

# National preventive mechanism against torture and ill-treatment in Ukraine

EFFICIENCY ASSESSMENT



Organization for Security  
and Co-operation in Europe  
Project Co-ordinator in Ukraine

Kharkiv Institute  
for Social research





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and Co-operation in Europe  
**Project Co-ordinator in Ukraine**

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**Authors:** Andrew Chernousov, Denys Kobzin, Svitlana Shcherban, Oleg Martynenko

*We express our sincere respect to the staff of the Office of the Ombudsman for Human Rights and civil society monitors who for many years, under any circumstances do routine work aimed at improving human rights in custodial settings.*

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The publication contains the results of the evaluation of the activities of the national preventive mechanism in Ukraine starting at 2012 and to the date. The conclusions and recommendations for improving the work of the Ombudsman for combating torture and ill-treatment in Ukraine are also presented.

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# ABBREVIATIONS

ARC	Autonomous Republic of Crimea
ATO	Antiterrorist operation
FLA	Free legal aid
VRU	Verkhovna Rada of Ukraine
NGO	Non-governmental organization
SCES	State Criminal Execution Service of Ukraine
SMS	State Migration Service of Ukraine
SBG	State Border Guards of Ukraine
SPTs	State Penitentiary Service of Ukraine
SJA	State Judicial Administration of Ukraine
CPEE	Checkpoint of exit/entrance
MIA	Ministry of Internal Affairs of Ukraine
MoH	Ministry of Health of Ukraine
MoJ	Ministry of Justice of Ukraine
MoES	Ministry of Education and Science of Ukraine
MoD	Ministry of Defense of Ukraine
MSP	Ministry of Social Policy of Ukraine
NP	National Police of Ukraine
NPM	National preventive mechanism
UN	United Nations
SSU	Security Service of Ukraine
SIZO	Is an investigative isolator
Commissioner	Ukrainian Parliament Commissioner for Human Rights
OPCAT	Optional Protocol to the UN Convention against Torture

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# INTRODUCTION

Years ago, Ukraine's ratification of the Optional Protocol to the UN Convention against Torture and Ill-treatment was accompanied by both great struggle and high expectations. As a result, the country has received the National Preventive Mechanism against Torture through the general efforts of state bodies and civil society. Not the first, but the most powerful for its time visiting body of custodial settings. But it was not time for it to gradually get on his feet and gain strength. To the complicated situation in prisons, isolators, orphanages added external circumstances — political instability, protests, and then the war. Independent Ukraine faced many challenges for the first time, and most of them were directly connected with human rights.

How effecient NPM is today? Can it accomplish its mission? What processes accompany its work? Can it timely and adequately respond to the challenges that face it and the country as a whole? How does its work relate to the work of other bodies to counteract torture? We were looking for answers to these and many other questions during the assessment and our team has been working on in August – December 2018.

We do hope that the findings and recommendations of the study will help to improve the work on combating torture and ill-treatment in Ukraine, and this will lead to systematic changes in custodial settings. After all, the people who are there need this.

# ASSESSMENT METHODOLOGY

The study was conducted between August and November 2018. As methods were used:

- ◆ In-depth interviews according to the original guide, designed specifically for research;
- ◆ Analysis of the results of the National Preventive Mechanism, which are available in the open access — press releases, special reports, reports;
- ◆ Analysis of the content of the Internet site of the Ombudsman and sites of ministries and departments under the jurisdiction of which there are custodial settings;
- ◆ Analysis of responses to requests for information to public authorities.

During the study, 15 in-depth interviews were conducted with the Ombudsman's office employees, civil society representatives involved in visits to custodial settings; employees of departments and ministries, where there are custodial settings.

## KEY CONCLUSIONS

1. It is difficult to precisely determine which model of NPM is used by the Office of the Commissioner for Human Rights. It is publicly declared that the NPM in Ukraine works according to the “Ombudsman+” model, where all activities are carried out with the participation of the civil society. However, a detailed study of decision-making technology for visits, visits themselves, reports, and advocacy shows that the “Ombudsman” model is most likely to be used, since all aspects of the mechanism are under the strict control of the Office, while the public is given a secondary role in monitoring organization activities and writing reports, as well as relative independence in conducting trainings.
2. The statistics of visits in the framework of the national preventive mechanism shows that, since its inception, the percentage of custodial settings visited has remained critically low and does not exceed 5% of the total. In this case, some visits are repeated, that is, it is carried out in previously visited institutions. A small number of visits to custodial settings also leads to the fact that some civil society activists are not involved in visits for a long time and in fact loses motivation to participate in the scheme of visits in the future.
3. Since the establishment of the NPM in Ukraine, unified mechanisms and algorithms for visiting the majority of custodial settings have been developed, as well as a national network of civil society representatives with knowledge, experience and motivation to make such visits on a royalty-free basis. Unfortunately, this resource is not used to full extent. Communities of people who are involved in different visiting schemes remain the main driving force for changes in the NPM and the possibility of achieving systemic changes in the system of custodial settings.

4. The weak Ombudsman model that exists in Ukraine does not foresee any serious levers of influence on violators except for public criticism and open discussion of problems. Despite the insignificant coverage of custodial settings with visits on a national scale, not every visit to custodial setting is preparing a press release, and generalized reports come with great delays. Systemic problems in custodial settings are weakly communicated in the public sphere. The Ombudsman has practically not presented his reports to the Verkhovna Rada of Ukraine since 2014, reports on the media are poorly presented. This leads to the fact that the NPMs are subsequently less and less perceived by the ministries and departments as something serious, which should be considered, and that most of the systemic human rights violations in custodial settings that were in 2012 continue to exist.
5. The NPM was not able to respond timely and adequately to the challenges of respect for human rights in custodial settings that appeared in Ukraine after the start of hostilities in 2014. Problems with illegal places of detention of detainees in the SSU in the area of combat operations; problems with crossing the CPEE and checkpoints were not reflected in the reports and recommendations of the NPM, despite the fact that they were actively discussed and covered in the media and reports of various civil society and international organizations.
6. The role that the national preventive mechanism for the prevention of torture and ill-treatment was carried out in 2013 is no longer unique. Today, there are a large number of projects and organizations that visit places detention in Ukraine and use reports to advocate for positive change. At the same time, the organizational capacity of the Office of the Ombudsman leaves ample opportunity for the NPM to become the most influential of existing schemes in the country to visit custodial settings.

## RECOMMENDATIONS:

1. To bring the system of organization of work of the national preventive mechanism in line with its mission, described in the OPCAT. Eliminate the Unit of Operative Response and Proceedings, and redeploy positions to other units of the Department. Eliminate the function of reviewing and responding to complaints by employees of the NPM Department as contradicting the spirit and letter of the Optional Protocol to the UN Convention against Torture.
2. All NPM resources should be used to increase the number of visits and attract new public resources for them. This will enable positive systemic changes in custodial settings. It is necessary to make greater use of the public's potential accumulated over the years of the NPM's existence — to provide experienced NPM monitors with the autonomous opportunity for the public to visit places of detention; involve the public in the planning of visits, decision-making on visits; the preparation of regular reports of the NPM and the Ombudsman. The introduction of such an approach will significantly increase the number of visits to custodial settings in the regions, will strengthen the analytical component and at the same time unload the staff of the Commissioner's Secretariat. This, in turn, will allow us to work more thoroughly on the recommendations and advocacy of systemic changes in places of detention.
3. In the public sphere, it is necessary to establish a permanent demonstration of the position of the Office of the Commissioner concerning systemic violations of human rights in custodial settings and to expand the number of channels of influence on the state at the expense of public statements and involving the civil society in communicating identified violations of human rights. Strengthen advocacy work on the implementation of NPM recommendations at the state level.

4. Strengthen cooperation with other forms of monitoring of custodial settings: organize and conduct joint visits, exchange of information, joint writing of reports, discussion of monitoring instruments, and also to coordinate advocacy campaigns to improve the situation in places of detention.

# THE HISTORY OF THE OPCAT IN UKRAINE

On December 18, 2002, the Optional Protocol to the United Nations Convention Against Torture was adopted. This document obliged the participating countries to establish a national preventive mechanism (NPM) for a period of no more than 3 years. Ukraine ratified the Optional Protocol on July 21, 2006, and thus committed itself to establishing such a body no later than 2009. Unfortunately, in the same year, despite the apparent coincidence of the functions of visiting the places of detention with the functions of the Ombudsman of Ukraine, an open statement was made by the representative of the Ombudsperson of the Verkhovna Rada of Ukraine about the refusal to assume the functions of the NPM. The statement was made at a meeting of the Verkhovna Rada Committee on Legislative Support of Law Enforcement. Thus, society and experts face a difficult task — to find another, effective model of a national preventive mechanism that would be working and at the same time complying with the principles of independence and efficiency.

For instance, in 2009-2010, the Ministry of Justice and human rights organizations developed draft laws in which NPM functions were assigned to a specially dedicated institution that would interact with the public. However, in August 2010, the Ministry of Justice proposed an amendment to the Law of Ukraine “About the Human Rights Commissioner of the Verkhovna Rada of Ukraine (Ombudsman)”, where functions of the NPM were again relied upon by the Ombudsman. Almost immediately the consideration of this bill was blocked by the public because it had a number of shortcomings: it did not involve public discussion, did not take into account all the places of detention and in general did not meet the principles of independence.

At the same time, the monitoring activity on observance of human rights in places of detention developed in parallel with the activities of the Commis-

sioner for Human Rights of Ukraine. This was largely due to the work of NGOs and their arrangements with ministries and departments.

During 2008-2009 the NGO “International Society for Human Rights – Ukrainian Section” implemented activities aimed at creating a system of public monitoring in the Criminal-Execution Service of Ukraine. The organization was engaged in the development of a monitoring program and instructions (regulations) for monitors – those who will implement monitoring activities, as well as for the administration of penitentiary institutions; conducting trainings for persons who carry out monitoring visits and for representatives of the administration of institutions of the State Department for the Execution of Sentences; conducting monitoring visits to penitentiary institutions.

In the course of 2010-2011, the trade union organization of the All-Ukrainian Union of Workers with Disabilities in the Autonomous Republic of Crimea monitored the provision of the rights of persons with disabilities in temporary incarceration and detention facilities of the Autonomous Republic of Crimea.

In 2008-2009, the All-Ukrainian Foundation for the Protection of Child Rights, together with representatives of the judicial branch, officials of the Ministry of Education and Science of Ukraine, representatives of other non-governmental organizations, implemented the project “Monitoring the Practicalities of the Activities of the Social Rehabilitation Institutions of the Ukrainian Education System”, aimed at identifying and describing peculiarities of functioning of institutions of social rehabilitation at the educational system of Ukraine in order to establish the basis for changing the format of their activities. According to monitoring results a report was issued.

In 2008-2009, the All-Ukrainian Foundation for the Protection of Children’s Rights, together with representatives of the judicial branch, officials of the Ministry of Education and Science of Ukraine, representatives of other non-governmental organizations, implemented the project

“Monitoring the Peculiarities of the Activities of the Social Rehabilitation Institutions of the Ukrainian Education System”, aimed at identifying and describing peculiarities functioning and functioning of the institutions of social rehabilitation of the educational system of Ukraine in order to create the basis for changing the format of their activities. According to monitoring results a report was issued.

In addition, in the course of 2005-2008, Kharkiv Institute of Social Research introduced the practice of visiting the territorial police departments and temporary detention cells of the mobile group to monitor the observance of constitutional human rights and freedoms.

During 2010-2015, KhISR conducted a series of visits to the in-patient institutions of the Ministry of Ukraine for Family, Youth and Sports and the Ministry of Social Policy in order to study conditions of basic human rights observance and the implementation of monitoring schemes for visits to places where children are under state custody. Visits were carried out in 4 regions of Ukraine (Kharkiv, Poltava, Sumy, Kherson and Crimea). During two years 15 institutions were visited.

