Submission regarding

The Central Information Commission (Management) Regulations, 2007

Submitted by

Commonwealth Human Rights Initiative

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Introduction

1. The Commonwealth Human Rights Initiative is an international, independent, non-profit NGO working for the practical realisation of human rights of people living in the Commonwealth. Access to Information and Access to Justice are the core areas of our programmatic activity. Public education and policy advocacy are the core approaches that inform CHRI's work. CHRI is headquartered in New Delhi with offices in Gujarat and Chhattisgarh in India and London in the UK and Ghana in Africa.

2. CHRI was part of the civil society legislative drafting process that preceded the enactment of *The Right to Information Act, (RTI Act)* 2005. CHRI made specific submissions before the Standing Committee of Parliament related to the Department of Personnel, Public Grievances, Law and Justice for improving the RTI Bill that was tabled in the Rajya Sabha in December 2004. Subsequently the Parliamentary Committee invited CHRI to make a second representation based on international best practices with regard to information access legislation. After Parliament passed the RTI Bill, CHRI organised a national level conference in May 2005 to discuss implementation strategies. Senior level officers from government, civil society advocates for RTI and international experts discussed the modalities of implementing this all-important law over two days.

3. Since July 2005, CHRI has been conducting sensitisation and capacity building programmes for senior and middle level officers of government and senior managers of public sector enterprises. Till date we have trained more than 3,700 government officers the Central Government and State Governments in more than 15 states. We have trained more than 600 senior managers and executives of Central and State level public sector enterprises for implementing this law within their jurisdictions. We also conduct capacity building programmes for civil society organisations and the media with a view to orientate them to make use of this law in the larger public interest in a responsible manner.

The Central Information Commission (Management) Regulations, 2007

4. CHRI welcomes the notification of the CIC (Management) Regulations, 2007 (referred to as the Regulations below) which coincides with the second anniversary of Presidential consent to the primary legislation. While the Government of India notified the Central Information Commission (Appeal Procedure) Rules, 2005 more than 20 months ago, the need for laying down clear cut procedures and systems that would inform the functioning of the CIC cannot be overemphasised. The CIC has publicised on its website minutes of its internal meetings where decisions were made to allocate work and regulate the procedure for processing and deciding upon appeals and complaints. However these are contained in different documents as well as in several decisions given by the CIC ever since its constitution. The notification of the Regulations is a step in the right direction towards codifying these procedures as a single document that would serve as a guide to the officials of the CIC and the people of India. CHRI also welcomes the decision of the CIC to make these Regulations available to people in Hindi as well.

Primary Concerns with the Regulations

Lack of Public Consultation:

5. The CIC has notified these Regulations unilaterally without any public consultation. The notification, dated 21st June, issued by the Additional Registrar of the CIC indicates that the

Regulations have come into force with immediate effect. Section 29(1) and (2) require that all Rules made by the Central and the State Governments be placed before Parliament or the relevant State Legislature respectively. This provision has been included the Act in order to enable the respective Parliamentary/Legislative Committees on subordinate legislation to discuss the Rules in detail and ensure that they are not in violation of the letter and spirit of the Act. Parliament and the State legislatures have the power to make changes to the Rules if necessary. This is a significant statutory limitation on the power of the executive to issue subordinate legislation which if unchecked may lay down procedures and systems that are contrarian to the letter and spirit of the principal Act.

6. However Section 12(4) under which the Regulations have been issued does not require the Chief Information Commissioner to place them before Parliament. The same section also grants functional autonomy to the Chief Information Commissioner in matters relating to the superintendence, direction and management of the affairs of the Central Commission and further states that the Chief Information Commissioner may exercise all such powers and things which may be exercised or done without being subject to directions by any other authority under this Act.

