CHAPTER 4: RELATIONS WITH THE EXECUTIVE, PARLIAMENT, THE JUDICIARY AND OTHER INSTITUTIONS

Independent monitoring mechanisms, including NHRIs, can only function effectively to the extent that other “institutions” on which they depend, or with which they must interact, are fulfilling their legitimate roles.

If the Parliament is dominated by the Executive, experience in many countries indicates that it is unlikely Parliament will seriously consider reports from NHRIs or other institutions which expose the government’s shortcomings. Governments uninhibited by an effective parliamentary opposition have frequently demonstrated a blatant disregard for the human rights of their opponents and contempt for institutions attempting to protect them – even those with a legislative mandate.

The credibility and effectiveness of any NHRI is also closely related to the independence and effectiveness of the judiciary. There are many reasons for this – including because NHRIs must sometimes rely on the courts to enforce their findings and recommendations and to sanction any failure to cooperate with legitimate requests from Commissions in the conduct of their investigations and inquiries into alleged human rights violations. In countries where the courts are dysfunctional or the judges incompetent or corrupt there is usually an increased burden for NHRIs involving complaints concerning the administration of justice or failure to receive “equal protection of the law”, as guaranteed by the ICCPR.

4.1. RELATIONS WITH THE EXECUTIVE:

As already indicated, the independence of a NHRI from the executive branch of government is an essential condition for its effective functioning and credibility.

However, national human rights institutions must develop and sustain the capacity to work with governments constructively – as well as, when necessary, criticising any government actions that are in breach of, or inconsistent with, the state’s human rights treaty obligations. This essential balance between the institutions’ “advisory” and “adversarial” functions is not always easy to maintain. Indeed, notwithstanding the explicit guarantees of the institutions’ independence, incorporated in constitutional or legislative texts, governments have frequently demonstrated an unwillingness to respect the independence of NHRIs which criticise them. In a number of cases national institutions in the Asia-Pacific region have not only been criticised
CHAPTER 4

but in several instances (for example Thailand and Australia), Commissioners have been vilified by prime ministers and had their budgets and staffing levels substantially reduced following reports the government did not like.

Members and staff of national institutions, must, however, always remember that they are not elected and that they have an important responsibility to ensure that criticism, including of those who are elected, is accurate and that reports and any public statements are balanced and fair. Criticism should, whenever appropriate, be accompanied by acknowledging positive steps taken by governments to improve the human rights situation.

NHRIs must also give priority to proactive strategies which will assist government and government agencies in discharging their human rights obligations. There are many ways in which this can be done and strategies which have been developed by NHRIs in the Asia-Pacific region include, for example, working with government departments and agencies to develop general and specialised educational programmes and with both public and private sector organisations to develop and implement nondiscriminatory codes of conduct for management. It is, in other words, incumbent on NHRIs to prevent human rights violations, wherever possible – not simply respond to violations after they have occurred.

NHRIs should also provide appropriate assistance to governments in fulfilling their reporting obligations under the various international human rights treaties the state has ratified. Clearly, the nature of this cooperation will depend on governments’ willingness to include in their reports accurate information on the human rights situation in the country. In the absence of such willingness, NHRIs must not compromise their independence and may consider sending alternative reports or commentaries to the Treaty Bodies.

Governments, for their part, should provide NHRIs not only with adequate resources (as already indicated), but also with all appropriate cooperation, and the Executive should issue instructions to all departments and agencies for which government is responsible (including the police and prison services) to do likewise.

Government cooperation should also extend to ensuring that the NHRI’s reports are tabled in the parliament in a timely manner and that sufficient time is allocated for serious debate of the institution’s recommendations. (Governments have frequently demonstrated their unwillingness to do this when they consider that the NHRI’s reports provide “ammunition” for their political opponents to criticise the government).

Similarly, NHRIs can only function effectively if governments fulfil their responsibility to respond to criticisms offered and recommendations