Throughout 2005-2006, the All-Ukrainian NGO “USER” monitored the observance of the rights of persons with mental disorders during their stay in a psychiatric hospitals (in several regions of the country).

Since 2001, the Chernihiv Public Committee for the Protection of Human Rights (CPCPHR) has been active in protecting the rights of refugees and migrants. In another region – Transcarpathian – only during 2010 Migration Reception Center (MRC) visited various NGOs and international organizations 64 times, and in 2011 – 28 times. In addition, it should be noted that in some regions MRC is regularly visited by civil society organizations (in the Transcarpathian region – “Caritas”, in Chernihiv – CPCPHR, in Kharkiv – “Social assistance Service” and the Institute of Social and Applied Research, in Odessa – “Faith, Hope, Love”, in Vinnytsa – “Vinnytsia Human Rights Group”). However, the monitoring described above could not be recognized as a national pre-

ventive mechanism since it was not systematic, regular and conducted by civil society organizations.

In December 2011, the situation that went into a deadlock, tried to solve on the initiative of the President of Ukraine. Thus, the President of Ukraine created a Commission on the Prevention of Torture, which includes representatives of civil society organizations and public activists who declare their interest in establishing a national preventive mechanism in Ukraine. In 2012, several meetings of the Commission were held, possible working models of visits to places of detention were discussed. Members of the Commission were involved in an expert assessment of possible models of NPM conducted by the working group, which included representatives of the Council of Europe, the Ministry of Justice and the Presidential Administration. The result of the working group's conclusion was that the most effective model of NPM in Ukraine could be the "Ombudsman +" model, as well as proposals for amendments to the Law of Ukraine "About the Commissioner of the Verkhovna Rada of Ukraine on Human Rights (Ombudsman)". The completion of the work of the working group virtually coincided with the election of the new Ombudsman.

# PRACTICALITIES OF INTRODUCTION OF THE OMBUDSMAN + MODEL IN UKRAINE

The change of the Ombudsman in 2012 allowed practically to unlock the establishment of the NPM in Ukraine. This, first of all, is due to the fact that the establishment of the preventive mechanism in Ukraine, due to its own peculiarities, tended to the model associated with the Ombudsman. In the end, launching and powers of the NPM in Ukraine was fixed by the Verkhovna Rada of Ukraine on October 2, 2012, through the adoption of amendments to the Law of Ukraine “About the Commissioner of the Verkhovna Rada of Ukraine on Human Rights”<sup>1</sup>. The law provides for the establishment of a preventive mechanism under the Commissioner, as well as:

- ♦ visits without prior notice to places of detention;
- ♦ conducting face-to-face interviews with “clients” and staff of custodial settings;
- ♦ participation in monitoring visits of representatives of the public, experts, representatives of non-governmental and international organizations.

The appointment of an existing body as a national preventive mechanism removes many issues regarding the mandate and methodology of activities. Yes, the Commissioner of the Verkhovna Rada of Ukraine has the necessary authority (to visit without prior notice of detention facilities, to conduct confidential interviews, to provide recommendations to

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1 The Law of Ukraine «About the Commissioner of the Verkhovna Rada of Ukraine on Human Rights». Link: <http://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80>

the authorities and to demand their implementation, to present reports and recommendations to the Verkhovna Rada of Ukraine). The currently selected “Ombudsman +” model suggests using as an additional resource for the public (this is the “+” part). This avoids the disadvantages inherent in models of a preventive mechanism based on the resources of the Ombudsman or the public.

Firstly, the possibilities of monitoring activities increase considerably because relying on a public resource, the Commissioner can perform a significantly larger amount of monitoring work. Secondly, such a model avoids a purely legal approach to the problem by attracting specialists of different profiles (psychologists, sociologists, social workers, doctors, teachers, etc.). Thirdly, the Commissioner has various levers that allow to influence the situation after monitoring visits and publication of their results. Thus, the public in this case is the most important resource that allows the Commissioner’s activities to be made more objective and also substantially larger.

It should be mentioned that since the first days of her cadence as the Ukrainian Parliamentary Commissioner for Human Rights, Valeria Lutkovska declared the establishment of the NPM in Ukraine as one of the three priorities of her activity. In her opinion, this provides the Commissioner’s institution with the necessary information on the situation in custodial settings, the ability to respond promptly to human rights violations, and to propose systemic changes aimed at improving the retention and handling of individuals. During 2012, in order to achieve these objectives, the Ombudsman of Ukraine performed a significant amount of work on three key components, namely: the Department for the implementation of the national preventive mechanism was established; working meetings were held with representatives of ministries and departments, which have places of detention; meetings with representatives of NGOs specializing in the problems of the NPM, visits to custodial settings, and specialized reports on certain types of detention places were prepared.

It should be noted that according to the Law “About the Commissioner of the Verkhovna Rada of Ukraine on Human Rights”, the possibility of in-

volving representatives of non-governmental organizations and other experts is rather discretionary and depends on the will of the Commissioner. Thus, in Clause 4. Art. 19-1 of the mentioned law states that the Commissioner engages, on a contractual basis (on a paid or non-paid basis), regular visits to places specified in paragraph 8 of Article 13 of this Law, representatives of civil society organizations, experts, scientists and specialists, including internationals”. Therefore, starting from 2015, we observe the periodic practice of visits to places of detention without the participation of representatives of NGOs, which contradicts the model “Ombudsman +”. Thus, the practice of NPM visits was disseminated by the Regional Coordinators of the Commissioner for custodial settings or with representatives of the NPM Department without public monitors.

*“Just in one of the regions, there was a monitoring visit within the framework of the NPM, and only Secretariat staff participated in it, but there was nobody from the public, but it was shown as the NPM visit”*

*From an interview with a public monitor.*

On the one hand, Regional Coordinators are not public servants, but on the other hand they are part of the structure of the Commissioner’s Offices in the regions and implement the mandate and separate functions of the Office. Also, the analysis of reports on the Commissioner’s site on visits to places of detention does not always contain clear information on the participation of public monitors.

# NPM MISSION AND COMPLIANCE WITH REQUIREMENTS OF THE OPCAT

According to the provisions of the Optional Protocol to the UN Convention against Torture, the national preventive mechanism is a “system of regular visits by independent international and national authorities to places where persons are deprived of their liberty to prevent torture and other cruel, inhuman or degrading treatment or punishment”.

Thus, the NPM’s mission is to **prevent** torture, cruel or inhuman treatment in places of detention. However, it should be remembered that for this mission, the preventive mechanism has a limited set of tools. Among the ones listed in the Protocol, it should first be noted that visits are of a preventive nature, carried out on a regular basis, as part of a general system of visits. Visits to custodial settings are carried out in order to restrain violations, as well as gradually improve the system of places of detention. Thus, the main goal of the NPM is the prevention of torture and ill-treatment, and the main “monitoring weapon” is the possibility of regular visits (which deprives public officials at detention places of belief in impunity, generates fears that ill-treatment will be detected) and a constructive dialogue with the authorities, which allows influence the change of the system by providing expert advice on the results of the visits.

It is worth to understand that the NPM methodology is fundamentally different from another type of visit, which is a response to any complaint that came from detention places. Such visits are aimed at solving specific problems, finding guilty in specific situations, investigating and documenting. However, despite their apparent benefit, **they should not be part** of the mandate and mission of the national preventive mechanism.

But, starting since 2013, the NPM Department and the Office of the Commissioner generally tended to a **reactive paradigm** of activity more and more. This was evidenced by the establishment of the Special Proceedings Division within the NPM Department, which was aimed at monitoring visits within the framework of the general activities of the NPM, but gathering evidence to further bringing particular individuals to justice. It is worth paying attention to the powers envisaged by the Law of Ukraine “About the Commissioner of the Verkhovna Rada of Ukraine on Human Rights”, which does not mention **any possibility** of conducting investigations by officials of the Office of the Commissioner. The Code for Criminal Procedure of Ukraine in Art. 38 The “Pre-trial investigation body” has an exhaustive list of bodies that have the authority to carry out a pre-trial investigation of criminal offenses and does not mention the Commissioner of the Verkhovna Rada of Ukraine on Human Rights.

The Optional Protocol to the UN Convention Against Torture itself contains in Article 19 the list of powers of national preventive mechanisms, among them are<sup>2</sup>:

- a. To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- b. To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- c. To submit proposals and observations concerning existing or draft legislation.

2 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Link <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

In Art. 20 of the Optional Protocol, the list of powers of national preventive mechanisms in the course of performing their functions is continued, namely:

- a. Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- b. Access to all information referring to the treatment of those persons as well as their conditions of detention;
- c. Access to all places of detention and their installations and facilities;
- d. The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- e. The liberty to choose the places they want to visit and the persons they want to interview;
- f. The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

In fact, all of this is about obtaining information about people in detention, about conditions of detention, the problems that affect their well-being and possible actions to change the situation for the better. As we see, **OPCAT is not in the task of investigating and responding to complaints on ill-treatment.**

It is also necessary to mention another important requirement of the OPCAT, which is contained in Art. 20 and grants the right to **establish contacts with the UN Subcommittee on Prevention of Torture**, to send information and meet its members. It is designed to facilitate the exchange

of information and means of more effective protection of persons deprived of their liberty between international mechanisms in the person of the Subcommittee on Prevention and national preventive mechanisms. But during development of this report, researchers **have not found any evidence of the existence of such communication** or examples of such interaction. It is clear that this is a failure not only of the Ukrainian NPM, but also of a weak strategy for communication with national preventive mechanisms of the Subcommittee on Prevention itself.

We assume, that created NPM should not duplicate the functions of either the Prosecutor's Office or the police in finding the truth and establishing the perpetrators in cases of torture and ill-treatment. Its task is different, we can say that it has larger. Although the prosecution of those responsible for the ill-treatment of persons in detention is an important mission, but the prosecution of one guilty person **without systemic changes leads** to repetition of such violations by other officials. Examples of this can be infinitely inferred, using the reports on the state of implementation of NPM in Ukraine, monitoring reports, reports in the media.

#### **System changes include:**

- ◆ Changes in legislation regulating the activity of custodial settings;
- ◆ Changes in standards for the provision of certain social services (concerning social custodial settings);
- ◆ Establishment of control bodies for observance of standards in places of detention;
- ◆ Creation of new monitoring mechanisms for monitoring the observance of standards while staying in detention;
- ◆ Changing funding schemes for places of detention, for example, moving away from the Soviet approach to funding bed places;

- ◆ Changing the attitude of the society to people who were/are in places of detention and promoting the policy of “openness” of such institutions, etc.

Of course, all these changes are not affordable for the small NPM team of 26 (and for the previous Commissioner there were 34) professionals, but they should focus on promoting systemic changes, rather than prosecuting individual violators of human rights, or concentrating on the constant repeated visitation of the same institutions for years.

# NPM DEPARTMENT STRUCTURE AT THE OMBUDSMAN OFFICE

Since the establishment of the NPM Department (May 2012), it had the following structure:

Representative of the Commissioner – Head of the NPM Department

- ◆ Unit for the Prevention of ill-treatment at the Ministry of Internal Affairs of Ukraine, Security Service of Ukraine and the State Tax Service. The Unit consists of 2 divisions: Division for monitoring places of detention, delivered, detained and arrested persons, and Division for monitoring the units that carry out detection and intelligence activities and investigations.
- ◆ Unit for the Prevention of ill-treatment at the State Penitentiary Service, State Migration Service and Border Guard Service, the Ministry of Defense and the State Judicial Administration. The Unit consists of 2 divisions: the Penitentiary Monitoring Unit and the Monitoring of the Ministry of Internal Affairs, the SMS, the SJA.
- ◆ Unit for the Prevention of ill-treatment at the Ministry of Health, the Ministry of Social Policy, the Ministry of Education and Science. The Unit consists of 2 Divisions: the Division for the monitoring of institutions for children and the Division for monitoring institutions for the elderly and people with disabilities.
- ◆ Expert Council under the Representative of the Commissioner for NPM realization. The Council is not a structural unit, but created to organize cooperation with representatives of civil society organizations and determine their role in the implementation of the NPM.

