

CHRI 2017

MODEL RULES OF  
PROCEDURE  
*for*  
POLICE COMPLAINTS  
AUTHORITIES IN  
INDIA



**CHRI**

Commonwealth Human Rights Initiative

Working for the practical realisation of human rights in the countries of the Commonwealth

# Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

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**CHRI 2017**

**Model Rules of  
Procedure**  
*for*  
**Police Complaints  
Authorities in India**

Developed by:

Commonwealth Human Rights Initiative

**The Rules were first developed by CHRI in 2012 and has since been updated.**

CHRI extends its deepest thanks to all those involved in the preparation of the Rules. Our special thanks to the former Coordinator of the police reform team, Navaz Kotwal, who led the entire exercise, Devika Prasad for the research and preliminary drafting, and to Venkatesh Nayak for extensive edits that elevated the formulation of the Rules immensely. We are grateful to Ms. Maja Daruwala (Senior Advisor, CHRI) for her guidance throughout.

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This report has been produced with the financial assistance of the European Union. The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders.

# Contents

Introduction	1
Draft Rules	3
1. Short Title, Extent and Commencement	3
2. Definitions	3
3. Procedure for the selection of the Chairperson, Members And Secretary	4
4. Terms and Conditions of the Chairperson and Members	6
5. Removal and Suspension of the Chairperson and Members	7
6. Staffing and General Administration	8
7. Sitting and Decisions of the Authority	9
8. Finances and Auditing	9
9. Procedure for Filing and Registering Complaints	10
10. Screening and Referral of Complaints by the Authority	12
11. Conduct of Inquiry	12
12. Issue of Notice of Hearing	13
13. Conduct of a Hearing	14
14. Appearance at a Hearing	15
15. Time limit for Completion of Inquiry and Grant of Adjournment	16
16. Decisions and Direction of the Authority	17
17. Immunities	18
18. Compliance with the Decisions of the Authority	18
19. Transparency in the Working of the Authority	19
20. Outreach	20
21. Annual Report	21



# Introduction

In September 2006, the Supreme Court of India passed seven directives for structural reform of the police in its judgement in the *Prakash Singh*<sup>1</sup> case. These directives taken together, were designed to kick start the process of police reform, which has been fiercely resisted since India's independence. As one of the seven directives, the Court ordered all state governments and union territories to establish Police Complaints Authorities (PCAs) at the state and district levels, with immediate effect. In response to the huge volume of complaints against the police and the endemic lack of accountability, the creation of dedicated police complaints bodies has been a long-standing recommendation in relation to police reform in India. Government-appointed committees such as the National Police Commission (1979-1981), the Ribeiro Committee (1998-1999), the Padmanabhaiah Committee (2000) and the Police Act Drafting Committee (2005-2006) have all unequivocally recommended the creation of dedicated police complaints bodies. The Court in 2006 finally provided the push for implementation.

The intention behind setting up police complaints authorities was

<sup>1</sup> *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1

to ensure that a local mechanism specialised in handling a wide ambit of complaints against the police, including the most serious, was readily available to the public at large. The long-term goal was to create a change in policing culture by drawing attention to and ensuring accountability for breaches of duty and lapses in required standards of behaviour.

In October 2006, a month after the Supreme Court's judgement, a legislative template in the form of a Model Police Act was produced by the Police Act Drafting Committee (PADC) or what is more popularly known as the Soli Sorabjee Committee. This Committee was created by the Ministry of Home Affairs to draft a new Police Act for India and replace the Police Act of 1861 which remains in force at the center and some states. In its judgement, the Court referred to the Committee's draft and advised state governments to frame new Police Acts based on the Model Police Act. The 2006 Model Police Act contains a detailed section that establishes police complaints bodies in the form of Police Accountability Commissions at both the state and district level. In fact, it not only conforms to the Court's framework, but fills in the necessary detail for effective functioning. For instance,

the Act details an independent selection process and criteria for the Chair and members, prescribes rights for complainants, specifies and expands the powers and includes reporting obligations for the complaints bodies. Where the Court prescribed minimum standards and a basic framework, the Model Police Act put in a place a system to manage complaints against the police through the specialised bodies.<sup>2</sup>

Since 2006, the Commonwealth Human Rights Initiative (CHRI) has been monitoring the functioning and progress of the new Police Complaints Authorities. The record of implementation has been wholly inadequate. To date, less than ten states have PCAs operating on the ground. Other states have either only created these authorities on paper, or have chosen to entirely ignore this directive of the Court.

The existing legal framework does not contain sufficient procedural detail to guide and shape the Authorities' inquiry process. At present, with the exception of two states, none of the Police Complaints Authorities work

<sup>2</sup> In 2013, another Committee was formed to revise the 2006 Model Police Act. The Committee produced a revised draft in 2014, but this has not been adopted by the Ministry of Home Affairs.

according to prescribed Rules of Procedure. In Police Acts, state governments are given the responsibility to make Rules and table them in the legislature once they are drafted. Rules have not been formulated or notified largely due to political apathy.<sup>3</sup> In the absence of legislation, government orders setting up the Authorities are silent on provisions on rule making. The absence of clearly laid down rules is leading to numerous problems, gradually diminishing public faith in the Authorities. In some states, Chairpersons of Authorities have devised procedural steps to follow from intake to final disposal, but in the absence of formal adoption, these are left open to variation. Procedures are entirely unknown to complainants, putting them at a further disadvantage in the inquiry process. There is a need to instill procedures which are geared towards making the inquiry process quick, easy and accessible for complainants.

In view of these concerns, CHRI has drafted Model Rules of procedure for the inquiry process of a Police Complaints Authority. These are the Model Rules, along with brief commentary to explain the rationale and reasoning behind the drafted provisions. Commentary is not provided for every Rule as some of the provisions are common features of Rules accompanying autonomous bodies and do not require elaboration. For the provisions that we feel require some explanation, we have provided commentary.

Extensive research on domestic criminal law and best practice models as well as on international models was conducted to complete the drafting of these Model Rules. It is hoped that Complaints Authorities, the police, and state governments will give serious consideration to these Model Rules and move towards their early adoption for the smooth and effective functioning of the Police Complaints Authorities.

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3 In some states, even where draft Rules have been forwarded to the state Home Department, Rules have still not been notified.



# The Draft Rules

**G.S.R. In exercise of the powers conferred by Section XX of the XXX Police Act, 20XX, the State Government of XXX hereby makes the following Rules, namely;**

## **1. Short title, Extent and Commencement**

- (1) These rules may be called The...
- (2) They shall come into force on the date of their publication in the Official Gazette.

