

- provision to involve civil society in this process. The SCA refers to its General Observations 2.1 “Ensuring pluralism” and 2.2 “Selection and appointment of the governing body”.
2. The lack of adequate funding is a structural problem of the HRCM. Despite the significant efforts made by the institution, inadequate funding undermines the capacity of the HRCM to hire staff, make use of equipped premises and carry out activities.
  3. The HRCM should be equipped with adequate resources in order to ensure the gradual and progressive realization of the improvement of the organization’s operations and the fulfilment of its mandate. The HRCM budget should also have a separate budget line for the NPM function. The SCA refers the HRCM to the General Observation 2.6 “Adequate Funding” in order to ensure its involvement in the budget process, and the sustainability of its financial, material and human resources. The attribution of additional powers and functions related to the work of NPM, which was not accompanied by any allocation of additional resources, can further affect the HRCM’s ability to function effectively. With regard to the HRCM’s role as the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention Against Torture, the Subcommittee draws the attention of the HRCM to the SCA on the Prevention of Torture’s Preliminary Guidelines for the ongoing development of NPMs, and in particular subparagraph (g) which provides that “adequate resources should be provided for the specific work of national preventive mechanisms, in accordance with article 18.3 of the Optional Protocol; these should be ring-fenced, in terms of both budget and human resources”.
  4. The enabling law provides the HRCM with both protection and promotion functions, and encourages the institution to interpret it in an extensive way which includes broad protection and promotion of all human rights, including through active cooperation with civil society.
  5. The HRCM is encouraged to continue its constructive engagement with the international human rights system and refers to General Observation 1.4 “Interaction with the International Human Rights System”.

The SCA requires further clarification on the role, functions, decision-making and budget allocations between the four Parliamentary Advocates and the Centre, and amongst the Parliamentary Advocates.

The SCA encourages the HRCM to seek the cooperation of the ICC, OHCHR and the regional coordinating group of NHRIs (European Group) in order to address the above mentioned matters.

### **2.3. Scotland: Scottish Human Rights Commission (SHRC)**

**Recommendation:** The SCA recommends that consideration of the application for accreditation of the SHRC be **deferred** to its first session of 2010.

The SCA notes that the SHRC was established in December 2008 and has been operational for eleven months. The effectiveness of the SHRC and its compliance with the Paris Principles could not be determined in the present session. The SCA refers to General Observation 6.6 “More than one national human rights institution in a state”.

### **2.4. Tunisia: Comité Supérieur des Droits de l’Homme et des Libertés Fondamentales (SCHRFF)**

**Recommendation:** The SCA recommends that the SCHRFF be accredited with **B status**.

The SCA expresses its concern with the following:

1. There are no provisions in the legislation setting out a transparent and pluralistic nomination process of members which include objective membership criteria. The ultimate appointment is done by the President of the Republic. The SCA refers to the Paris Principles regarding the

- appointment of the members of the national institution and to General Observation 2.2 "Selection and appointment of the governing body".
2. There are no legislative provisions regarding the immunity of members for liability for actions undertaken in their official capacity, nor for the dismissal or removal process of a member. The SCA refers to General Observations 2.5 "Immunity" and 2.9 "Guarantee of tenure for members of government bodies".
  3. There are no provisions indicating whether members of the governing body are full or part time, however, Article 5 of the Rules of Organization states that the members are not remunerated but receive an allowance for each meeting they attend. The SCA refers to General Observation 2.8 "Full-time Members".
  4. The institution is required to submit all its reports to the President of the Republic. Pursuant to article 6 of the law the SCHRFF undertakes investigations upon request of the President of the Republic and reports the results of the investigations to the President. This provision is not consistent with the exercise of the protection function that an NHRI is to carry out in an independent and unfettered manner. The SCA refers to General Observation 2.10 "Administrative regulation."
  5. The 2005 Annual Report on the human rights situation of Tunisia does not reflect the recent activities, conclusions and recommendations made by the SCHRFF. The SCA refers to General Observation 6.7 "NHRI annual report."

The SCA encourages the SCHRFF to interact actively with the international human rights system (UN Human Rights Treaty Bodies, Special Procedures Mandate Holders and Human Rights Council, including the UPR), providing information independently of the government and later ensuring follow up action to recommendations resulting from that system.

### 3. SPECIFIC RECOMMENDATIONS – RE-ACCREDITATION APPLICATIONS

#### 3.1. Bosnia and Herzegovina: Institution of Human Rights Ombudsmen for Bosnia and Herzegovina (IHROBH)

**Recommendation:** The SCA informs the IHROBH of **its intention to recommend the ICC Bureau that the IHROBH be accredited with status B**, and gives the Institution the opportunity to provide, in writing, within one year of such notice, the documentary evidence deemed necessary to establish its continued conformity with the Paris Principles. The IHROBH retains its "A" status during this period.

The SCA expresses appreciation of the work of the IHROBH, noting that it operates in a situation where the merger of three distinct institutions is currently on-going, and the law has not yet been clarified.

The SCA notes the following:

1. Civil society and other groups are not involved in the appointment process. The SCA refers to General Observation 2.2 "Selection and appointment of the governing body".
2. The importance of financial autonomy, both in terms of budget submissions and financial controls. The SCA refers to General Observation 2.6 "Adequate funding".
3. The Law on Salaries in Bosnia & Herzegovina has annulled the provision in the Law of the Human Rights Ombudsman that entitled members to a salary equal to that of a Constitutional Judge. This derogation may impact the Ombudsman's independence.
4. It commends the IHROBH on its concrete efforts to implement a regular consultation mechanism with civil society organisations. However, this cooperation should be formalised. The SCA also emphasises that engagement with civil society must be broad based, to ensure the pluralistic representation of social forces as required by the Paris Principles.