In 2013, the Division for Special Investigation Procedures and the Medical Unit was created.

With the election of Luydmyla Denisova as the Commissioner, the structure of the NPM Department has shrunk and changed substantially. So, since April 2018, the NPM Department has 26 positions and the following structure:

Director of the NPM Department.

- ◆ Unit of Inspection of objects of control.
- ◆ Unit for monitoring the observance of human rights for proper treatment.
- ◆ Unit of normative and legal maintenance of human rights for proper treatment.
- ◆ Unit of Operative Response and Proceedings

Coordinating Council on the implementation of the NPM under the Commissioner for Human Rights of the Verkhovna Rada of Ukraine. The Council **is not a structural unit** of the Secretariat and consists of representatives of civil society organizations, international organizations and representatives of ministries and departments who, in their subordination, have places of detention.

Among changes in the structure we could mention the establishment of the Unit for inspection of the control objects responsible for monitoring visits. There are 9 positions in the Unit, which is clearly not enough to organize the proper frequency of visits to about 5,000 places of detention in the country. Taking into account the fact that the Commissioner did not provide independent visits to representatives of the public since 2012, even a special association of experts to the unit for visits will not allow more than 300 visits per year, which is just less than 5% of the total places of detention, which are subject to monitoring. An important step was also the launching of database of experts from various fields to participate in monitoring visits and to provide their findings on the results and such

visits. Among such experts are psychiatrists, specialists in palliative care, specialists in socially dangerous diseases, etc.

We could also attribute to structure changes the fact that since May 2018 the medical unit in the NPM Department was liquidated, which was composed of specialists-doctors: forensic experts, psychiatrists, pathologists who professionally assessed the situation with the provision of medical care in places of detention and could record bodily harm during monitoring visits.

## USING OF NPM FOR COMPLAINTS SOLVING

In accordance with Art. 17 of the Law of Ukraine “About the Commissioner of the Verkhovna Rada of Ukraine on Human Rights” “The Commissioner accepts and solves the appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine “About Citizens’ Appeal”. Thus, according to the data contained in the Annual Report of the Commissioner, for example, in 2016, the Ombudsman Office received 2397 complaints from citizens concerning ill-treatment in places of detention. If we simply divide the number of employees of the NPM Department, and according to the staffing schedule in 2016 there were 34, and not even taking into account the fact that at that time the Department had vacant posts, people were sick, went on a business trip to places of detention, were on maternity leave, were on an annual leave, we will receive a figure of 70 (!) complaints per one employee of the NPM Department per year, including the chief.

*“But it was bad thing that we, as NPM employees, were obliged to solve complaints. That is, this work took 90% of the time and in the majority of it was very disturbing for monitoring visits. Because, elementarily, when you go to the visit for 2-3 days, you come back, on the table is already a pile of complaints. Each complaint must be solved in five days and instead of preparing a report on the results of the visit and visit reaction, first of all sat and screwed up all this bunch of papers. And when, at last, it was raging, let’s say, enthusiasm has already disappeared, and did not really want to write those reports”.*

*From interview with a staff member of the NPM Department.*

In order to clarify the situation with solving and response to complaints, it is necessary to briefly describe the algorithm of work of the employee of the Department with the complaint. Upon receipt of the complaint, the employee of the NPM Department must contact the ap-

plicant, take an explanation, state the situation, identify the rules of law that was violated, contact the authorities and officials responsible for it, prepare a response, write a letter to bodies requesting to take certain actions, apply to the Prosecutor's Office (if necessary), prepare an act of reaction of the Commissioner. Very often it is impossible to complete all these steps without visiting the applicant and checking on-site conditions. Because of this, it is very often the choice of the place to conduct a monitoring visit within the framework of the implementation of the national preventive mechanism is precisely because of the need to check the data on complaints of the person who is there. Therefore, in the practice of the NPM Department there are frequent cases when several visits to one place of detention through constant complaints were done (for example, Komarivsky Boarding School (Kharkiv Oblast), Rozhische Children's Asylum, the Castle Correctional Colony, Lukianivka remand prison etc.), but the situation with ill-treatment there has not improved. It should be noted that hundreds of other places of detention are still beyond the attention of the national preventive mechanism.

## VISITING OF CUSTODIAL SETTINGS

The analysis of the data presented in the Commissioner's reports shows that during the six years of the existence of the NPM, the total number of places of detention in the country has decreased by 20%. This is not the result of the NPM, but due to the processes of reform, the change in the structure of ministries and budgets allocated for managing places of detention.

Table 1. *Number of places of detention through years and ministries.*

	2012	2013	2014	2015	2016	2017	2018
NP	3348	2941	2696	3666	2019	1992	1992
SCES	191	191	150	148	136	148	148
SBG	85	89	63	67	63	62	62
MoD	379	434	201	259	260	298	298
SSU	28	1	1	1	1	1	1
MoES	610	571	526	472	476	654	654
MoH	144	131	230	233	260	282	282
MSP	788	807	723	705	699	691	691
SMS	2	2	2	2	2	5	5
SJA	489	692	637	612	613	612	612
<b>Total</b>	<b>6064</b>	<b>5859</b>	<b>5814</b>	<b>6165</b>	<b>4529</b>	<b>4745</b>	<b>4745</b>

This tendency should have contributed to the increase in the proportion of places of detention visited, especially given the numerous

trainings aimed at recruiting and training new monitors. Unfortunately, visiting statistics show that the percentage of places of detention visit is critically low.

So, if in 2013 (the first year when the NPM worked full 12 months) managed to visit 4.5% of the total number of detention places in the country, then in 2017 – 4.9%. It is difficult to talk about the effectiveness of the NPM, when during the year such a small percentage of custodial settings is visited. The public result of this work is most often the press release on the Ombudsman’s website ([www.ombudsman.gov.ua](http://www.ombudsman.gov.ua)), which outlines the main findings of the visit and, in case of detection, problems and violations of human rights.

At the same time, despite the modest amount of visits, not all of had press release. Openly provided data on visits to less than 3% of detention places in the country. For example, if in 2017 the Ombudsman’s Office stated that it had made 232 visits to custodial settings, only 138 press releases were published on the Web-site, ie 59% of the declared visits. The same situation is observed in 2018 – by the results of September – information on 171 visits were published only 109 press releases (64%). Thus, only a part of the NPM activity becomes public.

Table 2. *Number of visits to ministries through years.*

	2012		2013		2014		2015		2016		2017		2018	
		%		%		%		%		%		%		%
MIA	82	2,5	96	3,3	49	1,8	38	1,0	38	1,0	29	1,9	23	1,2
SCES	31	16,2	38	19,8	35	23,3	23	15,6	40	29,4	35	23,6	32	21,6
SBG	3	3,5	8	8,9	5	7,9	8	11,9	5	7,9	2	3,2	5	8,0
MoD	2	0,5	7	1,6	5	2,5	11	4,3	14	5,4	2	0,7	4	1,4
SSU	1	3,6	-	0	1	0	-	0	-	0	-	0	1	3,7
MoES	9	1,5	25	4,4	7	1,3	40	8,5	34	7,1	39	5,9	20	3,0
MoH	16	11,1	20	15,3	25	10,9	33	14,1	42	16,1	31	10,9	20	7,1
MSP	26	3,3	44	5,5	29	4,0	61	8,6	95	13,5	82	11,8	48	6,9
SMS	-	0	1	50	2	100	1	50	2	100	1	20	2	40
JSA	-	0	22	3,2	7	1	17	2,7	13	2,1	11	1,8	16	2,6
<b>Total</b>	<b>170</b>	<b>2,8</b>	<b>261</b>	<b>4,5</b>	<b>165</b>	<b>2,8</b>	<b>252</b>	<b>3,8</b>	<b>283</b>	<b>6,2</b>	<b>252</b>	<b>4,9</b>	<b>171</b>	<b>3,6</b>

A low number of visits is a significant problem caused by several reasons. The most important of these is the **selected model for organizing and conducting visits**. Thus, the planning, organization and conduct of the visit is carried out solely by the Office of the Commissioner for Human Rights — no visit can be planned and carried out by civil society monitors. Obviously, the Office wants to control all aspects of monitoring and does not trust the public enough to allow it to independent visit. Given the number of people working in the NPM Department, and the number of regional representatives of the Ombudsman, the possibility of visits under this scheme will always be limited.

*“It is necessary to inform people, involve new members, expand the influence of NPM on the territorial level, because our NPM is more concentrated in the center. That is, to expand its influence on territorial communities, at the territorial level. There should be a clear, unified system that should work, so that we could, for example, monitor six thousand places of detention (perhaps a bit less — five, five and a half), this is a huge amount“.*

*From an interview with a former employee of the Ombudsman’s Office.*

The natural consequence of this is that there is a continuing **shortage of financial resources** to visit places of detention. In order for representatives of the central office to get from Kyiv to a remote area in another region and visit custodial settings, considerable resources are needed.

Interviewed monitors also noted that the main problem of planning and conducting visits is **reducing of funding** from major donors, non-governmental organizations and foundations that provide travel, accommodation and meals to visitors. In recent years, funding has been gradually shrinking, while in the second half of this year, some monitors have been conducting visits fully at their own expense.

*“And now the situation is getting worse, because the trips are not being reimbursed any longer for monitors, which, in my opinion, speaks about what we’d expect in the future“.*

*From an interview with a public monitor.*

*“Previously, I could afford to take all the monitors at the same time, there were four of them there. We could have a great object to monitor during a day, totally. I could interview many people because we had a team to work. Now we can only talk about taking only one monitos, well, and, accordingly, it’s the same thing that visiting alone goes one. Because we go together, we can not divide”.*

*An interview with the Regional Representative of the Commissioner.*

**Visits are mostly planned by the NPM Department** of the Office of Ombudsman. Although monitors have the opportunity to offer certain places to visit, justifying it with some facts — experience with this institution, complaints from clients, results of work of other public representatives, etc. The planning of visits is mainly based on several factors: the representation of the NPMs in different regions and in different types of places of detention, as well as arrangements between the Commissioner’s Secretariat and NGOs that implement projects aimed at monitoring of certain human rights. In particular, thanks to such grants, all the special reports of the Ombudsman were written. Scheduled visits are planned and discussed in advance. In addition, unplanned visits are usually practiced, which is usually a reaction to the fact of ill-treatment in a certain closed institution. Such a visit is planned very quickly and may differ from regular full visit of the NPM.

*“It is necessary to make systematic visits, keep resources for this and opportunities. We must visit police, I do not know, after a day. In order to force them to work properly. For this I have to have time, opportunity and so on. It should be systemic so that they understand that we could come at any time of day or night. Then they will be constantly waiting for a visit, will always be waiting for visits. And if we have several people who live in the regional center, and there is no money to go elsewhere, that is, it is impossible to make 2-3 visits there. And then, when it seems that they are driving into the bureaucratic procedures, then it simply does not make any sense at all. People spend their time, not earning anything on that. Here, they do not go to work, but go on a*

*visit, and then we are criticized: “You missed coma there?” – Well, then it is just discouraging absolutely”.*

*From an interview with a public monitor.*

**Among the priorities this year**, Secretariat staff named, first of all, **repeated visits** to evaluate what was done. With regard to the types of places of detention, first of all visits are planned to institutions that have come under significant reformation. In particular, according to employees of the Department, there are special schools, psychoneurological boarding homes, investigative isolators [remand prisons], and rooms for holding of defendants in courts. They also plan to make a thematic analysis of the provision of medical care in penitentiary institutions. Separate visits are undergoing in the framework of projects.