7. Having regard for the autonomy granted to the Chief Information Commissioner under Section 12(4) it must be said that the move of unilaterally notifying the Regulations without public consultation is contrary to the spirit of the Act. The preamble of the RTI Act states that democracy requires an 'informed citizenry' and 'transparency of information' as the twain are vital to its functioning. An analysis of the Regulations, as will be shown below, indicates that some of its provisions are in excess of the powers conferred upon the Central Information Commission by the principal Act. The Commission would have been better advised to put the draft regulations in the public domain for ascertaining people's opinion on all matters contained in it before notifying it formally. The RTI Act itself is the culmination of a decade long process of public education and consultation. Civil society has played a very important role in drafting this law and preventing harmful amendments from achieving fruition. Had the Commission taken recourse to public consultation, the feedback would have convinced it that some of the Regulations are not people-friendly and changes could have been incorporated before formally notifying them. However the Commission has denied itself the benefit of people's input and in the process conveyed a picture of decision-making within the Commission that is not in tune with its statutory role as a champion of transparency. Even though the principal Act does not place a statutory duty of public consultation on the Commission, seeking people's inputs on the Regulations would have gone a long way in re-establishing people's confidence in its functioning. Indeed the Commission has denied itself a valuable opportunity to refurbish its image that has suffered somewhat on account of the piling backlog of appeals and complaints and its reluctance to penalise erring officials even in deserving cases.

8. The preambular para should clearly specify all the enabling provisions under which these regulations have been made.

Retrospective application of the Regulations:

Clause 1(iii)	Appeals and Complaints which have already been filed before the date of commencement of these Regulations and have been found in order and are already registered before this date will be proceeded with as before and shall

	not abate for any infirmity therein but these regulations will be applicable for any prospective action even in regard to such pending appeals and complaints.

9. Clause 1(iii) of the Regulations states that they would be applicable in respect of all those appeals and complaints submitted before the notification. This is in principle bad law. The Courts in India have frowned upon laws that applicable with retrospective effect. A wealth of jurisprudence has developed on the subject since the celebrated case of *Kesavananda Bharati*[1] and the Courts have tolerated retrospective application of laws only in exceptional circumstances. No such pressing need is made out in the present context. Hence it would be patently unfair to apply the provisions of the Regulations to appeals and complaints received prior to the date of notification which have not been registered, those in transit and those sent in ignorance of the regulations. The absence of consultation prior to issue of these regulations and making them applicable with immediate effect goes against the principles of natural justice and due process standards to make citizens suffer for actions that were taken during a period when the Regulations were themselves absent.

Recommendation:

Clause 1(iii) may be suitably amended by deleting the phrase- "…but these regulations will be applicable for any prospective action even"

<u>Provisions relating to intervener to a proceeding:</u>

Clause 2(n)	"Representative" means a person duly authorized by or on behalf of any of the parties to the proceedings or interveners and may include a Legal Practitioner.
Clause 2(o)	"Respondent" includes an intervener or a third party or a party impleaded by the Commission.
Clause 18(v)	Examine or hear or receive evidence on affidavit from a third party, or an intervener or any other person or persons, whose evidence is considered necessary or relevant.

10. The Regulations introduce the 'intervener' as a new category of persons who could be party to an appeal or complaint proceedings of the Commission. The principal Act does not envisage such an entity as having rights to interfere in any proceeding under the Act. It appears that this category of persons is being recognised by the Commission subsequent to directions from courts to hear parties whose interests may be affected by the information requests and related appeals/complaints filed by citizens. While it may be necessary to make such persons party to the relevant proceedings before the Commission, the current phrasing of the Clauses gives the impression that anybody could implead themselves before the Commission in any case. Under the scheme of the principal Act only third parties whose interests may be directly affected by the disclosure of information have *locus standi* in any application process or appeals/complaints proceeding. The only other instance where an unrelated party may be present before the Commission is when a person is 'duly authorised person' by the appellant/complainant to appear on his/her behalf or assist him/her during

[1] Sri Kesavananda Bharati v State of Kerala AIR 1973, SC 1461.

such proceeding.[2] No other person has a role to play in any of these processes or proceedings under the principal Act. Therefore the Commission does not have the power to introduce a new category of persons who can intervene in the appeals/complaints proceedings. Any person whose interests are affected by disclosure of information within the sense of Section 11 of the principal Act should be treated as third party. No other person should be allowed to interfere with any process or proceeding under the RTI Act. This will ensure that the appeals/complaints proceedings are not delayed unduly.

