to a criminal offense, the police can always arrest him/her and conduct a full investigation. A discretionary power to hold or not hold someone for merely not clarifying his/her name seems excessive.
Section 6(f), (g) and (h)	(f) ...This written record should be handed over to the relevant person within ten days of the date that the search and check of the person vehicle or place was exercised.	Repetition. Section 6(f) mandates the written record to be ‘handed over the relevant person within ten days’, while section 6(g) and 6(h)

	<p>(g) If a person requests for a copy of the record made by the police subsequent to his/her search and check before the duration stated in (f) of this article then a copy of the record should be afforded as soon as possible.</p> <p>(h) If the owner of a vehicle or place or the person in charge of a vehicle or place at the time of a search and check requests for a copy of the record made by the police subsequent to a search and check before the duration stated in (f) of this article then a copy of the record should be afforded as soon as possible.</p>	<p>requires a 'copy of the record should be afforded as soon as possible'.</p> <p>Suggest clear and plain language drafting.</p>
Section 7(a).2	<p>(2) A person who is realized as a witness to a crime except that of a traffic violation.</p>	<p>Arresting a witness of crime is not consistent with best practices in modern criminal justice systems. The prosecution would require assistance from its witnesses and arresting them will not help the cause.</p>
Section 7(b), section 7(d) and section 7(j)	<p>(b) Except for the instances stated in (d) of this article the authorization for search and check on the road should be given to the police by a police personnel ranking a sub-inspector or higher.</p> <p>(d) A commissioned officer of the police should give authorization to a police for a search and check on the roads in accordance with this Article...</p> <p>(j) If a police personnel senior than a sub-inspector sees that the road search and check need to be exercised for a period more than what has already been authorized the period could be prolonged by written authorizations for not more than seven days for each extension.</p>	<p>Section 7(b) speaks about a police personnel ranked sub-inspector of police or higher while section 7(d) mentions 'a commissioned officer', which could be of higher rank than sub-inspector. Finally, section 7(j) reverts back to the level of sub-inspector for further authorization after the initial period had expired.</p> <p>Suggest harmonizing in both sections.</p>
Section 7(c).1 and Section 7(l)	<p>(c) The authorization by any officer of the police to any police to search and check to determine whether a person, such as stated in (1), (2) and (3) of (a) of this article, is in a vehicle should be given only in the below stated instances.</p> <p>(1) The suspected crime of the person to be searched is a crime that warrants an arrest.</p> <p>7(l) As per stated in (h) and (k) of this Article when putting on record the reason of the road search and check, the alleged crime of</p>	<p>This section is inconsistent with section 7(a).2 where a witness could be arrested. Section 7(a).1 requires that an officer should ensure that the person subject to search is suspected of an arrest-able offense.</p> <p>Section 7(l) requires the record to show the alleged crime of that person that is being subject to search and in the case of the witness, this might not be possible.</p>

	the person that is being searched for should be put on that record.	
Section 8(a)	(a) Except for the instances stated in Article 10 of this Regulation, the police can enter and search and check people’s homes property and residences only subsequent to the police submitting the relevant form(s) requesting for a court order to do so and obtaining a respective court order to do so.	For avoidance of doubt, suggest subjecting the use of police powers to broad guidelines as prescribed in the Constitution and law, therefore, introducing the phrase ‘in performing powers assigned to police under the Constitution or Law police shall have the power to ...’ before the current text.
Section 10(a).2	2. If there is an incident of disruption of the peace and harmony of the place or if there is an imminent threat of disruption of peace and harmony of the place and the only means of stopping or breaking up the disruption is the immediate entry of that place.	Article 47(b) of the Constitution states that “residential property shall be inviolable, and shall not be entered without the consent of the resident, except to prevent immediate and serious harm to life, property, or under the express authorisation of an order from Court”. The language used in section 10(a).2 does not conform to Article 47(b) and should be changed to reflect the limitation imposed by the Constitutional provision.
Section 10(a).4 and 5.	4. In the instance it is believed that evidence would be destroyed or a criminal making a getaway. 5. In the instance that there is appropriate reason to believe that the situation necessitates immediate action.	Both sections 10(a) 4 and 5 contradicts with Article 47(b) of the Constitution and should be removed. As explained above, Article 47(b) limits the powers of police in relation to search of private dwellings and any elaborations to this Article should contain within the boundaries set by the said Article.
Section 10(b)	(b) Except for stated in (3) of (a) of this Article the Authority accorded from this article can be executed by a police as per stated below. (1) In the instance that there is appropriate reason to believe that a person who is being wanted by the police is in that place. (2) In the instance that the person wanted by the police is part owner of that place and it is recognized that he/she might be in that place.	There doesn’t seem to be any need for this part of this section, as section 10(a) 3’s original text is found in Article 47(b) of the Constitution. According to section 10(a) 3, the police may enter a private dwelling without the consent of the owner for the purpose of saving a life of a person or protecting property from excessive damage. Therefore, the nature of the incident would prevent obtaining a prior court order to enter such dwellings in those circumstances.
Section 11(a)	(a) In the instance that a person is arrested for an offense that warrants an arrest and subsequent to that arrest if the police with appropriate reasons is of the realization that the arrestee is carrying on him/herself or in	The fact that an arrested person was found carrying on him items of evidence of crime or evidence of another crime does not warrant his house or any other place to be searched without obtaining a court order. This practice

	a place that at that moment he/she is in charge of items of evidence of his/her crime or that of another crime affiliated with the suspected crime of the arrestee then the police has the authority to enter and search and check that person or that place without a court order.	would violate the sanctity of private dwellings as provided by Article 47(b) of the Constitution.
Section 11(b)	(b) In the event that an item has been found in the search and check stated in (a) of this article then the police has the authority to seize that item.	Any evidence collected using the search and seizure conducted according to Section 11(a) run a risk of being declared unconstitutionally (and illegally) obtained evidence by a trial court.
Section 11(h)	(h) In the instance that when a search and check of a place was executed the owner or the person in charge of that place at that present moment was incarcerated by the police then the outcome of the search and check should be included in the case diary.	The fact that the owner of the searched place being incarcerated by the police (or the nature of incarceration) in itself does not bar the police from sharing the outcome of the search with the owner (this seems to be the case if the owner is not incarcerated). Additionally, police could include the said information in the case diary.
Section 12(d)	(d) In the instance if on a search and check of a place a computer or any other electronic appliance which can store data is found which with appropriate reason to believe holds information which can be used as evidence in an ongoing investigation or if there is appropriate reason to believe that it holds information gathered in relation to of a crime or if there is appropriate reason to believe that it might be concealed or lost or destroyed or changed then the police in order to see whether it contains information relevant to the investigation has the authority to seize the appliance and hold it until the investigation is over and to copy that information to another appliance or make a printed copy of that information.	This section gives power to police to hold information collected pursuant to this section until the investigation is over. However, after mirroring the information available on an electronic appliance, there could be little value of the appliance carrying the information. Hence, the appliance (after mirroring the information onto a secure platform) could (should) be handed back to its owner.
Section 13	Use of the phrase 'arrest-able offense'.	The phrase 'arrest-able offense' or 'an offense which warrants an arrest' is alien to the language used in the Constitution <sup>3</sup> . Suggest rephrasing this section in line with Article 46 of the Constitution.