*“We have the Council of Europe project on psychoneurology. There is a cluster of visits in it. We’re visiting 4 regions. We invite experts to these visits, then we conduct a seminar with directors”.*

*From an interview with a staff member of the NPM Department.*

Another problem that was named in the interview with planning and conducting visits is the untimely communication to public monitors on them. This problem has been taking place for several years since the NPM’s existence, and then a procedure for informing about visits in a week advance that everyone in the region expressed readiness to engage in monitoring was developed. With the advent of the new Commissioner, this procedure has ceased to be used, and at the moment some of the monitors do not know about when and where the visits to places of detention will be conducted. Often this leads to the fact that monitors can not quickly plan their time and pay attention to visits when they find out about it the day before.

*“I do not know what is happening there. Although I see that the visits are conducted somewhere, they post something. And I confirm my availability: we are ready to visit, but still silent”.*

*“It is unplanned, it is unclear how this is done, not coordinated, in organizational matters — a mess. And thus, a new Ombudsman came, and nobody told me that my mandate was canceled. And I also see visits where only Secretariat staff participated, and nobody from the public. And this is also shown as a visit of the NPM”.*

### *From interviews with public monitors.*

It should be noted separately that preparatory work **is not always carried out when planning a visit** to a specific place of detention. The rules of conduct during the visit, the ethical principles of monitoring are not discussed, tasks between the participants are often distributed exactly during the visit, and not to before. And if experienced monitors are fully reliable and almost no effect on the quality of the visit, constant involving of new visitors and experts is causing some harm in coordinating on-site actions, as well as in the process of recording data and writing a report.

### Consequences of a small number of visits

The small number of visits to places of detention during the 6 years of existence of the national preventive mechanism leads to negative consequences, among which one should distinguish:

- ♦ visits cover a small proportion of the total number of places of detention, which does not allow to draw a clear picture of what is happening there on the basis of the received data. Also, the collected data can hardly be called reliable and presenting the picture as a whole — the visit takes place without any system, based on the sample and bias percentage;
- ♦ the small number of visits **does not allow to effectively prevent torture and ill-treatment**, since most places of detention in the country are not visited by the NPM; The management and staff of most institutions do not consider that they can be visited at any

time; clients and prisoners in institutions do not know / are poorly aware of the visiting mechanism;

- ◆ **Public is poorly involved with the practical side of the fight against torture**, most of the monitors have the opportunity to participate in trainings, discussions on the problem of torture and ill-treatment, but at best get an opportunity to visit several visits throughout the year.

It should also be noted the Office's desire to respond to complaints received through NPM visits. The use of a preventive mechanism to respond to a violation that has already been committed, violates the very meaning of the model and contradicts the principle. At the same time, in a significant number of places of detention in the country, a significant number of complaints (in 2016 – 2397), effective response would also require a significant number of visits. Thus, the chosen approach, which is to verify the reliability of complaints with the help of the NPM, concentrates the efforts of the Office and NPM activists in specific cases, **decreasing the resource in the analytical component** and significantly reduces the effectiveness of the mechanism for preventing torture and ill-treatment.

Currently, **there are almost no difficulties with the access of NPM visitors to places of detention**. During the existence of a mechanism ministries and departments that have closed institutions where people can be detained, they regularly inform both local government authorities and directly the leadership of such institutions about the possibility of visits by the Human Rights Ombudsperson. That is why during the last year, none of the interviewed monitors indicated that they encountered in their practice either with postponed visits, or deny of access to a specific institution. However, there are still difficulties during the visit, when the administration may in one way or another limit the monitors in the data collection (delaying provision of data about the institution, requirements not to shoot certain objects, etc.).

*“It happens that they’re asking to leave mobile phones in the locker. But there are times when operational communication with the leadership in Kyiv is very important. The group should always be in touch”.*

*From an interview with a regional representative.*

*“It happened recently that they did not allow kitchen, because there are no sanitary books. That is, there are some minor issues. Now a bit different problem when you arrive, then the information about it very quickly spreads out. We do not make visits for more than 2 days and try to make sure that there are different types of institutions, because everyone is starting to clean and prepare. Of course, the walls will not be removed, but this principle “without warning” is still violated”.*

*From an interview with a staff member of the NPM Department.*

As a rule, such problems are recorded in the report, and then observed by the reaction of state bodies to the actions of employees of places of detention, which hinder the activities of the Ombudsman.

*“We specify in the report exactly who and did what. There was a situation in one visit – the head of the medical unit did not allow our employee to the medical unit. Then the boss was fired. In general, everyone has already adapted to such visits and any visit without warning is no longer perceived as some kind of supernatural news, because in addition to the NPM they are still monitored by many other inspective bodies”.*

*From an interview with a staff member of the NPM Department.*

During a visit to a large institution, the group is usually divided into several squads, and each group monitors a certain range of questions in the toolkit. An obligatory part of the visit is an interview with people who are kept in a place of detention, and with the staff of the institution.

*“For example, if a group has a psychologist, who is interested in communication, he or she goes and talks. If there is another specialist in the group, he or she is busy with own topic, because he or she knows more about it. We’re not forcing nobody to do work against specialization”.*

*From an interview with a regional representative.*

If the institution is small, then, as a rule, a small group of 2-3 people are visiting it. During the visit, **major human rights are monitored:** the right to a decent standard of living, work, rest, health care, medical care, social protection, etc. — will be monitored. The depth of visits depends on the monitoring tasks (first visit, repeated, response to a resonance event, etc.), size of the institution, number and professionalism of the participants. The latter is very important, as it often affects the final product which is a visit report. **The varying degree of detailization of facts** and deeply embedded in problems that are mostly indirectly related to the risks of ill-treatment and torture **leads to complexity in generic analysis of reports** and in identifying systemic problems of a specific type of institution.

*“Very often a monitoring visit becomes a check visit. When they start to scribble in papers, they start to recount something — it’s already a check. I believe that a monitoring visit should not be checking. The check is done by the supervisory authorities and may be appointed by the results of the visit”.*

*From an interview with a public monitor.*

It should be noted that six years after the NPM began its activities in Ukraine, it still has no methodology for conducting visits to some places detention. Action plan to implement the Strategic Directions of the Ombudsman for 2018, approved by Order 50/02-18 dated September 3, 2018, it was specified for a prospective for the year 2018 that “the development of a methodology for visits to psychiatric facilities, transit zones of airports and institutions, providing palliative care”. It remains a mystery according to which methodology all these places of detention have been visited all these years.

**The visit ends with a conversation with the administration of the institution**, during which certain points are specified, in particular the reasons for the violations detected. The management has the opportunity to substantiate the identified shortcomings and to explain when the inappropriate conditions of detention will be changed. The common practice is to eliminate **the disadvantages already during the visit**, which is a separate note in the report. In the event of the detection of serious human rights violations that can be considered rigorous, the monitoring group shall notify the Commissioner's Secretariat and may call the Prosecutor's Office or the police to fix the offenses. Then the Department employees monitor the situation at this place of detention.

# REPORTS PRODUCING

It should be noted that the NPM in Ukraine has two important tools in its work — visits and reports. Each of these tools is extremely important and performs its own function.

Visits allow regular attendance in places of detention, to record what is happening there. According to the philosophy of the Optional Protocol to the UN Convention Against Torture, this should, on the one hand, equip the staff of the institutions with the fact that they can be visited at any time, on the other hand, to collect information on the current state of affairs, complaints and violations of human rights. Subsequently, this particular information is subject to generalization and forms the basis of the reports.

Reports, in turn, present to society and authorities the situation and problems in places detention and can be used as an advocacy tool to achieve systemic changes aimed at improving the situation.

That is why one of the key tasks for which the NPM was created is an open and public description of the situation in places of detention. These places were also visited prior to the establishment of a preventive mechanism, but visits were of an intrathoratorate nature or were carried out by state authorities, which made them ineffective. The main condition for the effectiveness of the NPM is an open description of existing problems, their public discussion and decision-making. **In fact, visits without a report or reports without discussing the problems found are meaningless**, since they do not in any way affect the situation and conditions for people in places of detention.

The main problem that can be highlighted when writing visits based on the results of the visit is the incomplete understanding by the monitors of their role in **the implementation of the tasks of the preventive mechanism**. Unfortunately, it is mostly found among public monitors, who believe that the main component of this activity is the visit to custodial

setting. Such a distorted understanding of the mission of the NPM leads to a partial ignoring of the need to write a report on the visit.

*“As a rule, a representative of the Commissioner writes the report because he has such a duty. We do not have such a duty”.*

*From an interview with a public monitor.*

*“Communication should be closer with monitors in order to make the work effective. Because there are situations when we came back from the visit and the monitors just disappeared and just did not get into contact”.*

*From an interview with a former employee of the Secretariat.*

Secondly, the above mentioned problem of varying degrees of detail in data collection leads to the **difficulty of writing a report for those monitors that do not have a deep knowledge** of the conditions of detention in a certain type of place of detention. In addition, some of the monitors lack the analytical skills of working with data from various sources — documents, interviews, records of CCTV, etc.

*“Of course, the hardest thing about all this is writing reports. I always thought the report should be clear. Our task is to see whether torture is based on the Optional Protocol, based on the Convention. Well, and now we are writing very large reports. It seems to me that something is wrong here”.*

*From an interview with Regional Coordinator.*

*“Reporting is a bit sick topic, because not all monitors, let’s say, have special training in the вумудцзюме of analytical documents and, in principle, can work with analytical documents. One thing is, you are a specialist in finding some kind of human rights violations, another thing is to describe them and write down the recommendations correctly. This requires appropriate skills. Therefore, in terms of the employee of the Secretariat, those reports written by our monitors, they do it as they could. Who knows how?”*

*From an interview with a former employee of the NPM Department.*

As a rule, the next day a press release must be issued for a visit that is posted on the official website of the Human Rights Commissioner. **The report itself should be written within 3 days**, although in fact it is written for 7-10 days. Because of cost cuts and time, visits to regions often occur one after another for several days. Employees of the Department physically do not have time to process the amount of information they receive during such trips in such a short period of time.

*“We have short terms, it is very difficult to have time to write everything. We try to stick to the terms, but this is not always the case. The reason is the bad connection with the monitors. You make a report already without their participation, because they are thinking too long over the report and sending the materials late“.*

*From an interview with a former employee of the NPM Department.*

*“We need more time, because they are not experts, they need more time to learn reporting documents“.*

*From an interview with a regional representative.*

A full report is not a public document, and it can only be distributed among the participants of the visit. Almost a year ago, there was a practice of filling in reports electronically on a specially designed website. Each report was available to all participating monitors as well as to the staff of the Secretariat. However, the disadvantages.

*“There were about 163 evaluation criteria in the electronic database. Well, there it is clear that not all criteria for each type of places of detention fit. Some is more suited to it, some — less, depending on those algorithms that were used“.*

*From an interview with a former employee of the NPM Department.*

*“Previously there was a database that was filled in electronically. As for me, it was generally “horroe” which nobody needed, and I did not like it, technical characteristics, it has system errors when two people were on the visit, came and started to fill simultaneously. Something is stored, something is not. It contained questions that were not at all about, and they are not needed at all. It was very uncomfortable and they decided to give it up”.*

*From an interview with a public monitor.*

The report is currently being prepared in the traditional way, in the form of an electronic file (Word format) and consists of a narrative and attached photographs and documents (statistics, acts, orders, etc.). At the end of the report recommendations on the institution are provided for eliminating certain disadvantages in the work.