## **2. Definitions**

- (1) In these rules, unless the context otherwise requires:
  - (a) "Act" means the XXX Police Act, 20XX;
  - (b) "Authority" means the State Police Complaints Authority established under the Act;
  - (c) "Chairperson" means the chairperson of the State Police Complaints Authority appointed under the Act;
  - (d) "Complainant" means a person by whom, or on whose behalf a complaint is made under the Act;
  - (e) "Complaint" means a complaint about "serious misconduct" or "misconduct" taken cognizance of by the State Police Complaints Authority or under the Act;
  - (f) "Government" means the State Government of XXX;
  - (g) "Inquiry" means an inquiry instituted as per procedure specified in Rule 11 of these Rules;
  - (h) "Member" means a member of the State Police Complaints Authority appointed under the Act;
  - (i) "Misconduct" means any willful breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the public, excluding "serious misconduct" as defined in the Act;
  - (j) "Respondent Officer" means such police personnel who is the subject of a complaint;
  - (k) "Selection Panel" means the panel constituted under Rule 3;
  - (l) "Secretary" means the Secretary of the Authority appointed under Rule 3;
  - (m) "Section" means a section of the XXX Police Act, 20XX;
  - (n) "Serious misconduct" means any act or omission of police personnel that leads to or amounts to:
    - (a) death in police custody;
    - (b) grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860;
    - (c) rape or attempt to commit rape; or
    - (d) arrest or detention without due process of law.
- (2) The words and expressions used and not defined in these Rules but defined in the XXX Police Act or the Criminal Procedure Code, 1973, shall have the meanings respectively assigned to them in those enactments.

### 3. Procedure for Selection of the Chairperson, Members and the Secretary of the Authority

- (1) The Government shall appoint the Chairperson of the Authority from a panel of three eligible candidates recommended by the Chief Justice of the XXX High Court.
- (2) Any retired High Court judge not disqualified in accordance with the relevant criteria specified in sub-Rule 5 shall be eligible for appointment as Chairperson.
- (3) The members of the Authority shall be appointed by the State Government from the list of eligible candidates recommended by the Selection Panel.
- (4) The Government shall constitute a Selection Panel consisting of:
  - (i) the Chairperson of the Authority appointed under Sub-Rule 1;
  - (ii) the Chairperson of the State Public Service Commission;
  - (iii) the Chairperson of the State Human Rights Commission:

Provided that where no State Human Rights Commission exists, the Chairperson of the Lokayukta shall be a member of the selection panel;

Provided further that where no Lokayukta exists, the Chairperson of the State Vigilance Commission shall be a member of the Selection Panel;

- (5) A person shall be ineligible to be the Chairperson or a Member of the Authority, if he:
    - a) is not a citizen of India;
    - b) has completed 70 years of age;
    - c) has not been employed in any police, defence or intelligence service or any other allied service for at least one year prior to his appointment to the Authority;
    - d) has not been a public servant for at least one year prior to his appointment to the Authority;
    - e) holds any elected office under the Constitution including that of a Member of Parliament or State Legislature or any local body;
    - f) is a member of, or is associated in any manner with an organisation declared as unlawful under an existing law by the appropriate authority;
    - g) is an office-bearer or member of any political party;
    - h) has been convicted of any offence punishable with imprisonment for a minimum of one year;
    - i) is charged with the commission of an offence specified in clause (h);
    - j) has been declared to be of unsound mind by a competent court.
  - (6) The Government shall appoint as Secretary to the Authority an officer not below the rank of Additional Secretary to the Government, after due consultation with the Chairperson and Members of the Authority.
  - (7) The Secretary shall communicate to the Government the date on which any vacancy in the Authority is likely to arise due to the completion of the term of the Chairperson or any member, at least three months prior to such date:
- Provided that in the event of a vacancy arising in the Authority for any other reason, the Secretary shall inform the Government of the same immediately.
- (8) The Government shall within seven working days of receiving a communication from the Secretary, about any vacancy in the Authority, advertise such vacancy in the Official Gazette and in the leading dailies of the State, inviting applications from eligible candidates and specify the last date for receipt of applications.

- (9) The Government shall, for the purpose of scrutiny, make over to the Selection Panel, all applications not disqualified in accordance with the ineligibility criteria specified in sub-Rule 5, no later than three weeks from the date specified in sub-Rule 8.
- (10) In addition to considering the applications received from the Government under sub-Rule 9, the Selection Panel may also invite *suo motu*, applications from eminent persons qualified to be appointed to the Authority.
- (11) The Selection Panel shall scrutinise all applications received under sub-Rules 9 and 10 and submit to the Government, within four weeks, a short list of candidates, along with reasons for selection, based on comparative assessment of merit and experience, in accordance with the criteria specified in sub-Rule 12.
- (12) The Selection Panel shall assess the suitability of the candidates in accordance with the following criteria:
- (a) in the case of all eligible candidates:
    - (i) proven record of personal integrity;
    - (ii) proven commitment towards upholding human rights;
    - (iii) superior knowledge of the law;
    - (iv) proven adherence to high professional and ethical standards; and
    - (v) high degree of verbal and written communication skills;
  - (b) in the case of a candidate with a judicial background, his or her proven record of upholding due process and its reflection in judgements and decisions delivered;
  - (c) in the case of a retired police officer, his or her untarnished and impeccable record of service to be ascertained on the basis of his or her Annual Performance Appraisal reports;
  - (d) in the case of a retired government servant, his or her untarnished and impeccable record of service to be ascertained on the basis of his or her Annual Performance Appraisal Reports.
- (13) The Government shall publish the short list of candidates along with reasons supplied by the Selection Panel under sub-Rule 11, in the Official Gazette and leading dailies inviting objections, if any, from the members of the public.
- (14) The Government shall make over to the Selection Panel objections, if any received from the members of the public under sub-Rule 13.
- (15) The Selection Panel shall recommend the final list of eligible candidates to the Government after taking into consideration the objections received under sub-Rule 14.

**Commentary:** *The Supreme Court in the Prakash Singh judgement prescribed a selection process for the Chairperson and members of Police Complaints Authorities, which importantly provides for short-listing of candidates by an independent panel.<sup>4</sup> In the majority of legislation or government orders setting up Police Complaints Authorities, this short-listing process has not been included, leaving selection and appointments to the sole discretion of the state government.<sup>5</sup> This leaves room for patronage, personal preference and politicised appointments, which have been the downfall of independent oversight bodies in India. The selection process to any government authority must be one that assures impartiality and independence. Such a process introduces a semblance of openness, and objectivity in selection or independence. Absence of the same will result in positions that would be obliged for their posts to the government against whose agencies they will often be required to act.*

<sup>4</sup> The Court specified that the Chair of the state-level Authority, a retired High Court judge, is to be chosen out of a panel of names proposed by the Chief Justice; similarly, the district-level Chair, a retired District judge, is to be chosen out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. The other members are to be chosen out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission.

<sup>5</sup> The Police Acts of Meghalaya and Sikkim enshrine panels for selection. The panel in the Sikkim Police Act 2007 most closely complies with the panel identified in the Court's directive.