<sup>3</sup> A detailed discussion of the issues arising from using the word 'arrest-able' offenses can be found in comments relating to section 50 of the Regulation.

<p>Section 14 (a)</p>	<p>(a) Except for the instances stated in Article 13 of this Regulation, the police can arrest a person only subsequent to the police asking for a court order to do so by submitting the relevant form to a court and obtaining the relevant court order issued by a Judge referring to the below said.</p> <p>(1) That the suspected crime is a manner of crime that warrants an arrest.</p> <p>(2) That it is believed that if the person who is wanted for arrest will not present him/herself when asked to do so or there is appropriate reason to believe that an item which is of relevance to the case might be concealed or lost or destroyed or changed.</p> <p>(3) That there is appropriate reasons to believe that if the person who is wanted for arrest is not arrested there might be harm done to him/herself or another person or to property.</p>	<p>This section contradicts with Article 49 of the Constitution. According to the Constitution Article 46, a person can be arrested for an offense when the arresting officer observes the offense being committed, or has reasons or probable grounds or evidence to believe the person has committed an offense, or under the authority of an arrest warrant issued by a competent court.</p> <p>Article 49 discusses circumstances where a person's remand can be further extended. Article 49 states; "No person shall be detained in custody prior to sentencing, unless the danger of accused absconding or not appearing at trial, the protection of the public, or potential interference with witness or evidence dictate otherwise."</p> <p>Therefore, the circumstances that a judge should refer to while issuing a court warrant are the circumstances that would permit keeping the accused in remand are found in Article 49 of the Constitution. Further circumstances are elaborated in Supreme Court's rulings 2010/SC-A/19 and 2011/SC-A/33.</p> <p>The circumstances prescribed in this section therefore contradicts with the Constitutional provisions explained above.</p>
<p>Section 15</p>	<p>The form requesting for a court order which is submitted to court by the police should include the below stated information.</p> <p>(a) Name and address of the person wanted for arrest.</p> <p>(b) Reason of the person's arrest.</p> <p>(c) The suspected crime of the person and the Article of Law he/she has been in violation of.</p> <p>(d) Reasons for the suspicion of his/her crime.</p>	<p>The form requesting the court order should also include one of the five reasons (as prescribed in Article 49 of the Constitution) that the police believe, would warrants extension of remand of the accused once arrested. Because, should reasons for extension of remand does not exist, the initial arrest (and remand) could only last 24 hours.</p> <p>[refer to Umar Naseer case]</p>
<p>Section 16</p>	<p>(a) If for appropriate reasons the police on believing that a crime which does not warrant an arrest is being committed or is being attempted and it is inappropriate or difficult to call that person to a police center by sending him a summon then if the standard conditions stated below are fulfilled the police can arrest that person.</p>	<p>The phrase "crimes that does not warrant arrest" is hereby introduced to this regulation. Section 50 states that, "in this Regulation in the instance when crime that warrants an arrest is stated it means actions with reason or reasons enough to believe that a person has committed a crime or is committing a crime or is attempting to commit a crime."</p> <p>Therefore, the definition of crimes that warrants an arrest include all crimes and "crimes that does not warrant arrests" is</p>

		technically unimaginable. There seems to be an obvious conflict in both these concepts as it is used in this regulation.
Section 16	'standard conditions' to arrest.	This section introduce "standard conditions" to be fulfilled for someone to be arrested by the police. It is unclear that following the 'standard conditions' would suffice in absence of a court order warranting the arrest of such person or not. General constitutional rule is that if a person is to be arrested, save from scene of crime (and in circumstances prescribed in Article 46 of the Constitution), police should obtain a court warrant to that effect before performing an arrest.
Section 16(b).3	3. That the address of the person to be arrested is not made clear or there is doubt whether the address given to the police by that person is genuine.	The address of a person accused of a crime is irrelevant to any criminal investigation and lack of such information should not be considered a 'standard condition' that would permit an arrest. Furthermore, the level of doubt about the address of the accused that would trigger an arrest is unclear and could be used easily abused.
Section 16(b).4.iv	4. If the police has appropriate reason to believe that arresting the person wanted for arrest is necessary in order to prevent that person from doing any of the below stated: (iv) Socially unacceptable conduct.	According to this section, socially unacceptable conduct could result in the person being arrested without a court warrant. The law number 11/2010 (Law Prohibiting Socially Unacceptable Conduct) outlines all the provisions relating to such conduct and has an elaborate legal process to tackle socially unacceptable conduct. Suggest harmonizing this Regulation in line with Law number 11/2010.
Section 16(c)	(c) The address of the person to be arrested stated in (3) of (b) of this regulation will be an acceptable address only if the person to be arrested has been residing there for an appropriate length of time or an address in which another person who is liable to receive the summons for that person resides in.	Again, for the purpose of a criminal investigation, the address of the arrestee is irrelevant. It is unfair to arrest a person for not providing an 'acceptable address'. Should there be concerns about flight risk of the accused, Article 49 of the Constitution allows such a person to be held in remand until the risk is reduced or until the end of trial. Not providing an 'acceptable address' should not be ground for an arrest.

