PADC Model Police Act, 2006:
A NOTE ON ISSUES OF CONCERN

1. Broad definitions in Chapter I

CHRI is concerned that some of the words and phrases used in the Model Act have been defined very broadly in Chapter I. For example, words and phrases like terrorist activity, militant activities, insurgency and organised crime have been used throughout the Model Act with concomitant police duties as well as powers of the state to declare areas as Special Security Zones. The definition of these terms is not sufficiently precise. Instead, definitions are inclusive – the terms are defined to "include" activities, which means that many other activities that are not specified can fall within the terms of the definition. This has the potential to impact heavily on the fundamental rights of the community, and broaden the application of the Act well beyond what was anticipated by the Committee.

2. Special Police Officers

CHRI has grave reservations regarding the inclusion of Section 22 in Chapter II of the Model Act. Section 22 empowers the Superintendent of Police to appoint "any able-bodied and willing person" "he considers fit to be a *Special Police Officer* to assist the Police Service".

A Special Police Officer appointed under Section 22 would have the same powers and immunities as ordinary police officers, but would not have the opportunity to undertake the comprehensive training a regular officer is required to undergo, in subjects as diverse as the use of fire arms, the principles of law relating to use of force and the legal rights of the public. Experience in Punjab, where a system of Special Police Officers led to high levels of public complaints of police misconduct, shows that the scope for abuse of powers would be very high. If more police officers are required in a given situation, proper recruitment and appointment procedures must be followed to induct new officers. An effective police service is a professional, trained police service. This is a minimum standard that must not be breached.

3. The rural policing system

CHRI notes with concern that the police presence in rural India continues to be minimal. The rural policing system advocated by the Committee in Chapter VII is based on assistance from local villagers who are appointed as *Village Guards* and *Village Defense Parties*. The functions broadly include:

a. preventive patrolling;
b. securing and preserving scenes of crime;
c. remaining alert and sensitive to any information about any suspicious activity, or movement of suspicious persons or development of any conspiracy in the village, that is likely to lead to a crime or breach of

law and order, and promptly passing on such information to the police; and

d. making arrests and handing arrested people to the police without delay.

These provisions have vast scope for abuse. Who are “suspicious persons”? What is suspicious activity? Authorising Village *Guards* to arrest and hand over a suspect to police – concerningly there is no requirement that this takes place within twenty-four hours of arrest – might result in a concentration of powers in the dominant groups within villages that might be steeped in gender, caste or religious bias. The scope for abuse is vast, especially given the fact that most villagers would not be aware of the ambit of powers of the *Village Guard* and *Defense Party* or of their rights vis-à-vis these power structures within the village.

Apart from the grave dangers of abuse of power, lack of appropriate skills, experience and training would also mean inefficient, ineffective and unresponsive policing in rural areas. What skills would a villager bring in preserving and securing crime scenes or in preventive patrolling? There is no excuse for the failure to provide regular police cover to villages where the majority of Indian population resides.

4. Police powers in the Commissionerate system

Chapter VIII, “Policing in metropolitan areas, major urban areas and other notified areas”, grants many powers [**Sections 92-97**] to the police in the Commissionerate system, including powers for:

a. licensing or even prohibiting the keeping of a place of public entertainment;
b. licensing or even prohibiting the running of cinemas;
c. regulating or prohibiting public assemblies and processions; and
d. requiring people to execute bonds, “with or without sureties for good behaviour” if the police receives information that the concerned person is “likely to do any wrongful act that may lead to disturbance of public order”.

These powers are extremely wide. Their unregulated application may result in dangerous abuses.

Section 97 of the Model Act grants extremely wide powers to the police to remove people from their homes and cities. For example, a person may be removed if “it appears to the Commissioner of Police” that the person’s “movements or acts” “are calculated to cause “alarm”, “danger, or harm to person or property”. This is a very broad provision. How will it be decided that acts of a particular person are calculated to cause alarm? This section leaves a vast scope for abuse by vested powerful interests in the community to deprive the poor and the powerless of their livelihoods and homes by ensuring that they are removed from the Commissionerate after a false complaint is lodged. Taking another example, a person may be removed “if it appears to the

Commissioner" that "such person is so dangerous as to render his being at large in the Commissionerate" "hazardous to the community". In law, when does a person become "hazardous to the community"? Furthermore, if a person is so dangerous, why remove him or her from one area and leave people in another jurisdiction at his or her mercy? Why not charge and prosecute him or her?

The Model Act indeed *gives the police the carte blanche to exercise their wide discretionary powers even in the absence of any independent witnesses*. This provision empowers the Commissioner to take decisions curtailing fundamental rights of an individual even if there is no public witness so long as the Commissioner is of the opinion that witnesses are not willing to give evidence because they apprehend the safety of their person or property. Powers to curtail fundamental rights of the public should not vest with the executive, let alone the police. If an authority needs to be empowered to remove people from a community, the local judicial magistrate is an appropriate person. The police are a wholly inappropriate substitution. Aspects of these provisions already exist in some state Police Acts. However, this alone is no reason to continue to grant further powers to the executive that can further marginalise the vulnerable. Such provisions have no place in a democratic society.

Section 97 should not be included in the Model Act. Additional mechanisms and processes must be put in place to ensure that powers granted under other provisions in Chapter VIII are not abused.

5. Chapter XIII - Police accountability: A welcome step, but more needed

CHRI recognises the contribution of this Committee to the cause of police accountability. What matters to the people is not who transfers police officers or who appoints them, but whether the police will become responsive and accountable. We welcome the inclusion of Chapter XIII that institutionalises civilian oversight of policing and intends to ensure police officers are held accountable for their misconduct. It is in this context that CHRI wishes to draw the attention of the members of the Committee to certain omissions in the draft chapter that might dilute the very purpose for which the civilian oversight agency is being created.