*Additionally, while there is stipulated selection criteria for appointment of candidates to Police Complaints Authorities in Police Acts and government orders, these are not sufficiently rigorous or wide-ranging. Independent oversight bodies require people who have more than just legal knowledge or judicial experience as essential as these are. They require people who understand all the dimensions of accountability and are willing to develop the Complaints Authority's role to exercise accountability not just through fair and quick inquiries, but through regular reporting, easy access, assistance to complainants and the will to confront the police and government when necessary.*

*It is not unusual for Rules to contain specified selection criteria for appointment to independent bodies. For example, the Consumer Protection Rules 1987 prescribe detailed selection criteria for appointment of members onto a similar public complaints body in the consumer protection regime.<sup>6</sup>*

#### 4. Terms and Conditions of Service of the Chairperson and Members of the Authority

- (1) The Chairperson shall hold office for a term of three years from the date on which he or she enters office and shall be eligible for reappointment for a term of similar duration:

Provided that no Chairperson shall hold office as such for more than six years in succession or after he or she has attained the age of seventy years.

- (2) Every Member of the Authority shall hold office for a term of three years from the date on which he or she enters office and shall be eligible for reappointment for a term of similar duration.

Provided that no member shall hold office as such for more than six years in succession or after he or she has attained the age of seventy years.

- (3) The Chairperson and a Member shall, before he or she enters upon the office, make and subscribe before the Governor, an oath or affirmation in the form given below:

"I, ..... having been appointed Chairperson/Member of the State Police Complaints Authority, swear in the name of god that I will bear true faith and allegiance to the solemnly affirm

Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution, human rights and the laws."

- (4) The Chairperson or a Member may, at any time, by writing under his or her hand addressed to the Governor, resign from office:

Provided that the Chairperson or a Member may be removed from office in the manner specified in Rule 5.

- (5) The salaries and allowances payable to and other terms and conditions of service of:

- (i) The Chairperson shall be the same as that of a judge of the High Court;  
(ii) A Member shall be the same as that of a Secretary to the Government.

Provided that if the Chairperson or any Member, at the time of appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his or her salary in respect of the service as the Chairperson or a Member, as the case may be, shall be reduced by the amount of that pension including any portion of pension which was

<sup>6</sup> See Rule 12(A) of the Consumer Protection Rules, 1987 [http://ncdrc.nic.in/1987.html#\\_Hlk149594609](http://ncdrc.nic.in/1987.html#_Hlk149594609)

commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the Chairperson or a Member, if, at the time of his or her appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his or her salary in respect of the service as the Chairperson or Member shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the Chairperson and the Members shall not be varied to their disadvantage after their appointment.

**Commentary:** *Across almost all the States that have established Police Complaints Authorities (through either legislation or government order), a two or three year tenure has been set for the Chair and members in the Police Act or government order setting up the Authority in that state.<sup>7</sup> Security of tenure is not only vital for preserving the independence of the Authorities, but also ensures that the Chair and members are assured an adequate time period to familiarize themselves with their roles as Authority members, gain expertise and specialization and subsequently develop the Authority's role. Where legislation does not provide for security of tenure, it is strongly recommended that the Rules fill this gap.*

*As the Authorities will primarily be responsible for inquiring into actions and omissions that often will be in the nature of human rights violations and as knowledge of and commitment to human rights is an essential criterion for appointment, it is advisable that the standard oath of office be amended to include an affirmation to continue to uphold human rights.*

*Similarly, the remuneration package for the members of the Authorities is not specified in Police Acts or the government orders. It is desirable that the salaries and allowances be fixed at reasonable levels so as to enable them to work independently without fear or favour.*

## 5. Removal and Suspension of the Chairperson and Members

- (1) The Chairperson or a Member may be removed from his or her office only by order of the Governor, upon receipt of a recommendation from a majority of members of the Authority along with substantial material findings of any one or more of the following circumstances:
- a) proven misbehaviour; or
  - b) failure to attend three consecutive sittings of the Authority without reasonable cause; or
  - c) persistent and willful neglect to perform official duties; or
  - d) being adjudged an insolvent; or
  - e) conviction of an offence which, in the opinion of the Governor involves moral turpitude; or
  - f) engaging during his or her term of office in any paid employment outside the duties of office;
  - g) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
  - h) acquisition of such financial or other interest as is likely to affect prejudicially his or her functions as the Chairperson or Member.

<sup>7</sup> Two exceptions are the States of Goa and Kerala, where there is no tenure laid down for the Chair and members in the Goa government order or the Kerala Police Act, 2011.

- (2) An order of removal shall not be issued against any person without providing such person an opportunity of being heard.
- (3) The Governor may suspend from office, and if deem necessary also prohibit from attending office, the Chairperson or a Member who is the subject of a recommendation made under Sub-Rule 1, until such time as time the Governor has passed orders.

**Commentary:** *The grounds for removal must be laid down unequivocally in the Rules so that there is no scope for confusion. By vesting the Governor with the power to order removal it is ensured that the Authorities' members are not at the mercy of the State Government. Similarly, the Authorities themselves may also recommend removal of a member by majority resolution. Further, Rules require that principles of natural justice be adhered to before the Governor issues an order of removal. The Rules also provide for the suspension of a member during the period when the recommendation for removal is under the consideration of the Governor.*

## 6. Staffing and General Administration of the Authority

- (1) The Government shall provide the Authority with such competent officers and employees as may be necessary for the efficient performance of its functions and the salaries and allowances payable to them and the terms and conditions of service of such officers and employees may be determined by the Government in consultation with the Authority.
- (2) The Authority may also requisition the services of any competent officer or employee from the public services of the State as it may deem fit for a period not exceeding six years and the salaries and allowances payable to them and the terms and conditions of service of such officer and employee may be determined by the Authority in consultation with the Government.
- (3) The Chairperson with the aid and assistance of the Members and the Secretary shall be responsible for the general superintendence, direction and management of the affairs of the Authority.
- (4) The Secretary shall be responsible for the maintenance of the registry of the Authority.
- (5) In the event of the office of the Chairperson falling vacant for any reason, the senior-most Member with judicial background shall officiate as the Chairperson and perform the duties and functions and exercise all the powers of that office until such time as the vacancy is filled up.

**Commentary:** *The Authorities must be ensured highly qualified officers and staff for their effective performance and disposal of complaints. While it is normal practice for Governments to second their officers to such bodies, experience has shown that only surplus staff or those close to retirement are sent to such bodies. While the prerogative of the Government to second staff must be ensured, the Authorities should also have an opportunity to scout for the best talent in the public services and requisition the Government for their services. The Rule provides for a proactive role for the Authorities in identifying competent officers for induction into its staff.*

## 7. Sitting and Decisions of the Authority

- (1) Subject to sub-Rule 5 of Rule 6, every proceeding of the Authority shall be chaired by the Chairperson with Members in attendance.
- (2) Three Members including the Chairperson shall constitute the quorum for any meeting where any decision is required to be taken by the Authority.
- (3) All decisions shall be taken by a majority of the membership of the Authority:

Provided that when there is a tie the person chairing the meeting shall have a casting vote.