<p>Section 17(c)</p>	<p>(c) In the instance that the person to be detained is brought before a judge as per under this Article the below said information should be submitted to the judge.</p> <ol style="list-style-type: none"> <li>(1) Date and time of the person's arrest.</li> <li>(2) Reason for his/her arrest.</li> <li>(3) The suspected crime of the person and the Article of Law he/she is in violation of.</li> <li>(4) The reason for suspecting him of that crime.</li> <li>(5) The reason for detaining him further.</li> <li>(6) The evidence that has been gathered relating to his/her suspected crime.</li> </ol>	<p>The Regulation is silent on the instance where the arresting officer does not want to keep the arrestee in remand for a period exceeding twenty four hours.</p> <p>High Court in its ruling 2012/HC-A/130 stated that in the event that police does not want to keep the person in remand, police may release the accused without producing the arrestee in front of a judge.</p> <p>An exception to the rule is the initial arrest. Law requires that the court make a decision on the validity of the initial arrest and subsequently decide on the extension of remand/or not.</p>
<p>Section 19</p>	<p>... And if the police have decided to arrest that person, then he/she should be prohibited from leaving the place and informed that he/she is under arrest.</p>	<p>It is important to note that, should the police need to arrest the person, police should satisfy the circumstances prescribed in Article 49 of the Constitution. (refer to comment on Section 15 above)</p>
<p>Section 20</p>	<p>(a) Except for the instances stated in 21. of this regulation if a person is detained in any other place except a Police Center or personnel other than a police arrests a person for a suspected crime, then the arrestee should be taken to a police center as soon as possible.</p>	<p>Section 20 recognizes an incidence where a person other than a police officer could arrest a person. The Regulation however is silent on how this information could be recorded at police.</p> <p>Section 20(d) mandates the police to record in writing, several information relating to the arrest. The information pertained therein does not include information about the non-police person who conducted the initial arrest. Suggest including a provision stating that information about the person who conducted the arrest be recorded at the police station.</p>
<p>Section 21(f)</p>	<p>(f) In the instance that there is an alteration is to be made of place date or time stated in the notification of condition given to a person under this Article then a further written notification should be delivered to him/her two days prior to the date of attendance stated in the notification of condition.</p>	<p>This section requires police to inform the person released on condition about a change in the place, date or time stated in the notification of condition, two days prior to the date of attendance. This could be practically challenging.</p> <p>Suggest making the notification period shorter, for example, twenty four hours or 36 hours.</p>
<p>Section 21(h)</p>	<p>(h) In the instances stated below a person released on condition at a road site under this Article can be arrested without a court order.</p>	<p>This section gives power to police to arrest a person released on condition without a court order should the police find further evidence that warrants his arrest.</p>

	<p>(1) That a person released on condition at a road site without a credible reason did not present him/herself at the police center as per the notification given to him/her.</p> <p>(2) On getting any additional evidence that warrants his arrest.</p>	<p>Article 46 explain circumstances where a person can be arrested without a court order and the two instances mentioned in this section does not fall under those circumstances prescribed in the said Article.</p>
Stopping and Arresting of People for Investigation	Stopping and Arresting of People for Investigation	<p>The title “arresting of people for investigation” contradicts with Article 49 of the Constitution. The Constitution does not recognize investigative arrests.</p>
Section 22 (a) and Section 25(e)	<p>(a) In the below stated instances the police are at discretion to detain a person for 6 hours for the purpose of an investigation.</p> <p>(1) If there is suspicion that the person has committed a crime or is in the act of committing a crime.</p> <p>(2) If there is suspicion that the person has harmed him/herself or is harming him/herself or is about to harm him/herself.</p> <p>Section 25(e):</p> <p>(e) Stopping or detaining a person for an investigation as per stated in Article 22 and 23 of this Regulation cannot be seen as an arrest.</p>	<p>First, investigative detention is not recognized by the Constitution. Secondly, the instances described in this section falls within the ambit of Article 46 of the Constitution. Hence, the power to arrest is not limited to the instances listed in this section.</p> <p>Thirdly, Supreme Court’s ruling on its 2010/SC-A/19 suggests that, should a person be held without his consent by an investigative agency (for a time however short), it shall be considered an arrest and the protective provisions of the Constitution (including submission of habeas corpus applications) in favor of the arrestee shall trigger in such arrests. Thus, it is unconstitutional to consider investigative stops as explained in this section, a procedure not amounting to an arrest proper. Subsequently, an arrestee released under this section (after ‘investigative stop’ and before 24 hours) shall have the right to appeal at court of law to clarify if the arrest was illegal or not, pursuant to Article 48(d) of the Constitution.</p>
Section 23	Investigative stop	<p>It is contrary to the Constitution that a person be arrested for investigation. Reasons or circumstances warranting an arrest is outlined in Article 49 of the Constitution and it does not include detaining a person for investigation.</p>
Section 23 (b) and Section 23 (d)	<p>The police can detain a person for investigation of a suspected crime in the instances stated below.</p> <p>(b) In the event that the police asks for the identity of person and he/she refuses to give it or if the police has reason to believe that the information given by that person is not genuine.</p>	<p>Section 23 (b) gives power to police to arrest a person in the event that a person refuses to give the identity of that person. Section 23(d) defines ‘identity of a person’.</p> <p>Article 48 (c) guarantees every person upon arrest, the right to remain silent, except to establish identity. The manner in which to establish identity should not be limited to an</p>

	<p>(d) In this Article “identity of person” means a written official document that includes the name address age and permanent address of the person or an official document carrying a photograph of that person.</p>	<p>official document or an official document carrying a photograph of the person. An argument can be built on the fact that this section limits a fundamental right without using the procedure outlined in Article 16 of the Constitution.</p>
<p>Section 25</p>	<p>(a) In the instance that a person is detained for investigation under (b) of Article 23 of this Regulation the duration of detention of that person will extend only up to the time where any one of the instances stated below has been realized.</p> <p>(1) There is no reason for the police to believe that the identity of person that was given was not genuine.</p> <p>(2) On completion of twelve hours.</p> <p>(3) On giving the full information he/she has of that crime.</p>	<p>As explained above, the Constitution does not recognize detention for the purpose of investigation.</p> <p>Supreme Court’s ruling on its 2010/SC-A/19 suggests that, should a person be held without his consent by an investigative agency (for a time however short), it shall be considered an arrest and the protective provisions of the Constitution (including submission of habeas corpus applications) in favor of the arrestee shall trigger in such arrests. Thus, it is unconstitutional to consider investigative stops as explained in this section, a procedure not amounting to an arrest proper.</p> <p>Section 25 (a) 2 states that a person detained for investigation shall be released upon completion of twelve hours. Would this mean that police can re-arrest the person after releasing and subsequently restart the twelve-hour remand period? The room for abuse of power calls for checks and balances, which can be found in Supreme Court’s ruling as explained above.</p> <p>Section 25(a) 3 states that a person shall be released if he/she gives full information he/she has of that crime. The manner to decide if the information is given amount to ‘full information’ is not mentioned herein. Hence giving room for abuse of power. Suggest tightening the language of the text.</p> <p>Section 25(b)1 also contains same content as Section 25(a) 3.</p>
<p>Section 26 (b)</p>	<p>(b) Except for the instances stated in (c) of this Article if the police realizes that there is no reason to confine a person or keep him/her in confinement any further that person should be released immediately. And the police should give that person thus released a written document inclusive of the below stated information.</p>	<p>Section 26 (b) subjects releasing of an arrestee to subsection (c) of this Section.</p> <p>Subsection (c) states that the release of a person who was confined in a police center should be done with the knowledge of the highest personnel in that police center. Knowledge of the highest personnel in that police center has no relation to the reasons for release.</p> <p>The Constitution requires people to be released if there are no valid reasons to keep them in remand. Lack of consent of the highest police</p>