Clearly, much of how complaints authorities perform their functions relies on how separate they are from police and executive influence, and how autonomous and well embedded their status is in the country's legal framework. It also depends upon the width and clarity of their mandate; the scope of their investigative powers; the composition of their leadership and competence of their staff; the adequacy and sources of financing; and most importantly their ability to compel obedience to their recommendations and the attention or support their reports and findings get at the hands of the government and police. Given this, the composition of the body, the manner of its selection, the functions it is given and the powers it is awarded all become relevant.

5.1 District Accountability Authority

CHRI believes that the strength and the success of the District Accountability Authority lies in its ability to be accessible to the public. CHRI welcomes the decision to create the body at the district level. However, we are concerned that the Authority may not be created in each police district. Instead, a group of districts in a police range might be serviced by one Authority, making it virtually inaccessible for the poor in rural areas who may not able to access the far-flung district body. CHRI urges the Committee to consider setting up Authorities in each police district.

5.2 Composition of the Commission and the Authority

It is heartening to note that an independent selection panel – and not the government – nominates the members of the Commission and the Authority. With regard to composition of the body, however, there remain a few concerns that must be addressed to ensure its credibility and success.

a. *Retired police officer*

CHRI believes that having a police person on board is unnecessary and might significantly compromise the independence of the Commission or the Authority. It will also adversely impact the credibility of the Authority or Commission. The rationale for having an independent body itself is defeated by having personnel on board from within the police force.

The police have a duty to examine and supervise complaints through its own internal complaints mechanism. The Authority is intended to function outside the internal complaints mechanism. It is intended to inquire into serious complaints and, in certain specified cases, to assess the adequacy of departmental procedure. To have police personnel reviewing internally as well as being part of the external mechanism conducting impartial oversight defeats the independence of the Authority or Commission.

Importantly, the point is not just whether an officer is likely to be biased or not. The point is that the Authorities and Commissions were created in response to the community's lack of confidence in the current internal review procedure. Appointing police personnel to the Commissions and Authorities may well doom the body in the eyes of the public.

b. *One member from the civil society*

CHRI appreciates the thought behind including members from the civil society in the Commission or Authority. However, experience indicates that without any further qualification, even this category would be filled by retired bureaucrats – steeped in a culture of secrecy with a pro-government stance – to the exclusion of

members of the broader civil society. CHRI urges the Committee to add words “not being a retired public servant” after the words “civil society” in clause (d) of Section 160. After all, clause (e) of Section 160 does require one of the members to be a retired bureaucrat, and it would only be fair that no section of the society is over-represented to the exclusion of another. Similarly, the composition of the District Authority also requires amending to ensure that the body at the district level has some local civil society representation instead of just a retired judge, a police officer and a bureaucrat.

5.3 Functions and powers of the Commission/Authority

a. *Inquiry into serious misconduct – What about other misconduct?*
Serious misconduct includes only four types of police misconduct and leaves out many common types of misconduct, including torture not amounting to grievous hurt, death in police action as opposed to death in police custody (which would include cases of false encounters), false registration of cases and fabricating evidence. In all these cases, the complainant has no recourse to the Commission or the Authority and has to rely on departmental inquiries.

b. *Limited powers of the Commission/Authority in monitoring other cases of misconduct*
It is only in limited cases where the complainant can approach the Commission or Authority on the basis of indordinate delay or because he or she believes the principles of natural justice have been breached. The Commission or Authority can ask the police for a report and based upon the report, it may issue direction to the police to either expedite the inquiry or in appropriate cases, institute a fresh inquiry by another officer.

CHRI urges the Committee to further empower the Commission or Authority.

i. The Commission or Authority should have powers to call for evidence and other relevant documents of the inquiry where the complainant alleges bias or is otherwise unsatisfied with the departmental inquiry process. It might not be possible for the body to judge whether a case is made out solely on the basis of the police report; and other documents would be relevant to form the opinion.
ii. Where the Commission/Authority is convinced that there is inordinate delay in the process of the departmental inquiry, it should have greater powers than merely “advising” “expeditious completion”. The Commission should have powers to order/direct completion within a stipulated period subject to it condoning further delay on reasonable grounds.
iii. Importantly, in addition to ordering a re-inquiry or an expeditious completion, the Commission should also have

the powers to take over the inquiry itself in the interest of justice.

c. *Commission does not have powers to search and seize [Section 168]*

The powers of the Commission are similar to the powers granted to the National Human Rights Commission (NHRC). However, CHRI notes that the powers of the NHRC to enter a building, search and seize relevant documents (as provided under Section 13(3) of the Protection of Human Rights Act, 1993) have not been given to the Commission. This is an extremely important power. In cases where the Commission suspects that the concerned police officers are not cooperating, it may need to access relevant documents by exercising a power to enter and seize documents. We suggest the following provision be added to Section 168:

> 'The Commission or their representatives, specially authorised in this behalf by the Commission, may enter any building or place including a police station or an office of a police officer where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable."

d. *Interference with the functioning of the Commission or the Authority [Section 179]*

CHRI welcomes the inclusion of Section 179 to encourage cooperation with the Commission or Authority. However, despite the strong step in this direction, the intended objective of the provision may be thwarted by vested interests using the safety net provided by Section 197 of the Criminal Procedure Code. Section 197 clearly bars any court from taking cognisance of any offence by a public servant without prior sanction by the government. This would defeat the purpose for which Section 179 is created. We suggest an addition to this Section:

> "Notwithstanding anything contained in any law, a prosecution under this Section shall not require prior sanction of the government".