Recommendation:

The reference to 'intervener' should be omitted from Clause 2(n) and Clause 18(v). Clause 2(o) should be amended to read- ""Respondent" includes a third party;"

Include Rules notified by competent authorities:

Clause 2(p)	"Rules" mean the Rules framed by the Central Government under Section 27 of the Act;

11. Clause 2(p) makes reference only to the Rules framed by the Central Government. Section 28 of the principal Act empowers the Competent Authorities to make rules for implementing the Act within their jurisdictions. The Central Information Commission has jurisdiction over appeals and complaints arising form the actions of PIOs and Appellate Authorities designated by the Lok Sabha, the Rajya Sabha, the Supreme Court of India and the Administrators of Union Territories. In deciding all such matters cognizance will have to taken of the Rules framed by them. Therefore the Regulations should specifically include a reference to the Rules framed under Section 28.

Recommendation:

Clause 2(p) should be amended as follows- ""Rules" mean the Rules framed by the Central Government under Section 27 and under Section 28 by the Speaker of the House of the People, the Chairman of the council of States, the Chief Justice of India and the Administrator appointed under Article 239 of the Constitution;"

Powers and Duties of the Registrar:

Confusion about applications to the Commission:

Clause 4(vii)	The office of the Registrar shall receive all applications, appeals, counter statements, replies and other documents.

12. The Regulations make the Registrar the point person for receiving all applications, appeals, counter statement and replies. While it is laudable to fix responsibility for one person to receive all documents the current wording of the clause is likely to lead to confusion. The CIC is also a public authority within the meaning of Section 2(h)(b) of the principal Act and

[2] Section 7(2), *Central Information Commission (Appeals Procedure) Rules, 2005*.

has responsibilities for giving information to people about its functioning on request. PIOs have been designated by the CIC for this purpose. Similarly an appellate Authority has also been designated to deal with first appeals. The phrasing of Clause 4(vii) of the Regulations is likely to confuse people because it contains a reference to applications which may be misconstrued with RTI applications. Similarly the Registrar is competent to receive only second appeals because the first appeals fall within the domain of the Appellate Authority already designated by the Commission. Therefore it is necessary to amend the clause as recommended below.

Recommendation:

Clause 4(vii) should be amended as follows- "The office of the Registrar shall receive all second appeals, complaints, counter statements, replies and other documents."

Duty of transparency with regard to cause list:

Clause 4(x)	The Registrar shall fix the date of hearing of appeal, complaint or other proceedings and may prepare and notify in advance a cause list in respect of the cases listed for hearing.

13. The regulations place a discretionary duty on the Registrar to prepare and notify in advance a cause list of cases slated to come up for hearing. The Regulations should be suitably amended to make this a bounden duty of the Registrar to prepare a cause list and upload it on the website at regular intervals.

Recommendation:

Clause 4(x) should be amended as follows- "The Registrar shall fix the date of hearing of appeal, complaint or other proceedings and shall prepare and notify in advance a cause list in respect of the cases listed for hearing."

Inspection Fees under the Regulations:

Clause 4(xii)	The Registrar may, on payment of a fee prescribed for the purpose, grant leave to a party to the proceedings to inspect the record of the Commission under supervision and in presence of an officer of the Commission.

14. Clause 4(xii) of the Regulations empowers the Registrar to grant leave to a party to appeal/complaint proceeding to inspect the record of the Commission. While the grant of rights of inspection to parties to proceedings to inspect their files is commendable there is no reason why the CIC should charge any fees for inspection. There is no provision in the Section 18 or 19 of the principal Act that deal with complaints and appeals procedures to charge any fee on any party to such proceedings. Neither the Right to Information (Regulation of Fee and Cost) Rules, 2005 nor the Central Information Commission (Appeals Procedure) Rules, 2005 empower the CIC to charge any fees for the exercise of any right during the appeals/complaints proceedings. Therefore this clause is in excess of the powers of the CIC granted under Section 12(4) and must be amended to remove the reference to any fees payable by the parties. The CIC should not look to derive pecuniary gain from the

information needs of the parties involved. CHRI strongly recommends that no fees be charged for parties to a proceeding to inspect the relevant files. However if any person who is not related to the case wishes to inspect the file then it may be treated as an information request under Section 6(1) and all rules and procedures developed for processing such requests should be made applicable.