		officer in that police station should not be ground to keep a person in remand.
Section 26(d)	(d) The person who is being arrested is at that instance in violation of any Law or Regulation then releasing him/her under (b) of this Article is not obligatory.	Article 49 of the Constitution lists reasons to be considered when extending remand of an arrestee. It does not include being in violation of law at the point of arrest. Therefore, this part of this section is unconstitutional.
Section 27 (a)	a) If a person is arrested for a suspicion of a crime the person can be prosecuted for that suspected crime if and when the person in charge of that investigation unit or the highest ranking personnel in charge of the place of the person's confinement ascertains that there is enough evidence against him/her for prosecution. And for ascertaining thus the person can be confined as per stated in this Act.	This section provides that a person be remanded until the 'highest ranking police officer in charge of the police station ascertains that a criminal charge could be initiated against that person'. This is contrary to Article 49 of the Constitution. A person can only be held in remand in five circumstances outlined in the said Article. Furthermore, Article 223 (a) and (b) dictates that it shall the Prosecutor General who will decide if a criminal charge can be initiated against an accused. Not the highest ranking police officer.
Section 27(b)	(b) If a person is arrested for a suspicion of a crime and if the person in charge of that investigation unit or the highest ranking personnel in charge of the place of the person's confinement ascertains that there is not enough evidence to prosecute the arrestee then he/she should be released.	Article 223 (a) and (b) of the Constitution mandates the decision to prosecutor or not to prosecute for the Prosecutor General. The decision is not for the highest ranking police officer.
Section 27(c)	(c) A person who has been arrested should be released under (b) of this Article in the instances that the person in charge of that investigation unit or the highest ranking personnel in charge of the place of the person's confinement ascertains that even if the person's confinement is prolonged, no further evidence pertaining to that person's suspected crime can be obtained.	This section contradicts Article 49 of the Constitution. Holding a person in remand in order to collect evidence is not one of the circumstances prescribed in Article 49 of the Constitution to allow extension of remand.
Section 27	(e) Except for instances stated in (f) of this Article the written record should be made after informing him/her of the reason and in his/her presence. And a written document including the below stated should be given to that person.	According to Article 48(d), the decision to keep a person in remand is decided by competent court. It is not the function of police to inform the arrestee of the reasons for the extension of the arrest. It would be contrary to the abovementioned Article of the Constitution for the police to decide on the remand.

Section 29(a).1	<p>(a) Except for the below stated instances the police should release a person confined on suspect of a crime subsequent to his/her prosecution.</p> <p>(1) The genuine name and address has not been clarified or the police with appropriate reason recognize that name and address given by that person is not genuine.</p>	<p>The prosecution cannot charge a person without knowing the genuine name (and in most cases, the address) of the accused. Therefore, keeping a person in remand after criminal charges are brought forward against the person is (except for extremely exception cases) practically impossible. Moreover, Article 49 states the instances where police can request for extension of remand of a person and those instances does not include the incident mentioned in this section.</p>
Section 29(a).2	<p>(a) Except for the below stated instances the police should release a person confined on suspect of a crime subsequent to his/her prosecution.</p> <p>(2) That the police with appropriate reason recognize that the person will not present him/herself for his/her answerability.</p>	<p>Article 48(d) of the Constitution states that it shall be the decision of a competent court to decide to continue the detention of the arrestee. Therefore, it is unconstitutional for the police to assume this power and decide to continue remand of a person for any reason.</p>
Section 29(a).3	<p>(3) That the person is suspected of a crime that has imprisonment as a penalty and that the police have appropriate reason to find it imperative to keep him/her in confinement to stop him/her from committing another crime.</p>	<p>Preventative detention is a concept alien to the current Constitution and it will be unconstitutional to keep a person in remand to stop him from committing a further crime. However, police can request extension of remand of a person on the grounds of public safety.</p>
Section 29(a).4	<p>(4) That the police with appropriate reason recognize that it is imperative to keep him/her in confinement to take a sample from his/her body.</p>	<p>Taking a sample from the body would normally happen during the investigation. According to Section 29(a), the instances listed below is to be considered after the prosecution had filed charges against the person. Furthermore, keeping a person in remand to take a sample out of that person's body would be considered unconstitutional. It would contradict Article 49 of the Constitution.</p>
Section 29(a). 5	<p>(5) That the person is suspected of a crime that does not warrant an imprisonment as a penalty and that the police have appropriate reason to find it imperative to keep him/her in confinement to stop him/her from harming another person or property.</p>	<p>Keeping a person in remand for public safety can be justified. However, extension of remand on public safety ground shall also be a decision for the competent court. Not the police.</p>
Section 29(a).6	<p>(6) That the police with appropriate reasons recognize that he/she might hamper the judicial procedure or the investigation of that case.</p>	<p>Section 29(a) states that the instances listed in this section is to be considered after criminal charges has been filed by the prosecution, which happens after the investigation stage. Therefore, hampering an investigation shall not</p>

		be ground for extension of remand save in very exceptional cases.
Section 29(b)	(b) Even in the event that any of the instance stated in (a) of this Article applies a person can be confined further on order of a competent judge.	The instances listed in Section 29(a) does not conform to Article 49 of the Constitution. Hence, a decision based on those circumstances could be deemed unconstitutional.
Section 29(c)	(c) If the arrestee suspected of a crime is a minor then he/she should be released except for instances stated in (a) of this Article exclusive of (1) of that article.	See comments on Section 29(a).1 above. Pursuant to this Section, it could be interpreted that instances listed in Article 49 of the Constitution for extension of remand is dismissed in the event the arrestee is a minor. This defeats the purpose of the constitution and could raise practical issues.
Section 29(d)	(d) Even in the event that the police decides that an arrestee cannot be released due to any instance stated in (a) of this Article if the arrestee is held as per (4) of (a) of this Article he/she should cannot be held in excess of 6 hours subsequent to his prosecution.	See comments in Section 29(a).4 above. This Section states that if the arrestee is held in remand to obtain a bodily sample, he/she should be released upon six hours from filing of charges. Section 29(a) assumes that the list of instances found in this section are instances where police may extend the remand of a person after the prosecution had filed charges. Filing of charges are conducted by the Prosecutor General. So, it would be impractical for the police to identify the six-hour time limit for release of the person as prescribed in this Section.
Section 31(a)	(a) If any person who is suspected of a crime is held in custody of the police the Maldives Police Services should have a review committee for the reviewing of such persons.	The purpose and the powers of the 'review committee' in unclear. Review Committee is mandated to report to the Commissioner of Police, however, what happens to those reports and the powers of the Review Committee is unclear from the text of the Regulation.
Section 32(a).4	Under (1) and (2) and (3) of (a) of this Article the police are at discretion to remove and take any article carried by a person who is being incarcerated.	For avoidance of doubt, this Section should subject the discretion of the police to hold the items found in the arrestee, to items that could be considered evidence of crime or items that could be used to commit crimes.
Section 33 (h)	(h) If the body search and check of a mentally disabled or disturbed person is to be done then the search and check should be done in the presence of a custodian or an individual who has the ability to defend him/her in that situation.	Similar protection should be provided for minors.