In theory, the final report should be sent to all attendees for final approval of the text, but in practice this is not always the case. This practice depends on the manager of the visit, as well as the activity of the monitors, which may remind them to provide them with a full report for reading.

*“In general, the report should be sent, I do it of course. But now I’m so work-loaded, which, frankly speaking, do not leave any time to do”.*

*“The good question is whether reports are being sent. It is necessary to control and once again remind everyone to sent to all participants “.*

*From an interview with the employees of the NPM Department.*

The final report and recommendations are sent to the relevant department in the region, if the place of detention is communal, or to the Ministry which control it. No report or recommendations are sent to the institution itself.

*“We’re now sending the full version of the report, but previously it was just an excerpt. Both positive and negative conclusions are there together with descriptive part. The report is attached to the cover letter, which briefly*

*outlines identified deficiencies. We are mainly sending to the regional state administration. If this is SIZO [remand prison], then, of course, to the Ministry of Justice. If there are some facts of the crime were revealed, then we send to the prosecutor's office".*

*From an interview with a staff member of the NPM Department.*

Recently, the practice of analyzing several reports has been introduced at the same time as addressing systemic issues and general recommendations for certain types of places of detention. Such analytical documents are periodically sent to the relevant central authorities.

**Among the suggestions for improving the stage of writing reports, the monitors stated:**

- ◆ Mandatory participation of all monitors in writing the report and recommendations for the visit;
- ◆ Increased time to write reports;
- ◆ Submitting and agreeing the report and recommendations among all participants of the visit;
- ◆ Development of analytical data-processing skills in monitors.

# COOPERATION OF PUBLIC AGENCIES WITH NPM DEPARTMENT

An analysis of NPM's work showed that the results of the work can be described in three types of reports: so-called press releases (compiled on the basis of individual visits and posted on the Ombudsman's site), NPM reports and special thematic reports. Also, the information on the work of the NPM is an important part of the general annual report of the Ombudsman, which must be presented to the Verkhovna Rada (Ukrainian Parliament).

Press releases, most often report the place and date of the visit, the composition of the group and a brief summary of violations detected during the visit. However, in press releases almost never reported the recommendations that were given to the leadership of the place of detention visited. In general, this technology aims to voice the problems that exist in places of detention, but the approach used by the Office of the Ombudsman significantly reduces its effectiveness.

*“You write reports, recommendations, they are sent to the ministries. Are the answers come?”*

*“I do not see these answers honestly. And, if, to say, the results of the visit were posted on the site of the Ombudsman as press release (a brief information, but it is available), then I do not see the response to this report”.*

*From an interview with a public monitor.*

As already mentioned above, press releases are not published on all visits, and in fact we have a situation where NPM covers with visits a small number of places of detention, but even does not tell about them.

It remains unclear whether more complete reports are being prepared on all visits, who are collecting the data, whether there is a database on all the conducted visits, which would help to assess the trends in places of detention. Obviously, the availability of such a database in open access would help the national preventive mechanism to make its work more transparent, public and accessible.

Special and thematic reports. This type of reports can be an effective tool for influencing the situation in places of detention. This kind of report is based on the analysis of the series of visits. This allows to summarize the information collected, **to identify typical violations in certain places of detention or to certain vulnerable groups**; study their causes; offer a solution. During the history of the NPM's existence 3 such reports were released, they were concentrated on the coverage of particular topics:

- ◆ “Medical care at remend prisons of the State Penitentiary Service of Ukraine” (2013);
- ◆ “Protection of the rights of childdren who are in juvenile prisons of the State Penitentiary Service of Ukraine” (2014);
- ◆ “Rights of Children in Social Rehabilitation Institutions in Ukraine: Special Report on the Implementation of the National Preventive Mechanism” (2013).

The advantage of this type of report is also that it can be used to communicate with authorities and promote decisions that relate to all places of detention of the specified type, but not to particular one. Thus, the report “Rights of Children in Social Rehabilitation Institutions in Ukraine: A Special Report on the Implementation of the National Preventive Mechanism”, which was released in 2013, highlighted the massive violations of children's rights and was used for systemic changes in the system of social rehabilitation and in fact has led to the closure of most of these institutions. NPM reports on the rights of children in penitentiaries and access to medicine in prisons raised important issues for vulnerable

groups and laid the foundations for discussions about independent medicine and the system for collecting complaints in the penitentiary system. However, unfortunately, this did not lead to any system changes. It should also be noted that since 2014, the NPM no longer issued special reports.

*Regular report* is the most complete report form. It not only contains detailed information about all places of detention and the situation there, but also statistics and analysis of changes in the regulatory framework that regulates their work. Moreover, the publication of the regular report of the NPM is a mandatory requirement of the Optional Protocol to the UN Convention against Torture, which, in Art. 23 states unequivocally that “States Parties to this Protocol undertake to publish and disseminate annual reports of national preventive mechanisms”. By the end of 2018, the national preventive mechanism has released five reports (for 2012, 2013, 2014, 2015, 2016). A separate NPM report for 2017 was not released. Also, the work of the NPM is devoted to separate sections in the general annual reports of the Commissioner, issued in 2013, 2014, 2015, 2016, 2017. Regular report on the work of the NPM is not only an important source of information, it also includes recommendations to all stakeholders, such as agencies, departments, parliament, government, and local authorities, which, if desired, can be the most powerful advocacy potential to achieve positive change in places of detention.

At the same time, it should be noted that reports of all types were not used sufficiently and used by the Office of the Commissioner to achieve systemic changes in places of detention. Thus, despite the fact that the Commissioner for Human Rights actually represents the Parliament, the results of the NPM’s performance sounded from the rostrum of parliament only once in 2013.

*“The final report is the quintessence of all visits for the year. Unfortunately, few people used it. For example, Lutkovska [Ukrainian Ombudsman in 2012-2018], in my memory, was given to read it in the Parliament, as it is prescribed in the law, one only time in the very first year of her cadence. They did not provide such opportunities to her any more. It ended with the fact that the report was*

*sent to numerous ministries and departments that monitored, well, and then the reaction, I do not want to offend anyone, but it seems to me, it was close to zero. That is, well, people got books, they threw them on a shelf, they were dusty there, most likely, it was like this more or less”.*

*From an interview with a representative of the ministry.*

An analysis of the NPM reports and reports of the Ombudsman shows that the advocacy work is more focused on communicating with departments and ministries through official correspondence rather than on public discussion of existing human rights abuses in custodial settings. Formal communication is a necessary component of the achievement of systemic changes; the key tool for a monitoring mechanism with the use of the public remains open criticism of existing shortcomings in the system of places of detention. **Insufficient use of such public instruments of influence on the work of agencies** as the discussion of reports in the media, open criticism of existing practices in places of detention, deficiencies in the regulatory framework, systematic violations of human rights.

*“Previously, we had the right to comment on our own. Well, when there were no questions, we announced the position of the office. Now, I understand that all comments are given by Kyiv. And I do not even try to speak out of my own thoughts, because I do not know what Kyiv’s position on a particular issue is”.*

*From an interview with a regional representative.*

This leads to the fact that the NPM over time is less perceived by the ministries and departments as something serious, which should be considered. Reports do not pose a threat to the current system and do not entail serious consequences for legal or for reputable offenders. Namely, criticism, the coverage of information that is “inconvenient” to the existing system creates opportunities for discussing and bringing about systemic changes to the places of detention, which means abandoning existing practices across the country, changing standards, reducing human rights violations, reducing numbers of custodial settings and people inside them.

At the same time, the database of reports on visited places of detention is not available and is open for inspection. Accordingly, journalists and the public can get acquainted either with short press releases, or with synthesized reports.

In one of the most acute periods when, due to military actions in the East, more and more challenges of human rights emerged, there were numerous reports of abduction and illegal detention of people in legal and illegal places of detention, NPM and the office of the Commissioner for Human rights have not issued regular reports for almost 20 months during 2014-2015.

It may also be noted that the Action Plan for the Implementation of the Strategic Directions of the Ombudsman for Human Rights for 2018, approved by Order 50/02-18 dated 3.09.2018, does not contain paragraphs on the development of a separate report of the NPM and its presentation to the Verkhovna Rada, corresponding ministries and departments, i.e. key stakeholders. The plan only indicates that the results will be presented “in front of the representatives of public”.

After the analysis of the interaction of the NPM Department with the state authorities, the responses of the latter to the information requests that were related to the following questions were considered:

- ◆ The number of all visits by the NPM Department to correspondent places of detention;
- ◆ Participation in events (conferences, round-tables, trainings, seminars, meetings, etc.) devoted to the work of the National Preventive Mechanism;
- ◆ Implementation of the recommendations of the Ukrainian Parliament Commissioner for Human Rights to eliminate human rights abuses in their subordinate places of detention.

The analysis of responses showed that among all the state agencies statistics on NPM visits are available only at three of them: the State Border Guard Service of Ukraine, the Ministry of Education and Science

of Ukraine and the Ministry of Defense of Ukraine. The State Judicial Administration of Ukraine forwarded a request to the Secretariat of the Human Rights Ombudsperson who responded to this question. Other government agencies indicated that they were not collecting such data.

Regarding the participation in the NPM activities, the State Border Guard Service of Ukraine, the State Judicial Administration of Ukraine, and the Ministry of Defense of Ukraine responded formally that sometimes they participate in such events. Somewhat more detailed information was provided by the Ministry of Social Policy of Ukraine, mentioning 5 such events. Other government agencies did not answer this question.

A brief confirmation of the response to the recommendations of the Commissioner on the elimination of human rights violations in subordinate places of detention occurred in the responses of:

- ✓ State Migration Service of Ukraine

*“According to the results of monitoring visits to places of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine, and places of temporary accommodation of refugees, carried out within the framework of the National Preventive Mechanism (NPM), the SMS took measures in accordance with the given recommendations”.*

- ✓ Ministry of Defence of Ukraine

*“The leadership of the Main Directorate of the Military Service of the Law Enforcement of the Armed Forces of Ukraine [military police] reported on the results of the work of the NPM Department on the measures taken to eliminate human rights violations in subordinate areas that were subject to monitoring”.*

- ✓ Ministry of Education and Science

*“In view of the fact that institutions of general secondary education, which were subject to NPM monitoring, are in the municipal/communal*

property, the Ministry appealed to the relevant departments of education and science as structural subdivisions of regional state administrations with a request to take measures to eliminate violations detected during monitoring visits. According to the data of departments of education and science, the task of eliminating violations detected during monitoring visits is generally fulfilled or will be taken into account when forming a budget request for the next fiscal year, as the Ministry informed the Human Rights Ombudsperson”.

- ✓ Somewhat more information was provided by the State Judicial Administration of Ukraine, indicating exactly what changes were introduced following the recommendations of the Commissioner.

In particular, “*there were ongoing repairs of premises, work on the repair (modernization) of ventilation systems or their arrangement, maintenance of premises in proper sanitary conditions, equipment, where possible, separate entrances and access platforms for special vehicles, etc.*”.

Other government agencies **did not answer** this question.

It is also worth noting that the official websites of central government agencies that have places of detention in their jurisdiction do not in any way contain information on visits to the national preventive mechanism. There is neither the Commissioner’s recommendations, nor any response to them, nor data on participation in events devoted to the work of the national preventive mechanism.

Interviewed representatives of various ministries and departments highly appreciated the work of the NPM Department.