Recommendation:

Clause 4(xii) should be amended as follows- "The Registrar may, upon request, grant leave to a party to the proceedings to inspect the record of the Commission under supervision and in presence of an officer of the Commission.

Access to documents from the Registrar:

Clause 4(xiii)	Copies of documents authenticated or certified shall be provided to the parties to the proceedings only under the authority of the Registrar.

15. This provision states that copies of certified documents shall be provided to the parties of the proceedings by the Registrar. While it is commendable to make the Registrar the point person for issuing authenticated copies of documents it may lead to some confusion in actual practice. If a party to a proceeding applies under Section 6(1) for copies of documents relating to his/her case several months after a decision has been announced then the PIO of the CIC is competent person to deal with such a request. Therefore the clause should be amended to allow for such access procedures.

Recommendation:

The word 'only' should be omitted from Clause 4(xiii).

Working hours, sitting and vacation:

Clauses 5 & 6	Subject to any order by the Chief Information Commission, the office of the Commission will be open on all working days from 9.30 AM to 5.30PM with a lunch break of an hour from 1.00 PM to 2.00 PM. The Commission may have Summer vacation of 2 to 4 weeks during June-July and a winter vacation of two weeks during December-January, as notified by the Chief Information Commission. The office of the Commission will, however, remain open during vacation except on gazetted holidays. The Chief Information Commissioner may make appropriate arrangements to deal with matters of urgent nature during vacations.

16. Clause 5 indicates the working hours of the CIC. However the clause does not make it clear as to whether the CIC will follow a 5-day week or 6-day week. The Regulations should be amended to clarify this matter.

17. Clause 6 authorises the Chief Information Commissioner discretionary power to declare vacation in summer and winter. The Commissioners no doubt need rest and relaxation from time to time in order to maintain efficiency at work. However it is rather perplexing that the

CIC has chosen to follow the model of the High Courts and the Supreme Court in this matter. The practice of taking summer and winter breaks is of colonial origin and is being discarded slowly. Courts have recognised that taking long breaks from work is not helpful in reducing pendency of cases. Criminal Courts at the district level work without any break save the annual leave and entitlements of judges and staff. While it is nobody's case that the Commissioners should not have time for rest and relaxation there appears to be no rationale for taking week-long breaks when pendency at the CIC is assuming worrisome proportions.

18. Furthermore Section 13(5) of the principal Act states that the salaries and allowances payable and the terms and conditions of service of the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner and the entitlements of the Information Commissioners will be the same as that of an Election Commissioner. Leave of absence and vacation entitlements are clearly part of the terms and conditions of service of the incumbent of any post. The Election Commission does not declare vacation for its Commissioners like the courts. There is no reason why the members of the CIC should give themselves entitlements in excess of the provisions of the principal Act. However there is no objection for allowing the Commissioners leave entitlements that are permissible under law for the Election Commissioners.

Recommendation:

Clauses 5 and 6 should be suitably amended to provide the members of the CIC adequate leave of absence that is comparable to the members of the Election Commission of India.

Registration, abatement and or Return of Appeal:

Clause 7	Every appeal, complaint, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly and in double line spacing and the language used therein shall be formal and civilised and should not be in any way indecent or abusive. The appeal, complaint or an application shall be presented in at least two sets in a paper-book form.
Clause 11(iii)(a)	The Registrar shall scrutinize every appeal/complaint received and will ensure — that the appeal or the complaint petition is duly verified and required number of copies are submitted;

19. Clause 7 requires appellants/complainants to submit appeals/complaints in two sets and in paper book form. This is no doubt an improvement over the existing procedure which requires an appellant/complainant to submit five sets of all documents. However it is submitted that even this requirement is unnecessarily cumbersome for the appellant/complainant. In order to cause minimum inconvenience to the person approaching the CIC the Regulations should be amended to allow submission of only one set of documents. The Regulations should not insist upon submission of appeals/complaints in paper-book form as many appellants may not have access to such facilities. The CIC should make arrangements for making multiple copies of the appeal/complaint and the accompanying documents and binding them into a paper book form. The CIC may calculate

the estimated expenditure on making multiple copies of all appeals/complaints and binding them and include it in their budgetary demand placed before Parliament. This would go a long way in making the submission of appeals and complaints an easy process rather than the cumbersome procedure followed in courts.