- (4) The absence of a Member from any meeting or a vacancy in the Authority shall not affect the continuity of proceedings so long as the quorum is satisfied.
- (5) The Secretary or any other senior officer of the Authority assigned by him or her shall be responsible for recording and maintaining the minutes of every meeting of the Authority.
- (6) No decision of the Authority shall be held invalid merely on the ground of any technical defect in the appointment of the Chairperson or Member of the Authority.

**Commentary:** *These Rules lay down the ground rules for the manner in which meetings must be conducted and decisions arrived at in the Authorities. Clarifying these matters in the Rules not only ensures the smooth functioning of the Authorities, but also lends a high degree of certainty and makes the outcomes reasonably predictable.*

## 8. Finances and Auditing

- (1) The financial autonomy of the Authority is ensured.
- (2) The Secretary shall in consultation with the Chairperson and Members of the Authority prepare the annual budget of the Authority and forward the same to the Government by the thirtieth of January every year.
- (3) The Government shall after due appropriation made by the State Legislature, make to the Authority grant of such sums of money as are required to be paid.
- (4) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form to be developed in consultation with the Comptroller and Auditor-General of India and the Government.
- (5) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.
- (6) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights, privileges and Authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
- (7) The accounts of the Authority, as certified by Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Government and the Government shall cause the same to be laid before the State Legislature.

**Commentary:** *At present, the budgets of Complaints Authorities are administered through the state Home Department. Authorities themselves do not have a role in suggesting an appropriate budget estimate for themselves. This not only clips their independence, but also prevents Complaints Authorities from prioritizing for proactive measures such as producing public education material or publicising its mandate through a dedicated website which will have some financial implications. It is strongly recommended that the Rules bolster the independence of the Authorities through a provision which gives the Authorities the power to prepare their budget estimate on their own, with parallel responsibilities of accounting for funds spent. Once granted, the Authorities shall have the autonomy to spend the funds in an autonomous manner without having to seek permission from the Government for every item of expenditure. However, it is also important to ensure the financial accountability of the Authorities. Therefore, the Authorities' accounts will be audited by the C&AG as is the case with various similarly placed autonomous bodies.*

## 9. Procedure for Filing and Registering Complaints

- (1) Any person who desires an inquiry to be made by the Authority into one or more instances of misconduct or serious misconduct of police personnel, shall submit to the Authority a complaint in writing in English, Hindi or the official language of the State as soon as may be practicable subsequent to the occurrence of such instance:

Provided that a complainant can include the person in relation to whom the instance of misconduct or serious misconduct took place, or any person acting on behalf of that person.

- (2) A complainant may submit a complaint on plain paper providing all relevant details, to the extent available;

Provided that where such a complaint cannot be made in writing, the Secretary, or any other officer of the Authority assigned by him or her, shall provide reasonable assistance to the complainant to reduce his or her complaint into writing;

Provided further that the verbal complaint reduced into writing shall be read back to the satisfaction of the complainant by the officer recording it and the signature or thumb impression of the complainant shall be affixed on the complaint letter.

- (3) A complaint may be submitted by post, courier, fax, email or in person at the office of the Authority.
- (4) A complainant may, if he/she so desires, to the extent possible, supply copies of documents and records in support of the allegations made in the complaint which may include but need not be restricted to:
- (i) medical report or any certificate issued by a qualified doctor disclosing the nature of injuries on the body of the victim;
  - (ii) photographs showing injuries;
  - (iii) audio or video recordings relating to the allegations contained in the complaint;
  - (iv) relevant extracts from the Daily Diary of the Police Station concerned;
  - (v) copy of First Information Report, if any;
  - (vi) arrest memo, if any;
  - (vii) copies of complaints filed with the police or any other forum filed earlier about or relating to the current complaint;



Provided that no complaint shall be rejected for want of supporting documents and records.

- (5) The Secretary shall provide reasonable assistance to the complainant to cure any technical defects in the complaint.
- (6) Where a complaint is submitted in person the Secretary shall after assisting the complainant to cure technical defects, if any, issue due acknowledgement to him or her indicating the file number assigned to the case.
- (7) Where a complaint is received by the Secretary by post, courier or email the Secretary, after assisting the complainant to cure technical defects, if any, shall issue due acknowledgement to him or her within a week indicating the file number assigned to the case.
- (8) The Secretary shall not reject a complaint merely on the ground of technical defect.
- (9) The Secretary shall record a complaint case upon the direction of the Authority acting *suo motu* in accordance with Section XXX of the Act or upon information received from the National Human Rights Commission or the State Human Rights Commission or the Director General of Police.
- (10) The Secretary shall be responsible for recording all complaints received by the Authority in a register in the proforma specified by the Authority for this purpose.

**Commentary:** *Complaints Authorities have not prescribed a format for submission of complaints. Complaints are generally submitted in the form of letters which describe the nature of allegations. While a prescribed format is not necessary, it is essential that Authorities indicate the minimum information required to substantiate a complaint and suggest what supporting documents are relevant and can add weight to the complaint. In fact, the Authorities have not put in place dedicated staff or instilled procedures to assist complainants file complaints. At present, most complainants are unclear about what they can complain about, how to frame their complaint and what supporting documents are relevant. This results in a fair amount of complaints being disposed at the screening stage itself because of omissions or technical defects in the drafting and submission of complaints. If the Authorities provide no written guidance in the form of pamphlets or literature, or institutional support for complainants when filing complaints, then it is inevitable that ordinary people will make these kinds of inadvertent mistakes. This is especially relevant for the poor and/or illiterate, who are the main victims of police abuses and for whom, redress channels like the Complaints Authorities are very important and significant.*

*The intent behind this Rule is not to assign a format for submission of complaints, but to provide a template which clearly indicates the basic minimum information needed to file a complaint and inform complainants of the relevant supporting documents they can attach to add weight to their allegations. Collecting as much relevant basic information as possible at the outset will only help Authorities in their inquiries subsequently. This will also help to make the process less cumbersome for complainants by minimizing their having to chase up documents or information at a later stage. This Rule has been drafted with the intent to require the Authorities to put in place institutional support for complainants at the filing stage, particularly dedicated staff that can assist complainants file and draft complaints.*

*At present, none of the Complaints Authorities in India issue an acknowledgment letter to the complainant confirming receipt of the complaint.<sup>8</sup> After filing their complaints, complainants usually receive no information*

<sup>8</sup> In contrast, the issue of an acknowledgement letter is standard practice among police complaints bodies in other jurisdictions. This happens almost immediately upon receipt or within a few days; importantly this quick turnaround is made mandatory in Rules of procedure. In just two examples, in Ontario Canada, the Rules of the Office of the Independent Police Review Director lay down that receipt of complaints is to be acknowledged within “two business days” of the date received; in South Africa, the complainants must be informed in writing within 7 days that his/her complaint has been received, and is being investigated by an identified investigator along with contact details. See Rule 4.5, *Rules of Procedure* (2009), Office of the Independent Police Review Director: [https://www.oiprd.on.ca/CMS/oiprd/media/image-Main/PDF/OIPRDRules\\_of\\_Procedure-july-14-\\_v5\\_-\\_09.pdf](https://www.oiprd.on.ca/CMS/oiprd/media/image-Main/PDF/OIPRDRules_of_Procedure-july-14-_v5_-_09.pdf) and Clause 3(3), Draft Regulations for the operation of the Independent Police Investigative Directorate, Government gazette, March 2011: [http://www.icd.gov.za/documents/other\\_documents/ICD%20Regulations.pdf](http://www.icd.gov.za/documents/other_documents/ICD%20Regulations.pdf)