Section 38(c)	(c) If a person who is arrested or confined or questioned states that he/she wants the assistance of a lawyer then except for any of the instances stated below any question asked about the case for which he/she has been arrested or confined or questioned can be asked in the presence of his/her lawyer.	It should also be mentioned here that in the event the accused request assistance of a lawyer, all other criminal procedures (such as taking of samples, photos etc.) should be suspended until such time the assistance of a lawyer is provided, unless the circumstances dictate otherwise.
Section 38(d)	(d) To give a person in custody of the police the opportunity to get the assistance of a lawyer in the instances stated in (3) of (c) of this Article can be delayed only to the extent of 96 hours from the time of his/her arrest and under the below stated instances.	Withholding the right for a lawyer's assistance for 96 hours would contradict Article 48(b) of the Constitution. To limit the fundamental right prescribed in the said Article of the Constitution by a Regulation would contradict Article 16 of the Constitution. Therefore, this Section could be interpreted as unconstitutional on the above grounds.
Section 38(e)	(e) A sub-inspector of police or an official of a higher rank can give the consent stated in (c) of this Article either in writing or by word of mouth. If the consent was given by word of mouth then it should be put on record in writing as soon as possible.	Limiting a fundamental right prescribed in Article 48(b) of the Constitution using a Regulation would contradict Article 16 of the Constitution.
Section 39(d)	An interview made by police for an investigation should be made in places stated below. (a) In a police station (b) A place where persons can be confined or kept in custody that is stated in the Police Act. (c) A place under the jurisdiction of the police. (d) A place determined by the police due to the instance of a confronted situation.	To conduct an interview in a place determined by the police, as listed in (d) of this Section, a declaration or an authorisation by a senior ranking police official should be sought. A record should also be maintained about the places authorized for this purpose.
Section 41(a)	(a) If a minor is brought under the custody of the police then the below stated should be fulfilled;	To help maintain records, the Juvenile Justice Unit should be informed if a minor is brought under custody of the police. A periodic reporting mechanism can be introduced for this purpose.
Section 46(e)	(e) Photographs taken in accord with this Article can be used by any relevant personnel for the purpose of investigation of crimes, in stopping crimes, in the reduction of crimes.	Some checks and balances should be introduced for the use of photographs taken at police.

Section 47(a)	(a) If a person whose crime has been proven from a criminal court is a person who has not been kept in the custody of the police or whose fingerprints or samples for the making of his/her DNA profile have not been taken in the process of his investigation then the police can bring that person to a police center and in accord with this Regulation take his/her fingerprints or any other sample.	This Section assumes that a convicted person may not have been fingerprinted by the Police. The investigation papers submitted by the police at the Prosecutor General's Office should have a statement from the accused and therefore, a person convicted of a crime should have gone through the police investigation process.
Section 49(d)	(d) In the instance stated in (1) of (a) of this Article the Commissioner of Police can authorize the search for what is stated in (b) of this article.	This Section introduce an exception to the rule prescribed in Section 49(b). However, there doesn't seem to be a legally valid justification for the Commissioner of Police to act unilaterally without a court order in the instance listed in Section 49(a) 1.
Section 50	In this Regulation in the instance when crime that warrants an arrest is stated it means actions with reason or reasons enough to believe that a person has committed a crime or is committing a crime or is attempting to commit a crime.	The word 'instances that warrants an arrest' is defined in such a way that committing a crime or attempting to commit a crime is included in its meaning. This definition defeats the purpose of categorizing acts 'that warrants an arrest' and 'acts that does not warrant an arrest'.

**ANNEX III: Review of the Criminal Procedure Bill**

Section 7(b)	For the purposes of subsection (a), an offense shall be considered a major	This provision enlists the 'serious criminal offenses' for the purpose of this bill (and
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	criminal offense if it is one of the following types of offenses.	Article 53(b) of the Constitution). The list should be harmonized with the penal code.
Section 15(a).1	A person arrested for investigative purposes and held in custody under a court order for a crime that is classified as major criminal offense can only be held in custody for a maximum of 60 days. A person's detention period should only be extended every 15 days if the Judge believes that further evidence can be attained by keeping him detained based on the evidence already given by his co-accused.	<p>This sections introduces 'arrest for investigation' which is not one of reasons for arrest according to Article 49 of the Constitution.</p> <p>Arresting and keeping a person in remand for the purpose of investigation is not recognized by the Constitution.</p> <p>It also introduces maximum time limit for a person to be kept in remand (60 days) prior to prosecution. However, there could be cases which might not end within the stipulated time limit. There must be an exception to this rule along with checks and balances to ensure that only extension is granted only in cases which an extension is absolutely necessary.</p> <p>Suggest this Section to be reviewed in the light of the Constitutional provisions relating to arrest and detention.</p>
Section 15(a).3	If within the period specified in this section, evidence that can secure a conviction is gathered, an extra detention period of 15 days can be granted in order for the case to be forwarded to the Prosecutor General's Office and for it to be submitted to court.	This Section allows extension of detention for up to 15 days to allow prosecution to review the case file and file charges. This is a violation of Article 49 of the Constitution. The reasons to detain a person in police detention should not include reviewing the investigative documents by the prosecution.
Section 15(a).4	When after the time period for investigation, a case is sent to the Prosecutor General's Office, the case should be submitted to Court within 15 days. The person can then be further detained for a period of 60 days. Within this period, the Court should hold a trial and deliver a verdict.	<p>This section requires the prosecutor general to press criminal charges against the suspect within 15 days. The wording of the draft doesn't make room for the prosecution to exercise its discretion as prescribed in Article 223 of Constitution.</p> <p>Furthermore, the section also allows further extension of detention of arrestees until the trial is complete. This contradicts Article 49 of the Constitution.</p>
Section 15(a).5	If within the period specified in this section, the charges against the accused are not proven, that person shall be entitled to compensation as provided for by the law.	It could be practically challenging to compensate people who are acquitted of criminal charges as the reasons for acquittal may be instances that none of the criminal justice institutions could prevent. For