Recommendation:

Clauses 7 should be suitably amended to omit references to the requirement of submissions of appeals/complaints/rejoinders and other documents in multiple copies. Clause 11(iii)(a) should suitably amended to reflect this changed position.

Documents to accompany appeal or complaint:

Clause 9(vi)	A certificate stating that the matters under appeal or complaint have not been previously filed, or are pending, with any court or tribunal or with any other authority;
Clause 9(vii)	An index of the documents referred to in the appeal or complaint; and
Clause 9(viii)	A list of dates briefly indicating in chronological order the progress of the matter up to the date of filing the appeal or complaint to be placed at the top of all the documents filed.

20. Clause 9(vi) of the Regulations is superfluous. The principal Act has clearly delineated the jurisdiction of the Central and State Information Commissions. Section 23 bars any court from interfering with any process or proceeding under the Act except by way of an appeal. This immunity applies to the proceedings of the Central Information Commission as well. Given this clarity in the principal Act there is no reason why an appellant/complainant should be required to give a certificate about the freshness of the case in the Regulations. It is not possible that there could be any proceedings filed or pending with any court or tribunal on any matter under the RTI Act since that is a matter within the jurisdiction of the CIC. Therefore the appellant/complainant should not be compelled to give any certificate save a verification of the truth of the facts mentioned in the appeal.

21. Clause 9(vii) places an unnecessary burden on the appellant/complainant. The CIC no doubt has the powers of a civil court but it is a quasi-judicial body that has been set up to settle disputes relating to access to information between the applicant and the public authority. The applicant who already would have experienced the hassles of bureaucracy and red tape in obtaining information at the stage of application and first appeal should not be subjected to more bureaucratic procedures when he/she approaches the CIC. An index can easily be prepared by the Registrar or any other officer authorised to receive appeals/complaints by using a pre-printed check sheet. This process could be completed while checking the completeness of the appeal/complaint itself. There is no need to burden the appellant/complainant with this clerical requirement.

22. Clause 9(viii) also places an unnecessary burden on the complainant. The dates indicating the chronological order of the progress of the matter could also be mentioned on the check sheet by the receiving officer at the CIC at the time of submission itself. There is no need to burden the appellant/complainant with this clerical requirement.

Recommendation:

Clause 9(vi), (vii) and (viii) should be deleted.

Service of copies of Appeal/Complaint:

Clause 10	Before submitting an appeal or complaint to the Commission, the appellant or the complainant shall cause a copy of the appeal or complaint, as the case may be, to be served on the CPIO/PIO and the Appellate Authorities and shall submit a proof of such service to the Commission. Provided that if a complainant does not know the name, address and other particulars of the CPIO or of the First Appellate Authority and if he approaches the Commission under Section 18 of the Act, he shall cause a copy of his complaint petition to be served on the concerned Public Authority or the Head of the Office and proof of such service shall be annexed along with the complaint petition.

23. Clause 10 imposes an unnecessary burden on the appellant/complainant by requiring him/her to serve a copy of the appeal/complaint on the PIO/Appellate Authority and inform the CIC about the same. This is contrary to the very scheme of appeals and complaints provided for in Sections 18 and 19 of the principal Act. The citizen approaches the CIC only when he/she is dissatisfied with the response of the CPIO or the Appellate Authority. It is highly improper for the CIC to insist upon the appellant/complainant to serve copies of his/her appeal/complaint on the concerned officers of the public authority. This is essentially the job of the CIC which is duty bound to initiate the appeal/complaint proceedings. This includes serving a notice of the complaint/appeal received on the concerned officers. This notice can be accompanied with a copy of the appeal/complaint and all accompanying documents. The CIC cannot transfer to the appellant/complainant what is essentially its mandated duty. This provision is in excess of the powers conferred on the CIC by Section 19 and 25 of the principal Act.

Recommendation:

Clause 10 should be deleted entirely.

Return of an appeal/complaint by the Registrar for technical defects:

Clause 11(ix)	If any appeal or complaint is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant or complainant to rectify the same in his presence or may allow two weeks time to rectify the defect. If the appeal or complaint has been received by post and found to be defective, the Registrar may communicate the defect(s) to the appellant or complainant and allow him two weeks time from the date of receipt of communication from the Registrar to rectify the defects.