*whatsoever on the admission or progress of their complaint for several weeks or even months in some States. The complete lack of information on whether their complaint has been admitted or not and the next steps to be followed can be very discouraging for complainants. For those whose complaints are admitted, they only learn about this when they suddenly receive notice to appear before the Authority. This often means the complainant is given short notice of his/her appearance before the Authority and does not have sufficient time to prepare before appearing before the Authority. Additionally, it is particularly disheartening for a complainant to hear their complaint has been disposed following a preliminary assessment, weeks after the complaint was filed with no information provided in the interim. This may seem a simple administrative step, but will go a long way to streamline the complaint filing process and also improve communication with the complainants from the beginning.*

## 10. Screening and Referral of Complaints by the Authority

- (1) Upon registration of a complaint case, the Secretary shall cause the complaint along with supporting documents, if any, to be laid before the Authority no later than 48 hours from the date of receipt of the complaint.
- (2) Where upon examination of the complaint and all supporting documents, if any, the Authority makes a determination that it has no jurisdiction to inquire into the complaint, it shall reject the complaint for reasons to be recorded in writing, no later than fifteen days from the date of receipt of the complaint.
- (3) Where the Authority is satisfied, upon preliminary examination, that no prima facie case is made out in the contents of the complaint or the supporting documents, it shall reject the complaint for reasons to be recorded in writing, no later than fifteen days from the date of receipt of the complaint.
- (4) Where the Authority is satisfied that the complaint falls within its jurisdiction and that there exists a prima facie case to conduct an inquiry, it shall immediately proceed to conduct an inquiry into the complaint or refer the case to any other officer or agency as it deems fit for the purpose of conducting an inquiry.
- (5) The Secretary shall duly authenticate every order of the Authority made under this Rule and communicate free of charge, a copy of the order to the complainant, or the person representing the complainant, or the victim, as the case may be.

**Commentary:** *Internationally, it is standard practice that police complaints bodies scrutinize complaints only to see whether they fall into their jurisdiction or not – and this is reflected in their governing and subordinate legislation. This is the only marker for admission of complaints after which the inquiry or investigation process starts. The importance of this provision is that it prevents the rejection of complaints on the basis of technical defects or omissions. This is particularly important in the Indian context due to the lack of public awareness of the Complaints Authorities' mandates and scope and also scarcity of available information on the complaint filing process. Additionally, it is necessary to ensure that clear reasons in writing are provided, within a stipulated timeframe, when complaints are rejected on the stated grounds at this preliminary stage.*

## 11. Conduct of Inquiry

- (1) Where the Authority decides to conduct an inquiry on its own, it shall, within 48 hours of such decision, issue notice to every respondent officer who is the subject of the complaint, to show cause as to why departmental action or criminal proceedings should not be recommended against him or her on the basis of the complaint.

- (2) Every notice issued by the Authority under sub-Rule 1 shall be accompanied with a copy of the complaint and supporting documents, if any.
- (3) Where a notice is issued to an officer of the rank of Superintendent of Police or a Commissioner of Police and above, a copy of the notice along with all supporting documents shall be transmitted to the Director General of Police:

Provided that where the respondent officer is of the rank of Director General of Police, a copy of the notice along with all supporting documents shall be transmitted to the Minister in charge of the Home Department.

- (4) Where a notice is issued to an officer below the rank of Superintendent of Police or Commissioner of Police, as the case may be, a copy of the notice with all supporting documents shall be transmitted to the Superintendent of Police or the Commissioner of Police, as the case may be, in charge of the district.
- (5) A respondent officer shall submit his or her reply to the Authority within 10 days of receipt of the notice issued under sub-Rule 1 along with supporting documents, if any.
- (6) The Secretary shall transmit to the complainant, free of charge, a copy of the reply and any supporting documents received from every respondent officer, related to the complainant's case, within seven working days of receipt of such reply.
- (7) Where the Authority refers a complaint to any other agency or officer for the purpose of conducting an inquiry, such agency or officer shall inquire into the matter as expeditiously as possible and submit its report along with all supporting documents to the Authority within a period of thirty days.
- (8) The Secretary shall transmit to the complainant, free of charge, a copy of the report and any supporting documents received under sub-Rule 7, within seven working days.
- (9) The Secretary or any other officer of the Authority designated by him or her for the purpose, shall, from time to time, provide the complainant with updates of the progress made in the case and in any case update him or her at least once in 30 days.
- (10) The Secretary shall cause to be laid before the Authority every reply received from the respondent officer under sub-Rule 5 or a report received under sub-Rule 8 within seven days of receipt.

**Commentary:** It is essential that Police Complaints Authorities devise procedures that can produce efficient, time-bound inquiries. Quick efficient inquiries should really be the defining characteristic of the Authorities and the value they add to the police accountability regime in India. In fact, their mandate necessitates time-bound inquiry as delay on their part will have tremendous adverse impact on acting against police misconduct. Complaints Authorities must find whether there are prima facie grounds to order either the initiation of a departmental inquiry, or criminal prosecution. This is the extent of their role. The longer Complaints Authorities take to complete their inquiries and arrive at their findings, the longer it takes for the subsequent process (departmental inquiry or prosecution) to commence. The real danger here is that crucial evidence will get lost, or become obsolete, in this time. The intent behind this Rule is mainly to ensure time-bound proceedings and the receipt of all case documents by both parties, preceding the initiation of Authority hearings.

## 12. Issue of Notice of Hearing

- (1) While disposing a complaint case, the Authority may hold one or more hearings, as it may deem necessary, after giving due notice to the concerned parties including the complainant or his or her representative or the victim, as the case may be.

- (2) The Secretary shall notify all concerned parties of the date of hearing at least 15 clear days in advance.
- (3) Where the respondent officer is of the rank of a Deputy Superintendent of Police or a Deputy Commissioner of Police or below, as the case may be, the notice of hearing shall be communicated to the Superintendent of Police or the Commissioner of Police, as the case may be, and in all other cases the notice of hearing shall be communicated to the officer immediately superior to the respondent officer.
- (4) Every officer who has received a notice of hearing under sub-Rule 2 shall immediately communicate the same to the concerned respondent officer and ensure that such officer is given leave to attend the hearing on the stipulated date.
- (5) A copy of every notice issued under sub-Rule 2 in every complaint case shall be forwarded to the Director General of Police.