		instance, a person could be acquitted because the witness refused to give an accurate statement. It is unfair on the state to bear expenses for every acquittal.
Section 15(a).6	A person arrested for investigative purposes can be held in custody under a court order for not more than 30 days. Within this period, he should be brought to Court every 15 days to review his detention. Detention should only be extended if the Judge believes if there is sufficient evidence against a person for a conviction against him, if further evidence can be attained by keeping him detained based on the evidence already given by his co-accused.	<p>Unlike above section, this section discuss criminal proceedings and timelines for a crimes other than the serious crimes.</p> <p>The section assumes ‘arresting people for the purpose of investigation’ which is unconstitutional. Article 49 explains reasons for extension of remand and the reasons doesn’t include ‘arresting for the purpose of investigation’.</p> <p>The section also introduces a structure where the investigative authority is required to introduce arrestee before a judge for extension of the remand period. The judge is required to ensure ‘there is sufficient evidence to prove the case against that person’. In modern criminal justice systems, for the purpose of extension of remand, the judge is not required to review the evidence to ensure the person could be convicted of an offense, however the judge is required to ensure that the person has a criminal case to answer.</p> <p>Judge reviewing the evidence of crime and making a decision on the guilt of the arrestee is premature as if the prosecution is satisfied with available evidence, a criminal trial shall follow. The decision about the guilt should be reserved for trial stage of the criminal proceeding.</p>
Section 15(a).8	A person can be detained for a further period of 15 days for the case to be sent to the Court by the Prosecutor General’s Office if the investigator believes there is sufficient evidence for a conviction.	This Section allows extension of detention for up to 15 days to allow prosecution to review the case file and file charges. This is a violation of Article 49 of the Constitution. The reasons to detain a person in police detention should not include reviewing the investigative documents by the prosecution.
Section 15(a)	The case should be submitted to Court by the Prosecutor General’s Office within 10 days of the report being submitted after investigation. The accused can then be also detained for a further 30 days. Within	This section requires the prosecutor general to press criminal charges against the suspect within 10 days. The wording of the draft doesn’t make room for the prosecution to

	<p>this time period, a trial should be scheduled and a verdict should be delivered by the Court.</p>	<p>exercise its discretion as prescribed in Article 223 of Constitution.</p> <p>Furthermore, the section also allows further extension of detention of arrestees until the trial is complete. This contradicts Article 49 of the Constitution.</p>
Section 22(a).3 and 4	<p>The investigation should not be pursued if there are no sufficient reasons to believe that the accused committed a crime;</p> <p>The investigation should not be pursued if there are no sufficient reasons to believe that a person is or may commit a crime.</p>	<p>This section outlines decisions made by the investigative agency upon receiving a first information report. Section 22(a).3 and 4 dictates that the investigative agency could decide not to continue investigation should it find that there are no reasons to believe that the reported crime was committed by the accused or the reported crime did take place at all.</p> <p>The section however does not explain the manner in which this decision is made, or the procedure to be followed by the investigative agency to reach this decision. Lack of this procedure will give room for arbitrary decisions by the investigative agencies. Suggest introducing a regulation or a provision that would state that an officer/s with a certain rank in the hierarchy should make this decision and the manner in which he/she is made accountable for this decision.</p>
Section 23(a)	<p>An officer of a law enforcement authority can only enter a residential property without the consent of the owner in one of the following circumstances.</p>	<p>For avoidance of doubt, suggest subjecting the use of police powers to broad guidelines as prescribed in the Constitution and law, therefore, introducing the phrase 'in performing powers assigned to police under the Constitution or Law police shall have the power to ...' before the current text.</p>
Section 23(a).1	<p>Prompt action should be taken to halt an incident which might cause physical harm to a person or to a group of people or if it might cause damage to property.</p>	<p>Article 47(b) of the Constitution states that "residential property shall be inviolable, and shall not be entered without the consent of the resident, except to prevent immediate and serious harm to life, property, or under the express authorisation of an order from Court".</p> <p>The language used in section 10(a).2 does not conform to Article 47(b) and should be changed to reflect the limitation imposed by the Constitutional provision.</p>

Section 23(a).3	If there is an incident of disruption of the peace and harmony of the place or if there is an imminent threat of disruption of peace and harmony of the place and the only means of stopping or breaking up the disruption is the immediate entry of that place.	See comment immediately above.  As explained above, Article 47(b) limits the powers of police in relation to search of private dwellings and any elaborations to this Article should contain within the boundaries set by the said Article.
Section 23(a).5	If there is a reasonable belief that evidence in connection with a criminal offense may be destroyed, the residence of the suspect of that offense to be searched	A mere suspicion should not warrant police to enter and search a private dwelling without a court order.  Does this mean that as soon as the police arrest a suspect, police have the power to search his/her private dwelling (without a court order) in instances where police themselves believe is reasonable?  This provision lacks proper checks and balances.
Section 27(a)	Except in the following circumstances, properties excluding residential properties, an officer of a law enforcement authority must enter the premises with the consent of a person in charge.	For avoidance of doubt, suggest subjecting the use of powers to broad guidelines as prescribed in the Constitution and law, therefore, introducing the phrase 'in performing powers assigned to investigative agencies under the Constitution or Law, such agencies shall have the power to ...' before the current text.
Section 27(a).2	Having reasonable belief(s) that a suspect for whom an arrest warrant has been issued in connection with a criminal offense is residing at that place.	Should the law enforcement officer have reasons to believe that a person against whom a court warrant has been issued, is taking refuge in a place, the law enforcement officer must obtaining at least an oral permission to enter a place without the consent of the owner. There does not seem to be any reason to prevent an oral permit. The permission can then be documented later.
Section 27(a).3	If an act that disrupts the harmony of a place or if such an act might take place and it is believed that the only means of halting the act is by entering the premises.	The word 'sulha masalaskan' or 'disruption of peace and harmony of the place' is too vague. Suggest using alternative words, such as 'a crime or threat of crime affecting harm to life or property'.
Section 28(a)2	That the person is someone that has an arrest warrant issued against them in connection with a criminal offense.	This section introduces instances where a person can be stopped and searched without a court warrant.