*“I think that these people are very well trained, know, first of all, the Convention on Human Rights and focuses in monitoring on those issues relating to human rights and compliance standards providing various services”.*

*From an interview with a representative of the ministry.*

However, according to the majority of respondents, **the NPM system lacks the opportunity to apply more significant responsibility** for eliminating shortcomings in the work of custodial settings.

*“Ombudsman has not enough powers. Those recommendations and those reports are not binding, because of their non-fulfillment, there are no sanctions. It nullifies all NPM work. The role of the Ombudsman, the role of the NPM in decision-making should be strengthened”.*

*“I think it would be necessary to change their position on the Commissioner. I know him very clearly, there is no degree of responsibility for violating the rights of people with disabilities, the elderly, etc. There is a conclusion that this is all broken, and what’s next? It is simply a statement of the facts that were recorded as a result of the visit. But there is no reaction”.*

*From interviews with representatives of ministries.*

Currently, for the analysis of systemic problems in places of detention, there was established a special unit – Unit for monitoring the observance of human rights for proper treatment. It communicates with government authorities and tracking their response to the recommendations provided by the monitoring group. It is too early to evaluate it, since it has been established in May 2018.

However, an analysis of the work of the NPM Department on the implementation of various measures to counteract torture and ill-treatment in places of detention is useful for assessing the effectiveness of the NPM.

According to the NPM Department data, during 2012-2018, **69 statements by the Human Rights Ombudsperson were filed** on the basis of monitoring results. The main submission was addressed to the General Prosecutor’s Office of Ukraine (22 submissions), the Ministry of Justice of Ukraine (13 submissions) and the Ministry of Internal Affairs (10 submissions). 7 submissions were addressed to various regional state administrations. 32 submissions concerned violations of human rights

in a specific places of detention, and another 6 are violations of rights of particular persons. Other statements contain more general questions about ensuring proper conditions of treatment in different types of places of detention or elimination of violations of a certain category of the population.

Regarding the activity of the Commissioner's statements over the years, it is quite different. The smallest submission in 2012 (4 submissions), 2014 (3 submissions) and 2018 (5). The biggest number is in 2013 (22 submissions) and 2016 (18 submissions).

Unfortunately, evaluating the use of other rights of the Ombudsman in the defense of human rights is complicated because of the lack of fixed information about it. In response to the NPM Department, there is no data on the number of:

- ◆ Proceedings opened on the basis of violations of human rights and freedoms in places subject to NPM monitoring;
- ◆ Constitutional appeals of the Commissioner for violations of human rights and freedoms in places subject to NPM monitoring;
- ◆ Speeches of the Commissioner in the Verkhovna Rada of Ukraine regarding violations of human rights and freedoms in places subject to NPM monitoring;
- ◆ Court hearings on the protection of human rights in places subject to NPM monitoring, in which the Commissioner or his representative participated.

With regard to the assessment of the national preventive mechanism by its own monitors, it should be noted that **during the visits they can see the effectiveness of specific visits**, but most of them suggest **improving the conditions of detention in a particular institution or protecting the rights of a particular person**.

*“Then some repairs take place after visits and recommendations. For example, I saw the object before, well, there in 2012, 2013, 2014, and I see it now. I see what changes happen”.*

*From an interview with a regional representative.*

*“I know for sure that there is an effect. Those prisons, which, for example, I attended from the beginning, and we returned with repeated visits and really saw the renovated toilets there, with the repair of the room. In the first visits, what we saw there were inhumane conditions — it was without repair, without anything. And when we’re on a repeated visit, when we arrive, there has been more or less put in order”.*

*From an interview with a public monitor.*

But a completely different picture can be observed in the case of systemic changes, such as those reflected in the regulatory framework governing the activities of places of detention, or common practices. First, it is difficult to trace whether only the NPM influenced the adoption of these changes.

*“What is happening now is the transition of medical care from the subordination of the penitentiary system. That is, in principle, some kind of work is being done, but like any other job, it always encounters difficulties. That is, it is such a complex of works that goes beyond the mandate of a national preventive mechanism, but we are constantly talking about it”.*

*From an interview with a public monitor.*

*“I am closer to the social theme and the topic of childhood... In the report of the NPM for 2016, the recommendation of the NPM itself was the reform of the institution for children, that is, this was the recommendation of the NPM. I do not know how much this recommendation has affected, but the reform of the boarding schools system is taking place. And the fact that we go to the children’s institutions tell about what is happening here and there, I can not*

*say that only the NPM affected it, but the fact that it began to talk more about it is unambiguous”.*

*From an interview with a public monitor.*

The most of interviewed monitors, saying that they could improve in the further work of the national preventive mechanism, have also unambiguously stated the **enhancement of the Commissioner’s capacity or, in general, the establishment of a separate independent visiting authority in Ukraine.**

*“It is necessary to change the mandate of the Commissioner at the legislative level, which could be delegated to staff. And in principle, I do not know what else can be fixed”.*

*From an interview with a regional representative.*

*“It may sound undemocratic, but it lacks a response, now it’s more complicated. There is not enough lever, because recommendations are not enough. This is not enough. It is necessary to strengthen the power of the letters of the Commissioner”.*

*From an interview with a staff member of the NPM Department.*

There are also, among the proposals to improve the effectiveness of the NPM, some monitors named **participation in visits of more journalists.** In their opinion, in the context of the Commissioner’s weak position, it would be the interaction with the media that could actualize the problematic issues of observance of human rights in places of detention.

*“It was a very good practice, but I do not know if it will continue. In the past years, there were trainings for journalists, they were given monitoring mandates, and journalists went on a visit. And already after receiving this training, they understood that and how it could be highlighted. What ordinary journalist needs? He needs “blood”, “meat”, “thrash”. Understanding the essence of the*

*NPM, they described the visits more professionally. As far as this practice goes on, I do not know. But I think it was not bad”.*

*From an interview with a public monitor.*

A significant number of places of detention in Ukraine is located in highly centralized departments and ministries, which greatly facilitates the introduction of change. On the other hand, it is extremely difficult to influence decision-making in such systems. Their problems with the achievement of systemic changes are also in social institutions, many of which are actually managed by local authorities. To change the situation there, it is necessary to work systematically with local self-government bodies. That is why from the point of view of evaluating the effectiveness of the NPM is extremely important systemic results that it has been able to achieve over 6 years — is it that it managed to change the places of detention in the system to humanize the attitude of people who are held there?

Unfortunately, despite the work being done on visits and in the development of reports, the most important human rights recommendations of the preventive mechanism, which relate to systemic changes that are not taken into account over the years. It can be noted that for each department, the same remarks of the national preventive mechanism are repeated from year to year, which concern the most important aspects of observance of human rights in places of detention. This is an unequivocal symptom of the fact that systemic work to address the weaknesses of the Office is not conducted, but only limited to written answers or a temporary suspension of some institutions. **As before the establishment of an NPM, the system usually reacts to detected cases of torture and ill-treatment**, stating that this is an “exceptional case”, “a specific person’s fault” or “lack of funding.” The fact that prevailing this way of reaction is indicated in the reports of.

Thus, the 2014 NPM report states that “information on the elimination of deficiencies and violations is not always true”, or “Prosecutors’ Offices ignore information that points to actual crimes”. The analysis of

the reports shows that a significant part of the recommendations aimed at eliminating the revealed material and technical deficiencies in the places of detention specified in the report, as well as employees involved in the violation of human rights brought to the disciplinary liability, are taken into account. At the same time, the systemic problems suffered by people in all types of institutions associated with an outdated regulatory framework; outdated standards of work or equipment of places of detention; widespread and established practices of human rights violations remain unchanged.

For example, militia, and now the National Police, receives annually comments pointing to the prevalence of “unreasonable detentions”; “illegal holding in non-designated places, torture and ill-treatment of detained persons”; “practices of “unofficial detention of persons “(without drawing up the necessary procedural documents)”. Recommendations of the NPM regarding the legislative adoption of the rules for serving an administrative arrest, as stipulated in Part 2 of Art. 327 of the Code of Administrative Procedure, are not taken into account since 2013.

About changes in the State Penitentiary Service, and now in the Department of Criminal Execution Service of the Ministry of Justice, can be judged by the fact that in 2013 and 2017, the reports contained information that the service “widespread” use of prisoners or persons being held in custody, mental and physical violence by representatives of the administration or certain categories of prisoners”; “inhuman or degrading treatment of convicted and imprisoned persons”; “improper material conditions and meals”; “violation of the right of convicts to work and worthy payment”; “abuse of the administration of penitentiary institutions and investigative detention centers by measures of disciplinary action”; “violation of legislation in imposing disciplinary penalties”; “the negative practice of involving convicts in work associated with controlling the behavior of other convicts”; “impossibility of obtaining legal aid”. All this is fixed by the lack of “response from the Ministry of Justice of Ukraine to the facts of violations of the law in penitentiary and pre-trial detention facilities”.

Remaining unchanged remarks to the SMS of Ukraine regarding the conditions of detention in “transit zones of airports, the rights of detained persons for health care and medical aid”.

Regarding the State Border Guard Service of Ukraine, every year, the same remarks are repeated concerning “holding of detained persons in violation of the requirements of isolation, in particular men with women”.

In the State Judicial Administration of Ukraine, year after year, such violations as “prolonged detention in a special convoy car without access to drinking water and food”, “overcrowding of cells in the premises for defendants (convicts) of local courts of general jurisdiction” are recorded; “holding in a metal cage in the courtroom during the trial”; “deprivation of food for accused (defendants), convicted during the day of their participation in a court session”.

In the Ministry of Health of Ukraine, despite the adoption of the Order “On Approval of the Rules for the Use of Physical Restraint and (or) Isolation in Providing Psychiatric Aid to Persons Afflicted with Mental Disorders, and Forms of Primary Accounting Documents” dated March 24, 2016, No. 240, in the majority of hospitals visited by NPM continue to use illegal fixation of patients. Hospital staff simply do not know about the existence of the Order. The practice of “conducting court hearings on the continuation or change of types of compulsory medical measures without the participation of the persons to which they are applied” continues. The main functions of palliative care facilities (departments, chambers), beds do not comply with the requirements of legislation in the field of provision of palliative care.

In the institutions of the Ministry of Social Policy, despite the fact that each year NPM indicates “the need to standardize the use of physical restrictions for people suffering from mental disorders in residential institutions”, this issue remains unresolved. This leads to behavior that degrades human dignity and the use of violence against sick people.

There are several reasons for such a weak influence of the national preventive mechanism on the situation in places of detention. Among them are the following:

- ◆ a small number of visits, covering a small proportion of places of detention. This leads to a concentration of attention at individual institutions, to the detriment of the analysis of the situation as a whole;
- ◆ systemic problems in places of detention are poorly communicated in the public sphere: the Ombudsman has practically not presented his reports to the Verkhovna Rada since 2014, poorly presents reports in the media;
- ◆ the weak Ombudsman model that exists in Ukraine does not imply any serious levers of influence on perpetrators, but are available in the arsenal. The proceedings opened by the Office or the sending of information to the Prosecutor's Office are not effective and, in fact, depend on the desire of the Prosecutor General's Office to give the case a step.

*“We have the only problem — I do not know if it can be solved — these are the reactions of higher departments to our reports. Because as a rule, in most cases, as I know, after the report is sent, no reaction comes to us. Not in writing, not in oral form, and we do not know what decision was made. That is, we learn about the results only in a re-visit“.*

*From an interview with a former employee of the NPM Department.*

In fact, the only tool that could help under the existing conditions is active work in the public sphere; highlighting of the system of facts of violations and the reasons that led to them; criticism of the existing practices and approaches, as well as the involvement of the public in this process. However, the Office of the Commissioner practically does not use this method, nor available at its disposal sufficiently significant resources

of public activists. Often, the “post-visit” work is to respond to specific violations and punish the perpetrators. At the same time, the most important direction — the advocacy of necessary systemic changes, tracking changes for the year, public criticism and the formation of the basis for change, has been and remains weakly involved.