**Commentary:** *Police Complaints Authorities must ensure that a notice of hearing in a complaint case is sent sufficiently in advance to both the complainant and the officers concerned. The communication to the respondent officer is not sent directly to him or her but to his superior in order to ensure that the officer is relieved from other duties temporarily for the purpose of attending the hearing.*

### 13. Conduct of a Hearing

- (1) The Authority shall observe the principles of natural justice in the conduct of every hearing.  
*Explanation:* For the purpose of removal of doubt, it is hereby declared that all proceedings before the Authority are quasi-judicial proceedings and the Authority shall not be bound to strictly observe the provisions of the Code of Civil Procedure, 1908, the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1871 while conducting any hearing.
- (2) At the commencement of a hearing, the Authority shall explain to the concerned parties the general scope, purpose and procedure to be adopted at the hearing.
- (3) The hearing shall be conducted in the official language of the State.
- (4) Where the complainant or a victim related to the case is not familiar with the language in which the hearing is conducted, the Authority shall permit such person to be accompanied by another person of his or her choice to translate the proceedings into the language that he or she is familiar with.

Provided that where a complainant or victim is unable to find an interpreter and makes a request to the Authority for translation of the proceedings, the Authority shall arrange for an interpreter at its own cost.

- (5) The Secretary or any other officer designated by him or her shall maintain a record of the proceedings at every hearing.

**Commentary:** *The principal intent behind this provision is to reiterate the scope and mode of Authority hearings, which have to be differentiated from court hearings. The hearings are the crux of the Authorities' inquiry process, but they are of a limited scope. The purpose of Authority hearings is only to gather information and evidence to arrive at preliminary findings and not to establish definitive findings of guilt (lack of it). This requires a more lenient standard of proof than any judicial proceeding. An Authority's hearing can be more informal and less technical than a court hearing, but always in conformity with the principles of natural justice.*

*In terms of language, the Model Police Act, 2005, establishes rights of the complainant and one of these procedural rights is precisely: “all hearings shall be conducted in a language intelligible to the complainant. In a case where hearings cannot be conducted in such a language, the services of an interpreter shall be requisitioned, if the complainant so desires”.<sup>9</sup> This provision and the other rights of the complainant have been written into the Police Acts in many States, but not all. It is significant that the Model Police Act codified the necessity for the complainant to understand the proceedings. Complainants are frequently disadvantaged due to their unfamiliarity with the technicalities and complexity of the inquiry process. They will be doubly disadvantaged if they do not understand the proceedings into their own complaint. If a complainant cannot comprehend the questions put forth, the evidence presented, or the rebuttals of the respondent; and is unable to make interventions, then all fairness of the proceedings is lost. The Authorities must ensure that at every stage of the proceedings, all persons involved understand the oral and written evidence and can actively participate in the proceedings. It is strongly recommended that in the absence of such a provision in the Police Act, Rules mandate that hearings must be conducted in a language that the complainant follows and if not, then the services of an interpreter can be availed free of cost to the complainant.*

#### 14. Appearance at a Hearing

- (1) The parties to a complaint shall appear at a hearing in person.
- (2) Legal representation of persons appearing at a hearing will be by leave of the Authority for reasons to be recorded in writing.
- (3) The Authority may summon any person who has knowledge of the matters relating to the complaint case to appear at a hearing for the purpose of examination, obtaining evidence on oath or for producing documents or records relevant to the case, or both.
- (4) Subject to proof of service of the hearing notice under Rule 12, or the summons under sub-Rule 3, it shall be lawful for the Authority to draw adverse inference in the event of non-appearance of any person to whom notice of a hearing has been issued under Rule 12 or a summon has been issued under sub-Rule 3 and proceed to take further action by invoking its powers under Section XX of the Act.
- (5) The Authority may cause a warrant of arrest to be issued against any person in order to secure his or her appearance on the date of hearing as may be specified by the Authority, if:
  - (a) there is sufficient reason to believe that such person is not likely to appear before the Authority without being compelled to do so or;
  - (b) the person is about to make or is making preparations to depart from the State and material facts of the case cannot be obtained by the Authority in the absence of such person.

**Commentary:** *The very purpose of creating Police Complaints Authorities as quasi-judicial bodies is to reduce technicality and formality, to make the inquiry process quick and easily accessible and not to replicate overly formal court processes. It is strongly recommended that Authorities refrain from giving lawyers a mandated role in the inquiry process. In view of national<sup>10</sup> and international<sup>11</sup> best practice, the legal representation of a person appearing or giving evidence at a hearing of the Authority must be by leave of the chairperson of the Authority. Of*

<sup>9</sup> Section 164(5), Model Police Act 2006

<sup>10</sup> The drafted procedure of the Goa State Police Complaints Authority provides useful guidance on this as it states: “The parties shall always appear personally and, if allowed by the Authority, may be permitted to remain present along with a next friend or assisted by a lawyer”. Drafted internal procedure of the Goa State Police Complaints Authority ( Revised), dated 8 June 2008

<sup>11</sup> Clause 5.10, *Practice Notes: Hearings of the PIC*, February 2010 Police Integrity Commission (New South Wales, Australia): <http://www.pic.nsw.gov.au/files/File/Practice%20Notes.pdf> ; this is established in Section 35(1) of the Police Integrity Commission Act 1996

*course, a reasonable opportunity should be given to a person giving evidence before the Authority to get legal advice or get legal representation. But Authority inquiries should not depend on the presence of the lawyers to proceed. Where this has begun to happen, lawyers' failure to appear have added to delay by causing adjournments. Ideally, the parties should always appear personally and if allowed by the Authority, they may be assisted by a lawyer.*

*Under the Model Police Act 2006, Complaints Authorities are given the powers of a civil court, including the powers to commission and examine witnesses and issue arrest warrants for non compliance of summons.<sup>12</sup> This has been adopted in all state legislation and government orders setting up the Authorities. Where a person is served with summons to attend the hearing as a witness and he or she fails to do so, the Authority may, subject to proof of service of summons, issue a warrant of arrest to compel appearance.<sup>13</sup> Unfortunately, Authorities are not making use of this power even when implicated police officers or police witnesses do not appear for hearings. Non-appearance of implicated police officers or police witnesses at hearings is one of the biggest problems facing Authorities, and is a significant factor in the endemic delay in the Authorities' inquiries. This has not only become a delaying tactic on the part of implicated officers, but there have also been instances of this time being used to intimidate or coerce complainants into withdrawing their complaints. The longer the inquiry process drags on with frequent delays, the greater the probability complainants will be subjected to threat, coercion and reprisal. It is crucial that Authorities begin to make use of their powers to respond to repeated non-attendance and issue warrants for ensuring their presence. It is important that Rules reiterate this power in the hands of Authorities.*

## 15. Time Limit for Completion of Inquiry and Grant of Adjournments

- (1) Every inquiry initiated on the basis of a complaint received by the Authority shall be completed and appropriate orders passed, as expeditiously as possible, and in any case within a period of ninety days from the date of receipt of the complaint:

Provided that where orders are passed after the expiry of the time limit mentioned in this Rule, the Authority shall record the reasons for delay in writing.