		<p>Section 28(a) 2 states that a person against whom a court warrant for arrest has been issued, can be searched without a court order and without the consent of the person.</p> <p>However, a court warrant to arrest does not necessarily entail a permission to conduct a search. This power has to be harmonized with relevant Constitutional provisions.</p>
Section 31(a).3	Reasonable belief that the person has inflicted harm on himself or that he will inflict harm on himself or that he may inflict harm on himself.	Harming ones own self is a criminal offense and would fall under the ambit of Section 31(a).2 (Committing a crime of about to commit a crime). Therefore, it is a repetition to include it in this section.
Section 31(d)	A person held for an investigative stop under subsection (a) must be released as soon as the purpose for that investigative stop is fulfilled.	<p>This section doesn't define the length of the investigative stop. It only says that as soon as the purpose of the investigative stop is fulfilled, the person shall be released.</p> <p>This could raise constitutional issues as the Supreme Court's ruling on its 2010/SC-A/19 suggests that, should a person be held without his consent by an investigative agency (for a time however short), it shall be considered an arrest and the protective provisions of the Constitution (including submission of habeas corpus applications) in favor of the arrestee shall trigger in such arrests. Thus, it is unconstitutional to consider investigative stops as explained in this section, a procedure not amounting to an arrest proper.</p> <p>Subsequently, an arrestee released under this section (after 'investigative stop' and before 24 hours) shall have the right to appeal at court of law to clarify if the arrest was illegal or not, pursuant to Article 48(d) of the Constitution.</p>
Section 31(b)	<p>In the following circumstances, a person maybe stopped by an officer of a law enforcement authority.</p> <p>(b) If there is a reason for the officer of the law enforcement authority to believe that the person may have information for the investigation regarding a crime</p>	<p>This Section allows investigative agencies to detain a person if the detaining officer suspects that the person has information pertaining a crime committed, or that is being committed, or about to be committed.</p> <p>According to Article 49 of the Constitution, having information about a crime does not</p>

	committed, in the progress of committing or might commit and might not obey to an order to co-operate.	warrant an arrest or detention. Therefore, this section could be declared unconstitutional.
Section 31(d)	Law enforcement officials believing that the situation warrants immediate action.	The section gives power to investigative agency to detain a person if the officer believes that the situation warrants an immediate action. However, in light of the Constitutional safeguards for an arrest, it has to be detailed that an arrest can only be allowed in situations where it is permitted under Article 46 of the Constitutional for the person to be arrested or detained.
Section 32	A person can be detained Section 31 of this Act until one if the following circumstances occur: (b) 12 hours from the time of detention.	Section 32 (c) states that a person detained for investigation shall be released upon completion of twelve hours. Would this mean that police can re-arrest the person after releasing and subsequently restart the twelve-hour remand period? The room for abuse of power calls for checks and balances, which can be found in Supreme Court’s ruling as explained above.  Section 32(b) states that a person shall be released if he/she gives full information he/she has of that crime. The manner to decide if the information is given amount to ‘full information’ is not mentioned herein. Hence giving room for abuse of power. Suggest tightening the language of the text.
Section 32(d)	If a person is detained under section 32, that person shall not be considered to be under arrest.	Supreme Court’s ruling on its 2010/SC-A/19 suggests that, should a person be held without his consent by an investigative agency (for a time however short), it shall be considered an arrest and the protective provisions of the Constitution (including submission of habeas corpus applications) in favor of the arrestee shall trigger in such arrests. Thus, it is unconstitutional to consider investigative stops as explained in this section, a procedure not amounting to an arrest proper.
Section 32(f)	The “place to keep people in detention” means a place to detain people decided by a law enforcement authority.	Suggest specifying that ‘a detention center’ should be a formally recognized center under the Prisons Act.

Section 35	<p>Instead of requesting the person to appear at a Police Station, Police may arrest a person under the following circumstances:</p> <p>Danger of the person repeating an offense  Potential interference with evidence of a criminal offense  Potential interference/threatening of witness of a crime  Protection of the public or the accused</p>	<p>Article 46 of the Constitution states that, “no person shall be arrested or detained for an offense unless the arresting officer observes the offence being committed, or has reasonable and probably grounds to believe the person has committed an offence or is about to commit an offence, or under the authority of an arrest warrant issued by court”.</p> <p>Section 35(a) 2,3,4 and 5 already falls under the category explained in Section 35(a)1. To avoid repetition, suggest removing the said subsections.</p>
Section 57(b)	<p>Rather than ordering a person to be present at a law enforcement authority, an officer of a law enforcement authority may arrest an accused in the following circumstances:</p> <ol style="list-style-type: none"> <li>2. If the accused may repeat the offence</li> <li>3. If the accused may temper with evidence</li> <li>4. If the accused intimidate witnesses</li> <li>5. If the accused may harm himself or someone else</li> </ol> <p>In circumstances stated in Sub Section (a) the investigator may limit the right to be silent of the accused. But anything said by the accused in such a circumstance, cannot be used against him in trial.</p>	<p>The section limits the right to silence of the arrestee. The circumstances mentioned in the section needs to be revisited and discussed widely in public to see if the incidences mentioned truly justifies suspending right to silence. This should also be discussed in light of limitations introduced in Article 16 of the Constitution to limit fundamental rights, which include (among other conditions), best practices in other democratic countries.</p>
Section 58	<p>An interview conducted according to Section 60 should be recorded in audio and writing.</p>	<p>What about interviews that occur in places not stipulated in Section 60 of this Act? Would those interviews not enjoy the safeguards prescribed in this section?</p>
Section 71(c)	<p>Photographs taken in accord with this Article can be used by any relevant personnel for the purpose of investigation of crimes, in stopping crimes, in the reduction of crimes.</p>	<p>Some checks and balances should be introduced for the use of photographs taken at police.</p>
Section 72(a)	<p>(a) If a person whose crime has been proven from a criminal court is a person who has not been kept in the custody of the police or whose fingerprints or samples for the making of his/her DNA profile have not been taken in the process</p>	<p>This Section assumes that a convicted person may not have been fingerprinted by the Police. The investigation papers submitted by the police at the Prosecutor General’s Office should have a statement from the accused and therefore, a person convicted of a crime</p>