# COOPERATION OF THE OMBUDSMAN OFFICE WITH CIVIL SOCIETY WHILE IMPLEMENTING NPM

Since the very beginning of the work of the NPM, the basic scheme of selection of people who can carry out visits together with civil servants of the Secretariat of the Human Rights Ombudsperson was approved. To do this, the following conditions were required:

- ◆ Be older than 18 years old;
- ◆ Do not have crime records;
- ◆ To attend a basic training on monitoring the places of detention, which is held together with the representatives of the NPM Department;
- ◆ To be selected by an Expert Council at the NPM Department and as a result to obtain an authorization from the Commissioner which is valid for a year.

It should be noted that over time, these criteria have not been changed, although somewhat changed the training curriculum. In particular, in the opinion of the monitors, the emphasis shifted from the general understanding of the monitoring mission and the use of international standards in assessing the conditions of detention for a more detailed study of the standards of the functioning of institutions that are subject to an independent visiting. It is difficult to estimate how much this shift of emphasis affects the efficiency of work, since there is no consensus on what should be a Ukrainian monitor – specialized in specific institutions or universal.

*“Maybe it’s my internal resistance because it should be deep professionals in a certain area. I think that if I see that the children are clean, well-groomed, developed, fed up there, that everything is fine there, then this should be*

*enough for me. And if there are some points there, I do not need to know these deep things, I do not believe that this is mandate of the NPM and the NPM should do this“.*

*From an interview with a public monitor.*

*“When you arrive to prison, for example, there are so many nuances that it is necessary that the visit lasted several days even, because to look at all the documents, whether everything is done according to the rules is very difficult in one day. In addition, it requires a lot of training to know where and how to look. This requires dedicated educational measures for monitors”.*

*From an interview with a former employee of the NPM Department.*

A positive innovation in basic training subsequently became a **practical component, including participation in visits to places of detention** along with NPM monitors after a series of lectures. This allows to immediately understand how this activity meets the expectations of those who are in training and in more detail acquaint future monitors with the principles, tasks and ethical standards of conduct during the visits.

**The organization and conducting of trainings was relied upon and still relies on non-governmental organizations** that are in some way connected with the monitoring of closed institutions in Ukraine and, due to their background, can find donors to train people who have volunteered to become NPM monitors. The selection for training takes place through an open competition, information about which is placed on various information sites on the Internet. The last basic training was held in April 2018.

It should be noted that further training and upgrading of volunteers of the NPM is also carried out at the expense of NGOs. The Ombudsman's budget does not include such expenditure items.

**Trainings topics are typically selected based on the needs of the monitors** of the national preventive mechanism (in particular, educational

activities for government officials, trainings for reporting by monitors, and interview skills for different categories of clients, etc.), as well as those topics that are civil society organizations that offered training (in particular, monitoring certain places of detention, protection of the rights of certain categories of people, etc.).

Among the urgent needs several monitors admitted the need for training on psychological relief and the prevention of professional burnout.

*“These severely sick people who do not understand who they are and when you start checking their condition, how they lie, how they are treated, how they are fed, you know, it’s hard to hang on. I think, it is necessary to conduct some kind of trainings, sessions, because it is significantly influencing the psycho sphere”.*

*An interview with a regional officer of the Office of the Commissioner.*

**For the current moment, the base of public monitors**, which Office of the Ombudsman was granted the authority [mandate] to conduct visits, **is listed with 150 people**, monitors are presented in all regions of Ukraine. The largest number of monitors is in Kyiv (29 people) and Chernihiv regions (11 persons), the least in Odesa (3 persons) and Kirovohrad (3 people).

*“Look, how it was earlier: selection, competition, on the recommendation of other organizations — those or other, training and post-graduation training according to specializations. People only learn to be at the forefront of everything, so they were given attention. Now monitors can simply be assigned. Now mandates are handed out to anyone, and it looks like some kind of show”.*

*From an interview with a public monitor.*

And although the **regular increase in the community of monitors**, on the one hand, is a guarantee of the expansion of the system of visits, on the other hand, this, unfortunately, **does not in any way affect the**

**number of visits to places of detention**, which remains insignificant. This discrepancy leads to a number of negative consequences:

- ◆ Part of the monitors loses interest in the mechanism because of rare visits (one a year or less) to places of detention;
- ◆ Suffers the overall quality of visits and writing reports by attracting, first of all, new monitors that, due to their limited participation, are not able to gain sufficient experience for effective monitoring;
- ◆ The burden on Secretariat staff is increased due to the need for contact with more monitors.

The introduction of this year was also the involvement of lawyers in the framework of the **signing of a Memorandum of Cooperation with the Coordination Center for Legal Aid of the Ministry of Justice of Ukraine**. According to the Memorandum, one of the areas of cooperation is:

- ◆ Introduction of cooperation mechanisms on the prevention, detection and suppression of torture and other cruel, inhuman or degrading treatment or punishment, violations of the right to protection and the provision of free secondary legal aid;
- ◆ Development of a mechanism for selection, training and involvement of employees of the system of provision of free legal aid to joint monitoring visits to places of detention carried out by the National Preventive Mechanism<sup>3</sup>.

Although the training of lawyers has not yet taken place, they have already begun to invite to visit places of detention. The relation to this is ambiguous. After all, firstly, without preliminary training it is difficult to fully understand the purpose and tasks of the national preventive

3 Memorandum on Cooperation between the Commissioner for Human Rights of the Verkhovna Rada of Ukraine and the Coordination Center for the Provision of Legal Aid dated 25.05.2018. Link <http://zakon.rada.gov.ua/laws/show/n0001715-18>

mechanism and to adhere to a certain ethical code of conduct. Second, the very fact that people working in the structure of the Ministry of Justice of Ukraine can visit institutions that are subordinate to the same ministry also **raises questions about compliance with the principles of independence, objectivity and impartiality of monitoring**. There is also a certain conflict of interest, when individuals who are in places of detention as independent monitors, during the visit, begin to provide legal advice as representatives of Centers for the provision of legal aid.

*“They monitor with us as monitors, but if you need some advice or any relationship with a legal aid client, the lawyer coordinates it”.*

*From an interview with a staff member of the NPM Department.*

*“As far as I remember, mandates were recently issued by the Commissioner to the representatives of free legal aid, but they are part of the structure of the Ministry of Justice. I do not know how adequately they will evaluate the violations that occur in prisons”.*

*From an interview with a public monitor.*

Besides, the practice of engaging in visits of experts (doctors, lawyers, psychiatrists, etc.) when they require a monitoring task began to be introduced. Yes, this year, physicians were actively invited to visit psycho-neurological hospitals, palliative care facilities, and more. First of all, this is due to the elimination of the medical department in the structure of the NPM Department, which usually closed the issue of professional evaluation of medical care in places of detention. The Commissioner’s mandate is issued to each expert by the end of the year and may be invited from time to time.

*“We’ve selected up physicians who are qualified enough for visits. Here I have one clever doctor in charge. He does visits with us. So, when necessary, we write an invitation letter to him, and, accordingly, where we can, pay him food, accommodation and travel”.*

*From an interview with a staff member of the NPM Department.*

In terms of motivation, for most trainers to become part of the monitoring mechanism for the prevention of torture, there was a conscious desire to positively influence the situation in custodial settings. Equally important motivating factor is the opportunity to expand human rights activities, gain experience for work in own civil society organization. On the other hand, in a much smaller number of monitors, the motivation to join the NPM (“try something new”) or it is limited by certain factors (“necessary for one project”, “one must get acquainted with those working in the prison”, etc.).

*“The places of detention are different and, one way or another, we can get there. This also applies to me. By visiting such institutions, I can influence the change”.*

*“Well, in principle, from the very beginning I worked in the direction of protecting of human rights and our activities were related to helping people in places of detention. Evaluated the situation and realized that there are many questions that need to be addressed with the administration regarding human rights violations”.*

*“When we learned about the NPM, we realized that it could help us, and we would be able to get into institutions through this mechanism too”.*

#### *From an interview with public monitors.*

It is important to admit that the necessary condition for the functioning of any mechanism that uses the volunteer resource is the continued **support of this motivation**. In addition to the material component, which is manifested primarily in the acquisition of certain skills, contacts, and the use of the fact that a person — a NPM monitor and can indicate this when writing the curriculum vitae, projects, etc., to a large extent, the emphasis should also be on social character incentives. This concerns the human need for contributing to an important mission, the existence of public recognition, communication with like-minded people.

In addition, it is important for volunteers to see that they improve the lives of people who are helping and show their indifference to the problem.

All this is realized, usually, through the establishment of a volunteer community that communicates with each other, discusses problems, generates new ideas for improving its activities. Speaking about the community of monitors, it is necessary to note a few issues that negatively affect their willingness to participate in the national preventive mechanism:

### Insufficient informing of monitors

The survey showed that public monitors occasionally encounter lack of information about what's going on in the NPM system. In particular, it refers to visits, coordination of work for the next year, familiarization with the reports on visits and reactions to them.

Interviews showed that public monitors, unfortunately, do not know for sure what is happening after a visit to a place of detention: where the report is sent, what is the response of the administration of the institution, whether the visit affected the changes, etc. Also, on an ongoing basis, the agreement between all the participants of the visit to the final text of the report and recommendations.

Problems with lack of information are also felt by regional representatives and coordinators. On the one hand, there is an active expansion of their circle of tasks, on the other hand — extremely weak informational and methodical support is provided. In particular, monitors should independently carry out inventory in their own areas regarding changes in the number and contact details of places of detention.

*“Look, once we had such guides, well, not manuals, but such directories. It was the 12th, 13th year, if I'm not mistaken. There, where there was a list of all institutions with phone numbers of directors, with sites, if any. Here, they were developed by Andrew Chernousov even then. And by this time we use them with these directories. It would be very nice, of course, to update all the data now”.*

*From an interview with a regional representative.*

## Restricted number of cooperative events

According to the opinion of monitors, meetings help to discuss the urgent issues of visits, difficult situations during monitoring, the reaction of state agencies, etc. For many, this is also an opportunity to find out what's going on in the NPM system, which has gains in various areas of activity. For some monitors, it's important to offer your own ideas to eliminate the problem points in the work.

*“For us, for example, it's important to feel that we are involved in one business, we are a team, a team spirit, there is some kind of support for these people, well, at least the same communication that at least could be. At the moment, I do not really like how it's organized”.*

*From an interview with a public monitor.*

*“There was a forum every year. And more additional training, when conducted, we were invited. People felt compelled to do this because this is a volunteer work. So, at such meetings, they felt that they needed what they were invited to, they were taught, that besides, some things were done for them. If this is, for example, an interesting meeting”.*

*From an interview with a regional representative.*

In several interviews, hopes were raised to increase the frequency of monitors meetings in regions. At the moment, such meetings are almost non-existent and there is no way to discuss the work that can be done by the forces of field monitors.

*“It happens once a year... or rather, the NPM forum was held, when all got together. From time to time, these monitors met on specialized trainings, as I said. There were attempts in some areas to arrange meetings for joint planning. These were one-time attempts, we met once or twice”.*

*From an interview with a public monitor.*

## Irregular involvement of the public in the planning and follow-up of the results of the visits

In the interview, part of the monitors noted that they almost did not know what was happening with the planning of visits to the NPM Department. There is also a very weak interaction with state authorities in the regions in order to improve the living conditions of people in places of detention. There were attempts to hold press conferences after a series of visits, meetings with local authorities, but for the most part, such events do not occur on an ongoing basis.