- (2) The complainant or a victim or a respondent officer may apply for adjournment of a hearing at least three days in advance of the date of hearing:

Provided that the Authority may grant adjournment at shorter notice on the basis of sufficient cause shown by the party applying for the adjournment and reasons for grant of the adjournment shall be recorded in writing.

- (3) The Authority shall ordinarily not grant adjournment of a hearing unless reasonable cause is shown by the concerned party to a case and in every instance the Authority shall record reasons for grant of adjournment, in writing.

- (4) Where an adjournment is granted on the plea of a respondent officer for reasons of performance of unavoidable official duty, the hearing may be held on the next working day:

Provided that not more than three adjournments may be granted to a respondent officer during the pendency of a complaint case against him or her.

- (5) The Secretary or any other officer designated by him or her shall communicate an order of adjournment to all concerned parties forthwith.
- (6) Where the complainant or the victim or the respondent officer fails to appear before the Authority, the Authority shall proceed with the case *ex parte*.

<sup>12</sup> Section 155, Model Police Act 2006

<sup>13</sup> Order XVI, Rule 10(3), Code of Civil Procedure, 1908

**Commentary:** Most Authorities since their set up are faced with a mounting pendency of cases. This is gradually resulting in complainants losing faith in the ability of the Authority to do justice. It is important that the Authority set timelines within which cases will be decided. This will help address perceptions and concerns related to promptness and efficiency. There is no time-limit set for the inquiries of Police Complaints Authorities in any new Police Act. This is a crucial requirement for inclusion in Rules of Procedure. Complaints Authorities are already mired in tremendous delay, taking a year or more in some States to complete their inquiries. This kind of delay is unwarranted for the limited scope of Authority inquiries. It is imperative that Rules prescribe a time-limit for completion of inquiries – 90 days as suggested above is a reasonable period – and inquiry procedures are designed to meet this limit in every case.

A central tenet of criminal law is that in every inquiry or trial, the proceedings should be held “as expeditiously as possible”.<sup>14</sup> But Police Complaints Authorities are struggling to check the frequent adjournments sought mainly by respondent police officers. This is a major source of the delay in the Complaints Authorities’ inquiries and there is an urgent need for procedural checks to guard against any party seeking frequent and unnecessary adjournments. Understandably, a police officer’s official duties have to be seriously considered and there will be occasions when there is a clash. But sufficient and credible reasons must be shown to justify an adjournment; and official duty cannot be used to unduly delay the Authority’s hearings. Unfortunately, for the most part, implicated police officers are using adjournments as a way to delay and subvert Authority proceedings by seeking frequent adjournments. The main intent behind this provision in the Rules is to minimize and condition the grant of adjournments and also ensure that endless adjournments are not tolerated. This provision borrows language from the Code of Criminal Procedure, 1973 to match the law’s stringency. It is strongly recommended that Rules codify a firm stance on the grant of adjournments and Authorities ensure strict adherence to the limits set.

## 16. Decisions and Directions of the Authority

- (1) Upon completion of an inquiry initiated under Rule 11, the Authority shall communicate its findings to the Director General of Police or the Superintendent of Police or the Commissioner of Police as the case may be with a direction to:
  - (a) register a First Information Report against the respondent officer if a case of serious misconduct is borne out; and/or
  - (b) initiate departmental action against the respondent officer.
- (2) The Director General of Police or the Superintendent of Police or the Commissioner of Police, as the case may be, may within fifteen days of receipt of the communication made under sub-Rule 1, bring to the notice of the Authority, any additional fact or information that has not been made available to the Authority during the inquiry or make a written submission against the provisional direction.
- (3) The Authority shall take into consideration any additional fact or information or submission received under sub-Rule 2 before arriving at a final decision on the complaint case in accordance with the time limit specified in Rule 15(1).
- (4) In its final decision the Authority may affirm or revise its findings or the direction recorded under sub-Rule 1, or both.
- (5) The Authority may in its final decision direct the Government to pay monetary compensation to the complainant or the victim, as the case may be.

<sup>14</sup> Section 309(1), Code of Criminal Procedure, 1973

- (6) Where the inquiry does not bear out the allegations contained in the complaint, the Authority may close the case for reasons to be recorded in writing.
- (7) The decision of the Authority shall be binding.
- (8) Every final decision of the Authority shall consist of:
  - (a) a summary of the allegations made in the complaint;
  - (b) a summary of the replies, reports and submissions received by the Authority;
  - (c) the findings of the Authority;
  - (d) the specific directions to the concerned authorities or the Government or both;
  - (e) dissenting view of any Member of the Authority, if any will be recorded in the official language of the State.
- (9) The Secretary or any other officer authorised by him or her shall notify all concerned parties at least seven clear days in advance of the date of pronouncement of the final decision of the Authority in a complaint case.
- (10) The final decision of the Authority shall be pronounced in open proceedings by the Chairperson or any member authorised by him or her for this purpose and communicated to the Director General of Police or the Superintendent of Police or the Commissioner of Police, as the case may be.
- (11) The person pronouncing the final decision of the Authority shall read out the operative parts of the decision and cause the explanation of the substance thereof to the complainant or the victim, as the case may be, in a language familiar to him or her.

The Secretary shall duly authenticate the final decision of the Authority and without any delay cause copies of the decision to be provided to the parties free of charge.

**Commentary:** *It goes without saying that Police Complaints Authorities must deliver reasoned final orders that clearly state the reasons for arriving at their final conclusion. This Rule has been modeled on Sections 353 and 354 of the Code of Criminal Procedure, 1973, particularly to enshrine the mode of pronouncing final orders as well as the substantive content required for final orders.*

## 17. Immunities

- (1) No statement made by a person in the course of giving evidence before the Authority shall subject that person to a civil or criminal proceeding or be used against him/her in such proceeding, except a prosecution for giving false evidence:

Provided that the statement is made in reply to a question which he/she is required by the Authority to answer or is relevant to the subject matter of the inquiry.

## 18. Compliance with the Decisions of the Authority

- (1) It shall be the duty of the Director General of Police or the Superintendent of Police or the Commissioner of Police, as the case may be, to provide all information and assistance to the Authority as may be reasonably required for the performance of its duties including the conduct of an inquiry initiated under Rule 11.
- (2) The Director General of Police or the Superintendent of Police or the Commissioner of Police, as the case may be, shall provide monthly progress reports to the Authority about the progress made in implementing the directions contained in its final decision.



- (3) Where an officer specified in sub-Rule 2 fails to furnish monthly progress reports, the Authority may invoke the powers vested in it under Section XX of the Act and take appropriate action against such officer.