24. Clause 11(xi) allows only two weeks to the appellant/complainant for rectifying any technical/formal defects in the appeal/complaint and resubmitting it. This period is too short

given the size of the country and the unreliability of guaranteed delivery on time by the postal and courier services. The appellant/complainant should not suffer due to the deficiency of these services. The complainant should be allowed at least one month's time to rectify the defects in the appeal/complaint and resubmit it.

Recommendation:

The phrase 'two weeks' should be replaced with 'one month' in Clause 11(ix).

Rejection of an appeal/complaint by the Registrar

Clause 11(xi)	An appeal or complaint which is not in order and is found to be defective or is not as per prescribed format is liable to be rejected. Provided that the Registrar may, at his discretion, allow an appellant or complainant to file a fresh appeal or complaint in proper form.

25. The Regulations empower the Registrar to reject an appeal found to be technically defective. This clause is contrary to Section 18(1) and 19 (3) of the principal Act which places a duty on the CIC to inquire into all complaints and appeals received by it. Rejection of an appeal/complaint on technical grounds is highhanded. While the sub-clauses of Clause 11 do provide the appellant/complainant an opportunity of being heard before a decision of rejection is made by the Registrar sub-clause 11(5) confers the character of finality on the decision of the Registrar. Discretionary power is placed in the hands of the Registrar to allow the appellant/complainant to file a fresh/appeal or complaint in proper form. This regulation is contrary to the position taken by the CIC in its own decisions with regard to rejection of information requests by PIOs on grounds of technical defects in the application.[3] The requirement contained in section 5(3) of the principal Act that the PIO provide reasonable assistance is not replicated in the context of appeals proceedings in the principal Act. Nevertheless the spirit of the Act requires that the CIC's office provide all reasonable assistance to appellants/complainants to rectify any technical defects in their appeals/complaints. Rejection of appeals/complaints on technical grounds does not amount to providing such assistance. This provision is in excess of the powers conferred upon the CIC by the principal Act.

Recommendation:

Clause 11(xi) should be deleted.

Adjournment of hearings:

Clause 17	The appellant or the complainant or any of the respondents may, for just and sufficient reasons, make an application for adjournment of the hearing. The Commission may consider the said application and pass such orders as it

[3] Central Information Commission Decision No.CIC/AT/C/2006/00052, dated 4 September 2006, *Dr. Reeta Jayasankar Vs Deputy Secretary (P) & PIO, Indian Council of Agricultural Research, New Delhi.*

	deems fit.

26. The provision of granting adjournments is a positive one. However experience of similar procedures in the courts indicates that adjournments are a way of prolonging the case which ultimately frustrates the citizen. Appeals proceedings under the RTI Act should not be allowed to go the way of courts. Clause 17 should indicate a maximum number of adjournments permissible in a case for any party. If a numerical limit is prescribed all parties to a case would use their right to seek adjournment by exercising due caution. At the very least the CIC should issue guidelines to be followed while granting requests for adjournments filed by either party.

Recommendation:

Clause 17 should be amended to include a maximum numerical limit of adjournment requests allowable for any party to a case pending before the CIC. At the very least guidelines should be issued for the benefit of all Information Commissioners while granting adjournment requests.

Award of costs by the Commission:

Clause 21	The Commission may award such costs or compensation to the parties as it deems fit having regard to the facts and circumstances of the case.

27. Clause 21 empowers the CIC to award costs or compensation to the parties. This provision gives the impression that public authorities which are parties to any case through their CPIOs, deemed PIOs and Appellate Authorities or any other officers can also move the Commission to order costs on the appellant/complainant. Alternately the same officers can also move the CIC seeking compensation from the appellant/complainant. First, there is no provision in the Act that empowers the CIC to order costs to any party. Second, the clause relating to compensation is completely contrary to the provision relating to the award of compensation mentioned in the principal Act. Section 19(8)(vi) of the RTI Act gives the CIC the power to order a public authority to compensate the complainant for any loss of detriment suffered. The CIC does not have the power to order a complainant/appellant to pay compensation to the public authority. If this provision were allowed to operate many public authorities would misuse it to demand compensation from citizens for seeking even the most innocuous bits of information. The scheme of the Act does not allow such a right to any officer or public authority. Clause 21 is therefore in excess of the powers granted to the CIC by the principal Act.