It is worth noting that part of the activities on establishing communication between monitors is undertaken by some NGOs, which, among the directions of their work, allocate assistance to the work of the NPM in Ukraine. In particular, NGO “NPM Monitors: Ukraine without Torture” is trying to attract monitors to take measures to attract public attention to the problems of ill-treatment in places of detention. In particular, this is done through appeals to MPs, public speeches, participation in conferences and other events. A similar direction of work is also in the NGO “Center for Human Rights Information”. This year, an action was held in the center of Kyiv, where they opened a temporary sculpture devoted to the problem of torture in Ukraine. Although such measures are not systematic, they support the work of the NPM Department in terms of communication and the formation of a community of monitors.

*“We used to have such practice: if you visited and found something bad, then wrote an appeal to MP, who cares for the county in whose territory the institution is located. There were different reactions, someone reacted, that is, the MP joined to the solution of these issues. And there were such MPs who ignored these requests, and we have held a campaign on June 26 under the Verkhovna Rada to attract the attention of MPs to this problem. With the fact that there were the media and when the names of MPs were voiced, which at all did not respond to requests, then quickly reacted”.*

*From an interview with a public monitor.*

It should be noted that at the moment, monitors record decrease of their activity in NPM activities also with the election of a new Commissioner and a change in the part of employees of the NPM Department.

*“Previously, the Board of Monitors worked, they were included in this work. There were some changes, workouts, etc. And now, with the arrival of the new Ombudsman, this activity has calmed down. I do not know what this is about. Maybe because of the fact that the new Ombudsman is trying to introduce the new working regime”.*

*From an interview with a public monitor.*

## NPM CHALLENGES APPEARED AFTER THE WAR CONFLICT IN THE EASTERN UKRAINE

In 2014, Ukraine has developed a unique situation, which faced for the first time both the authorities and citizens of the country. In eastern Ukraine, part of the territories passed from the control of the state under the control of the separatists supported by the Russian Federation. After the onset of hostilities, a number of phenomena that are directly related to human rights in places of detention have appeared, but do not have ready-made and legitimate decisions. There was a need to evacuate dozens of institutions (boarding schools, orphanages, psychoneurological boarding homes, who were in the area of hostilities); new or previously vacant custodial settings were launched (in field conditions, in volunteer battalions, in the SSU); There were new types of detainees and arrested (captives suspected of separatism). Often information about different events was not enough or it was controversial. Accordingly, the work of the national preventive mechanism for the prevention of torture and ill-treatment during this period was carried out with varying degrees of effectiveness.

### Problems with the official places of detention in the conflict zone

In 2014, there were dozens of custodial settings in the conflict zone, in which thousands of people were detained. This is an orphanage for the elderly, children with disabilities, and penitentiary institutions. Since the beginning of hostilities (June 2014), the Ombudsman has repeatedly pointed out the need for their evacuation, the central executive authorities responded formally to this idea and in fact lifted responsibility for the fate of the people by transferring it to the local authorities, which was in collapse. Thus, many institutions did not manage to evacuate, while others evacuated within Donetsk and Luhansk regions, which led to overpopulation and a new violation of human rights. At the same time, it should be noted that the NPM

did not stop visits to places of detention in a zone close to hostilities, and advocating the rights of people who were held there. In the 2014 and 2015 NPM report, the materials of the visits were highlighted in a special section, which describes the key issues of people in the official places of detention in the area of hostilities. Reports on visits made during this period were used by the Ombudsman as a tool for advocacy — for letters to the country’s leadership and suggestions for solving problems that occurred in places of detention, and as a result, some institutions have been moved. Unfortunately, however, the proposal to prepare and implement a centralized evacuation of boarding schools, where children, people with disabilities and the elderly are kept, remained unfulfilled.

Unfortunately, in the future, the NPM’s interest in the topic of places of detention in the area of conflict began to decline. Thus, the special report “Status of the provision of human rights and freedoms in places of detention in the ATO zone” announced in the report of the NPM in 2014 has not yet come out. The 2016 report no longer contained a separate chapter devoted to custodial settings in the combat zone, although many of the previously mentioned problems in places of detention had not yet been resolved.

## The problem with places of detention in the SSU

Despite the fact that according to the Law of Ukraine “On pre-trial detention”, the SSU does not have the right to detain people, in 2012 NPM reports indicated that each of the SSU departments in the regions and the SSU’s isolation facility in Kyiv are considered as places of detention. They were attributed to such, primarily because the SSU has the right to detain people and all opportunities for doing so. That is, in the detention facility of the SSU and in the regional departments there may be people who, accordingly, make these places subject to monitoring.

The conflict in Eastern Ukraine, which began in 2014 and the fight against separatism, led to the fact that a significant number of detainees had been detained by the SSU, which was held in official and unofficial

places of detention. This was done on the basis of expediency, contrary to the norms of the current legislation, which simply did not have time for the development of events. For example, there was a need to keep people detained in the course of hostilities or people who were prepared for the exchange of prisoners. Reports from international and national human rights organizations and investigators have repeatedly provided evidence that people are held under the control of the SSU in Kharkiv and Mariupol, and that there are places of detention in Kramatorsk and Bakhmut.

**Unfortunately, the NPM failed to respond adequately to the risks and threats to human rights that arose in the course of hostilities.** Visits to the SSU Headquarters in the Kharkiv Region were not able to identify people who were held there, which was publicly announced by the Ombudsman. However, according to independent researchers, people managed to be removed from the cells, while the NPM group was waiting at the entrance to the Headquarters. The press release on the Commissioner's site about the visit did not contain information that the NPM monitoring group was forced to wait for admission to places of detention for a long time.

Despite the acuteness of the problem, **visiting of all known places of detention in the SSU has not been carried out or conducted**; special trainings for monitors and a new methodology were not introduced; NPM and the Office did not pay any attention to working with victims of unlawful holding in the SSU; the special report of the NPM concerning places of detention in the SSU for the period of 2014-2017 was not prepared; there was no work with the SSU staff and the management of the department. In fact, many SSU staff did not even know the provisions of the OPCAT, which eventually became one of the factors that affected the access deny of the Subcommittee to probable places of detention of the SSU in 2016.

Moreover, it is illogical to note that in the reports of the NPM and the reports of the Ombudsman, the SSU departments has ceased to be a place of detention. In fact, it became a demonstration that the NPM removed the obligation to visit any places of detention in the SSU, in addition to the SSU's isolation facility in the city of Kyiv.

The problem of unlawful holding in the places of detention of the Security Service of Ukraine, raised up in 2014, has not yet found a solution. It is obvious that after the decline in the activity of fighting, the scandal with denial of access of the Subcommittee to the places of detention and subsequent diplomatic pressure on the country's leadership, the scale of the phenomenon decreased at a time. The problem of places of deprivation of liberty in the SSU was discussed in the media, but no decisions aimed at changing the legal field were adopted, and in fact the decision was postponed.

The problem with the CPEE (checkpoint of exit/entrance) and check-points in the combat zone in the East of Ukraine

Many other check-points and CPEEs, which not only regulate the connection between the occupied part of the Luhansk and Donetsk Regions, but also movement on all roads in the region on the territory under the control of the government, became another new place of detention, which appeared with the beginning of hostilities. Between 2014 and 2015, check-points were places where people were regularly detained and held, subjected to examination and interrogation procedures beyond any legal procedure. Reports by international and human rights organizations have repeatedly emphasized unlawful practices on check-points, which resulted in people not only being subjected to ill-treatment, but also unlawful detention, torture and even being killed. Unfortunately, none of the NPM reports paid attention to this problem, and in the course of several years it was virtually ignored by monitoring. Until now, the problem of check-points was not covered in the work of the NPM.

# MONITORING SCHEMES OF CUSTODIAL SETTINGS BEYOND NPM

The Optional Protocol contains recommendations to national preventive mechanisms to co-operate with other national agencies involved in monitoring places of detention in order to combine complementary efforts to prevent violations of human rights of persons deprived of their liberty. Collaboration with civil society groups would also be useful for national preventive mechanisms, because they are an independent and valuable source of information, and are uncompromising advocates of work for the same end as national preventive mechanisms. Therefore, even if the national preventive mechanism is established and functioning, the existence and functioning of other schemes for monitoring (visiting) the places of detention is essential for advancing the results in the area of combating torture and ill-treatment. Other visiting schemes are alternative providers of data on people in places of detention, they are providers of a different view that, in a modern society, can even balance the findings of the national preventive mechanism. It is precisely because of this that the existence and support of donor organizations of visiting places of detention is extremely important for combating torture and ill-treatment in Ukraine. For the purposes of this report, we briefly illustrate the experience of NGOs that have recently been active in visiting custodial settings.

**NGO “Ukrainian Institute for Human Rights”** conducts monitoring visits to penitentiary institutions of the State Criminal Executive Service of the Ministry of Justice of Ukraine, using the mechanism of access to such institutions through MPs and their assistants. In fact, the monitoring group consists of MPs assistants from the inter-faction association “Human Rights Coalition”. Reports on visits are published regularly on the web-site and on the organization page on Facebook.

**NGO “Kharkiv Human Rights Protection Group”** is one of the most experienced civil society human rights organizations in Ukraine,

which has been monitoring since the beginning of the 90-ies of the last century. Currently, KHRPG representatives regularly visit penitentiary institutions and publish reports on their own website. They get access to the institutions because of the fact that the monitoring groups have mandates of MPs<sup>4</sup> assistants.

**NGO “Alliance of Ukrainian Unity”** conducts monitoring visits to penitentiary institutions using certificates of assistants of MPs. It should be noted that a significant part of the visits of the organization still have an investigative component and, as a result, an appeal from MP on the situations described.

**NGO “Association of Ukrainian monitors on human rights protection in law enforcement”** within the framework of a memorandum on cooperation with the Ministry of Justice of Ukraine visits penitentiary institutions and prepares reports.

Besides non-governmental organizations, the duty to visit places of detention is in the higher authorities of those ministries and departments, which include such places. For example, the Administration of the State Criminal Execution Service of the Ministry of Justice of Ukraine created the **Penitentiary Inspection Office**, which carries out regular inspections of penitentiary institutions and verifies the observance of human rights and freedoms and, according to the results of visits, brings the perpetrators to disciplinary responsibility.

**The National Human Rights Office** has been established at the National Police of Ukraine with its representatives in all regions of the country who regularly visit the temporary detention centers as well as territorial police stations in order to monitor the observance of human rights and freedoms.

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4 According to the Law of Ukraine “About the status of the MP” and “Criminal Executive Code of Ukraine” MPs and their assistants have unrestricted access to any prison or remand prison.

As part of the General Prosecutor's Office of Ukraine, which supervises the lawfulness of pre-trial investigation, enforcement of court decisions and the serving of sentences, the **Office for the supervision of observance of laws in the execution of court decisions in criminal proceedings and other measures of compulsory nature in places of detention** was established. It is the most influential of all inspection state organizations, which has the authority to open criminal proceedings against officials involved in violations of human rights and freedoms.

As we see, in Ukraine, in addition to NPMs, alternative mechanisms for visiting detention places have been created and operate in order to control and combat torture and ill-treatment, which is a significant progress in overcoming such a shameful phenomenon as torture in places of detention.

A series of horizontal dotted lines for writing, set against a background of a map of Ukraine and faint Cyrillic text.



Пioneerское  
Новоселовка  
Новомалиново  
Новозовск  
Новолуганское  
Веселое  
Донец  
Докучаевск  
Амвросиевск  
Макеевск  
Николаевск  
Второй  
Сопино  
населенные  
Кировское  
Зеленополье  
Горловка  
Металлов  
Мичуринко  
Поволжье  
Виктор