	<p>of his investigation then the police can bring that person to a police center and in accord with this Regulation take his/her fingerprints or any other sample.</p>	<p>should have gone through the police investigation process.</p>
Section 73	<p>Unless stated otherwise in a legislation, if a Judge believes that an information may pave for a criminal act, he may issue a court order instructing an officer of a law enforcement authority to act as following.</p>	<p>This Section gives power to a judge to issue a court warrant giving power to investigative agencies to intercept private communications between individuals, should the judge sees that the communication includes information that could lead to a criminal offense. This new function for the judge questions the role of the judge in a criminal investigation. Usually, it should be the investigative agency who initiates a criminal investigation and giving this power to initiate a criminal investigation for a judge confuses the role different criminal justice agencies and creates a situation where the judge becomes the investigator and judge at the same time. This is more evident if the case is later sent to the court at which, the judge who initially ordered the investigation presides. The perception of a fair trial could be compromised in such situations. This demands that the judges' function be limited to adjudication and not initiating criminal justice investigations.</p>
Section 74(a)	<p>If there are reasons to be believe that a person has committed a crime, just committed a crime, is committing a crime or will commit a crime, an officer of a law enforcement authority, with the authority of a person in charge, has the power to withhold, to order to withhold the passport or official travelling document or to order not to travel out of the country for 7 days.</p>	<p>A 7-day time limit to hold a person's passport for a mere suspicion of a criminal offense seems unreasonable. The investigative agencies could hold the passport for a maximum of three days and then obtain a court warrant to the same effect. This could minimise chances of abuse of power by investigative agencies and make the criminal justice system more efficient. This also conforms to the spirit of the Constitution which is not to confine fundamental rights.</p>
Section 74(d)	<p>In the following circumstances, by virtue of Sub Section (c), if a request is made or if a Court finds it needs to, a Judge has the power to order the relevant authorities to withhold a person's passport or official travel document or to order the person not to travel out of the country.</p>	<p>This section allows the judge to issue a court order to prevent a person from travelling without a complaint or request from any authority. This seems unreasonable for the reasons explained above in comments about Section 73.</p>

		It is suggested that the reasons for holding the passport should also be reviewed in light of the spirit of the Constitution.
Section 74(e)	When a person's passport or official travel document is withheld or if a person is ordered not to travel out of the country in accordance to Sub Section (d), a Judge has a choice to determine the time period.	The judge has discretionary power as to the number of days the passport is being held/suspended. This could make room for abuse of power. Therefore, suggest specifying a maximum time for the judge to hold/suspend a passport and devise a structure for the decision to be reviewed when expired.
Section 76(a)	In cases investigated by the Maldives Police Service, if a person confesses according to Part Seven of this Chapter, the case should be submitted to Prosecutor General's Office within three days from the date the person signs his confession statement.	<p>The hastiness of this process could prove practically difficult to cope with. Furthermore, when the decision to submit the investigative papers with the prosecution is based on the suspect's willingness to sign an plea bargain with the prosecution, this leaves gaps in the criminal justice system. What if the police felt that the person arrested (and pleaded guilty) has co-conspirators / co-offenders? Would the police blindly follow the plea of the arrestee and close the case? What if the person who pleaded guilty did so to conceal his partners in crime and subsequently the true motive of the crime?</p> <p>The section needs to be reviewed to minimise practical difficulties while implementing the concept it introduces.</p>
Section 77(a)	In cases investigated by the Maldives Police Service, if the accused does not confess and if he is in detention, the case must be submitted to the Prosecutor General's Office within 22 days.	<p>This Section mandates police to submit any criminal cases within 22 days of the time of the arrest of the accused. The section implies that should the case not be processed and submitted with the Prosecution within the time specified, then the person could be released. This contravenes Article 49 of the Constitution. For example, according to Article 49, should the person be a threat to society, the person should be kept in remand regardless of the 22-day time limit.</p> <p>Furthermore, an investigation could go on for more than 22 days without the investigative agencies reaching a lead in the investigation. If the arrestee is a flight risk, or could tamper with evidence, the public interest (and Article 49 of Constitution) demand such person to be</p>

		<p>kept in remand until the circumstances that suggested extension of remand is minimised. Therefore, limiting the time for 22 days without subjecting it to other conditions does not look practical.</p>
Section 79(b)	<p>When the Prosecutor General orders as stated in Sub Section (a) and if the reason for not making the submission with the time period is accepted by the Prosecutor General, the time period can be extended. The period can only be extended according to Section 77, 78 and 79 of this Act.</p>	<p>In the event that the police (or the investigative agency) is unable to conclude the investigation within the time specified in this act, the agency shall write to the Prosecutor General with reasons explaining the delay and requesting an extension. The Prosecutor General may extend the time limit for a time not exceeding the time limits specified in this Act. This Section does not make sense as request for extension is because the agency was unable to conclude the investigation within the time specified and if the Prosecutor General can only extend the time for what is prescribed in this Act, it does not make any practical difference.</p>
Section 80	<p>When this Act comes into force, for cases that are being investigated by the Maldives Police Service or for cases submitted to that institution or for cases where the investigation is over and the case is still at that institution and hasn't been sent to the prosecutor general's office, the time period will start from the date this Act comes into force.</p>	<p>This could be technically and practically very challenging. The police records show that, annually, there are roughly over 21 thousand cases lodged with the police, out of which, only about 4000 cases reaches the prosecution. There could be thousands of cases pending with the police (especially in the atolls) and submitting those cases with the prosecution within 22 days could be challenging.</p> <p>Suggest reviewing this section and making room for an interim arrangement that is both practical and feasible.</p>
Section 83(a)	<p>Unless stated otherwise in legislation, in murder cases and cases where a person has been inflicted extensively, where it is decided that the case will not be sent to the Prosecutor General's Office based on lack of evidence, the Commissioner Police must re investigate the case as stated in this Chapter.</p>	<p>Save for this Section, this bill doesn't address the issue of cases not sent for prosecution for lack of evidence. This section mandates the Commissioner of Police to issue an order to reinvestigate murder cases and cases of serious bodily harm, which were filed with police for lack of evidence.</p> <p>As the chief prosecuting agency, the Prosecutor General should have a say on any cases that are filed after an investigation was initiated. These cases could be dealt summarily by a prosecutor or using any other process designed for this purpose.</p>

Section 83(b)	The starting point of the investigation period for a reinvestigation of a criminal offense as stated in subsection (a) shall be from the date that a court order is issued for the starting of that investigation.	Section 83(a) does not mention anything about a court order and the counting of days to start on the day court issues a court order to reinvestigate seems like a typing error.

**General notes:**

The review is limited to provisions in the Draft Criminal Procedure Code that is related to police powers and functions. Except in exceptional instances, this review does not look into inconsistencies in general functioning of the criminal justice sector.

Please also note that the draft Criminal Procedure Code subject of this review was a working draft (at parliament) provided to us by Maldivian Democracy Network. Some provisions in the draft lacked numbering and some phrases were incomplete. This paper only tries to review the draft as provided to us.

Some of the concepts found in this draft were borrowed from the 'Regulation on the use of police powers', hence the legal gaps found in those provisions remained in this draft. Some other concepts that were borrowed directly from the Constitution did not seem to appreciate the spirit of the Constitution that demanded fundamental rights not to be limited.



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