Recommendation:

Clause 21 should be amended as follows- " The Commission may award compensation to the appellant/complainant or a third party that is not a public authority within the meaning of the term as defined in Section 2(n) of the Act as it deems fit having regard to the facts and circumstances of the case.

Communication of decisions and orders:

Clause 22(ii)	Every decision/order of the Commission may either be pronounced in one of the sittings of the Commission, or may be placed on its web site, or may be communicated to the parties under authentication by the Registrar or any other officer authorized by the Commission in this regard.

28. Over the last two years the CIC has conducted a majority of its hearings in public. Decisions are also often pronounced at the hearings itself. In a few cases where the Commissioners found it necessary to confer with each other *in camera* on complex matters they have pronounced their final decision in a public sitting. This practice should become mandatory. All decisions of the CIC should be announced in public sittings before they are uploaded on the website. This ensures complete transparency and will go a long way in establishing people's confidence in the working of the CIC. Therefore the CIC should not give itself the choice between announcing its decisions in public and putting it up on its website on a date later than that of the final hearing in that case. The same clause also makes it discretionary for the Registrar to communicate an authenticated copy of the order to the parties. This is contrary to established practice in judicial circles where all parties to a case are entitled to authenticated copies of the order of the court. In fact no appeals against any decision of the CIC can be filed without authenticated copies. The Registrar should have a mandatory duty to communicate authenticated copies of the decisions/orders of the CIC to all parties to the case within a period of two weeks. Prescribing a time limit will ensure that the parties to the case receive copies of the order without delay.

Recommendation:

Clause 22(ii) should be amended as follows:- "Every decision/order of the Commission shall be pronounced in one of the public sittings of the Commission; be placed on its website and be communicated to the parties within a period of two weeks from the date of such decision/order under authentication by the Registrar or any other officer authorised by the Commission in this regard.

Allowing review of a decision:

Clause 23(2)	An appellant or a complainant or a respondent may, however, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request;
Clause 23(3)	The Chief Information Commissioner, on receipt of such a request, may consider and decide the matter as he thinks fit.

29. The CIC has established the good practice of reviewing its own decision upon an application by the aggrieved appellant/complainant even though there is no such provision in the principal Act requiring the CIC to do so. It is highly gratifying to note that this practice has been provided for in the Regulations. However the Regulations should also spell out the circumstances under which review shall be allowed. The CIC has maintained that where an

error of law or fact in the decision of the CIC is pleaded by the aggrieved appellant/complainant review is permitted. The Regulations should be amended to include the grounds on which review of the CIC's decision will be allowed. Similarly there should be clear indication as to whether the same bench will be required to hear the review application or the matter will be heard by larger bench of the Commission.

Recommendation:

Clause 23(3) should be amended as follows:- "The Chief Information Commissioner, on receipt of such a request may grant leave in cases where an error of law or fact is pleaded by the appellant/complainant/third party and shall refer the matter to such bench of the Commission as he/she deems fit."

Absence of a time limit for deciding appeals and complaints:

29. It is surprising to note the absence of any reference to time limits that should inform the disposal of appeals and complaints by the CIC. The principal Act does not prescribe a time limit for the CIC to give decisions on appeals and complaints. Time and again civil society advocates have strongly recommended to the CIC that it prescribe time limits of its own. The Regulations provided the right opportunity for fixing time limits for the disposal of cases. This would have ensured that appeals and complaints would not pile up into a huge backlog thereby eroding people's faith in securing speedy settlement of their cases and quick access to information. The Commission has committed a significant lapse by not prescribing a time limit for the completion of appeals and complaints proceedings.

Recommendation:

The Regulations should be amended to include a clause that prescribes specific time limits for the disposal of appeals and complaints. The time limits may be fixed after due consultation with all stakeholders.

Conclusion:

CHRI urges the CIC to post all responses and submissions it receives regarding these Regulations on its website and invite comments of the general public giving them a grace period of at least 30 days. Upon receiving the submissions of people, the CIC should collate them and incorporate changes to those provisions that are in excess of the powers conferred on it by the principal Act.

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