**Commentary:** *Success of the Authority is largely dependent upon the power it wields to institute institutionalise some change and hold wrongdoers to account. For this, it is important that police cooperate with the inquiries of the Authority. Authorities are vested with the power to recommend the initiation of a criminal case against errant officers, or initiate a departmental inquiry. However, without sufficient follow-up, these recommendations remain hollow. Rules need to institutionalise processes that guarantee that the department implements the Authority's final orders without delay as well as provide the Authority with periodic action taken reports. Presently, the Authorities are unclear about how they oversee the extent to which their recommendations are complied with and are content with simply making recommendations. Thus, such a provision in the Rules will go a long way in strengthening both the working of the Authority as well as police accountability.*

## 19. Transparency in the Working of the Authority

- (1) Every hearing of the Authority shall be open to the public, provided that in exceptional circumstances and for reasons to be recorded in writing by the Authority, such hearing may be held *in camera*.
- (2) The Secretary or any other officer authorized by him for the purpose shall be responsible for creating, developing and updating an Internet website in English and the official language of the State, to publicise the working of the Authority.
- (3) The Registry shall prepare and display on its website and the Authority's official notice board, the cause list of cases every month.
- (4) Subject to availability of resources, the Registry shall cause the publication of the monthly cause list of the Authority in the leading local language dailies of the State.
- (5) All minutes of meetings and final decisions of the Authority shall be uploaded on the website of the Authority without delay.
- (6) Any person may make an application to the Registry and inspect or obtain copies of information held by the Authority upon payment of fees prescribed under the Right to Information Rules notified by the Government.
- (7) A request made under sub-Rule 5 shall not be rejected except for reasons specified in Sections 8 and 9 of the Right to Information Act (Act 22 of 2005).

**Commentary:** *The legitimacy of the Authority is greatly enhanced by the transparency of its proceedings. Making the complaints system as open and transparent as possible will encourage the public to have confidence that complaints will be handled fairly and criminality, misconduct and unsatisfactory performance will be dealt with effectively. Copies of the proceedings should be a matter of public record and should be freely available. There is a compelling public interest in demonstrating how those serving with the police are accountable to the public, even when disclosure may bring to light failures in policing or poor conduct by police personnel.*

## 20. Outreach

- (1) The Secretary shall publish and disseminate basic information about the Authority and its procedures through print and electronic media.
- (2) Without prejudice to sub-rule (1) the Secretary shall, within 6 months of the constitution of the Authority, publish a guide in all the popular languages of the state giving the contact details, the powers and functions of the Authority, the procedure for filing complaints under the Act, any prescribed forms or formats for the purpose of receiving and disposing complaints and any remedies available to the complainant under this Act.
- (3) The Secretary shall update the guide published under sub rule 2 from time to time and in every instance when any changes are made in the Act or in any rule or procedure made under the Act.
- (4) The Government shall make copies of the guide available at the office of the Authority, at every police station and all other offices of the police department free of charge or at such reasonable sale price as may be specified.

*Explanation: For the purpose of sub- rule (1), “disseminate” shall mean making the information available to the public through printed pamphlets and handouts, notice board display, newspapers, radio, television, the internet and any other means of communication.*

**Commentary:** This provision reiterates what is already a legal obligation for all public authorities. Like all public authorities, Complaints Authorities have a statutory obligation under the Right to Information (RTI) Act 2005 to proactively disclose a wide range of information on their own, even if no one has specifically requested it. Section 4(1)(b) of the RTI Act requires all public authorities to routinely publish 17 categories of information, which should be regularly updated.<sup>15</sup> Public authorities need to make sure that this proactive disclosure gets widely disseminated – it is not enough to just collect it all and keep it on file. It needs to be published widely and in forms which make it accessible to ordinary people. At a minimum, every Public Information Officer has to have the information available in the form of a document or on a computer where it can be produced for ready inspection, or given out immediately, if requested as a printout or photocopy.<sup>16</sup> The intent behind this obligation is to strengthen access to public institutions and transparency in governance by obligating public authorities to take proactive measures to spread public awareness of their basic mandates, structures, powers, duties, etc.

To date, not a single Authority has published information as part of its obligation under the RTI Act. One of the biggest challenges facing Authorities is that people do not know they exist; where they do, there is little guiding information in terms of how to access the Authorities or how to use the Authorities. The proactive disclosure already required under the RTI Act provides a good mechanism for the Authorities to spread awareness and public knowledge of their mandate and procedures. Reiterating this legal obligation in “Rules” will provide another reminder to the Authorities that this is a legal duty to be complied with.

<sup>15</sup> The information to be published falls under the following general areas: 1) structure of the organisation – functions and duties, powers and duties of its officers, a directory of its employees, monthly remuneration received by each employee, 2) process of functioning – the procedures followed in decision-making, norms, rules and regulations, categories of documents held by the public authority, 3) financial details and schemes relating to the organization, 4) details of consultative arrangements, and 5) details related to accessing information.

<sup>16</sup> Section 4(4), Right to Information Act 2005

## 21. Annual Report of the Authority

- (1) The Authority shall submit to the Government an annual report at the end of each calendar year, inter alia, containing:
  - (a) the number and type of cases of complaints inquired into by it;
  - (b) the number and type of cases of misconduct inquired into by it;
  - (c) the number and type of cases it referred to any other agency or officer for the purpose of conducting an inquiry;
  - (d) the findings and final decision of the Authority in each case;
  - (e) the extent of any delay, and the reasons for the delay, in the completion of any inquiry, if any;
  - (f) the identifiable patterns of misconduct and serious misconduct of police personnel in the State; and
  - (g) recommendations for enhancing police accountability.
- (2) The Government shall, along with an action taken report, cause a copy of the report of the Authority to be laid before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House, in the budget session of each year.

**Commentary:** *Transparency and public reporting are of vital importance to the long-term success of the Authorities. The purpose of these reports is to document the complaints received, as well as to provide a check on the value of the oversight being provided. Regular and comprehensive reporting serves to help make the Authority accountable to the public and also can have a significant impact on the accountability of the police. Regular reports need to be provided by the authorities on its activities to the government who in turn places it before the state legislature for argument and debate. Such reports can facilitate policymaking and generate public demand for a more accountable police. Reporting requirements have been set out in most statutes or Government Orders setting up these Authorities. However, some States have seen considerable dilution in this requirement and thus its inclusion in the Rules becomes important.*



## CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does this through research, publications, workshops, information dissemination and advocacy.

### Access to Justice

**Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focussed on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

### Access to Information

CHRI is acknowledged as one of the main organisations working to promote access to information across the Commonwealth. It encourages countries to pass and implement effective right to information laws. We routinely assist in the development of legislation and have been particularly successful in promoting right to information in India, Bangladesh and Ghana where we are the Secretariat for the RTI civil society coalition. We regularly critique new bills and intervene to bring best practices into governments and civil society knowledge both in the time when laws are being formulated and when they are first being implemented. Our experience of working across even in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance we have been promoting knowledge about the value of access to information which is guaranteed by law while at the same time pushing for introduction of an effective and progressive law. In Ghana as and when the access to information law comes into being we intend to build public knowledge in parallel with monitoring the law and using it in ways which indicate impact of the law on system accountability – most particularly in the area of policing and the working of the criminal justice system.

### Strategic Initiatives Programme

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; reviewing Commonwealth countries' human rights promises at the UN Human Rights Council, the Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

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