

**“ European Union and Council of Europe working
Ombuds person’s capacity to protect human rights”**



Re-Assessment of the operational capacities and needs of the National Preventive Mechanism (NPM) of Ukraine

Prepared based on the contribution of the
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April 2020

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Abbreviations

OPCAT – Optional Protocol to the UN Convention against Torture

NPM – National Preventive Mechanism

CPT – European Committee for the Prevention of Torture

SPT – UN sub-Committee for the Prevention of Torture

APT – Association for the Prevention of Torture

NGO – Non-Governmental Organization

CSO – Civil Society Organization

UAH – Ukrainian Hryvna

DSA – Daily Subsistence Allowance

Introduction

This report is prepared in the framework of the European Union and Council of Europe joint project “EU and Council of Europe Working Together to Strengthen the Ombuds person’s Capacity Main Report document is for Human Rights” to look into the operation of the NPM of Ukraine and provide needs assessment for the future strengthening and development of the mechanism as well as assess the status of the implementation of the recommendations forming part of the previous assessment mission carried out in 2015.

In the course of this assignment, the Consultant carried out a 2-day mission to Kiev, Ukraine. In the course of the mission the Consultant met with Ms Liudmyla Denisova, the Ukrainian Parliament Commissioner for Human Rights, Ms Liudmyla Levshun, Head of the Commission Secretariat, Mr Viacheslav Petliovanyi, Representative of the Commissioner on observance of the procedural rights, Ms Olena Andriets, Head of the NPM Department, Ms Iryna Savitska, Head of the NPM Monitoring Unit, NPM Department staff members, Regional Representatives of the Commissioner and their staff members from different regions of Ukraine, public monitors and representatives of the local civil society.

The Consultant also held consultations with the Council of Europe office project team in Kyiv at the outset and end of the mission. In the course of preparing this report the Consultant analysed all available and relevant reports and other documents, including legal framework for the NPM of Ukraine.

The Consultant wishes to express sincere appreciation to all persons facilitating the mission and assisting in the preparation of this report including Council of Europe Project Managers Ms Victoria Galperina and Ms Iryna Krutova, as well as Ms Iryna Savitska, Head of the NPM Monitoring Unit of the Commissioners Office.

Executive Summary and main recommendations

As it transpires the NPM of Ukraine continues effective operation and in the course of the last few years number of positive developments took place. While few challenges remain, the NPM managed to significantly increase the number of the visits and published reports, improved analytical and follow up activities, took an active role in providing advice for the improvement of national legislation. Role of the regional offices of the Commissionaire in the work of the NPM is seriously reinforced and amount of the visits rendered by the regional teams to the places for the deprivation of liberty is also increased. Improved situation with the NPM budget merits special attention. As of 2019 the NPM is provided additional 2.6 MLN UAH to be invested in

the operational capacities of the mechanism. The NPM effectively applies methodological recommendations prepared with the assistance of the Council of Europe and benefits from the training and educational activities organised both in Kyiv and in the regions. The NPM is not any longer responsible for processing individual complaints as this competence was transferred to other division of the Commissionaire's office. The up-Work Mandf o c u s e s implementation of its recommendations and Monitoring Unit established within NPM plays a crucial role in that regard.

Main recommendations:

- **The NPM still requires additional human resources and as a matter of priority has to recruit people on the vacant posts and consider increasing the number of staff members and hiring more people for the Inspections Unit of the NPM as well as reinforcing the Medical Unit.**
- **Specialised institutions with patients requiring medical treatment as well as other places falling under the mandate of the NPM should be visited by the NPM teams which include relevant medical experts and specialists.**
- **The Regulation governing the NPM operation should be revised and preferably provide more time to the NPM teams to work on report drafts and related matters via adopting more flexible approach in the Regulation.**
- **In the future the NPM can consider slightly dropping the number of the visits and concentrating more on particular institutions and topics considered as most problematic ones under its mandate. This should allow the NPM to spend more time in the visited institutions, which require special attention and more resources.**
- **Role and activities of the Public Monitors should be revised to increase their effectiveness, independence and contribution to the work of the NPM. Public monitors should be provided with DSA when participating in the NPM work to cover their daily subsistence costs. The Commissioner might consider creating a separate post within NPM Department for a person dealing with the affairs related to public monitors, including selection process and training.**
- **Clear training strategy should be prepared based on the training needs, which should include requirements for the central office, as well as regional teams, public monitors and experts involved in the work of the NPM.**
- **Elaboration of methodological recommendations, special training courses and other training manuals should be kept as a priority and copies should be provided to all individuals involved in the NPM work.**

- **As to logistics, more means of transportation should be provided to ensure better mobility and independence of the NPM both in Kyiv and in the regions. Procurement of 2 new mini vans should solve part of the problem.**
- **Electronic database (platform) should be launched as a matter of priority providing access to relevant data and information to persons involved in the NPM work.**
- **Internal communication should be based on a clear strategy and more resources should be invested to promote systematic communication and exchange between all pillars of the NPM and other actors.**

Background

Ukraine ratified the Optional Protocol to the UN Convention against Torture and other Cruel and inhuman or Degrading Treatment or Punishment (OPCAT) on 19 September 2006.

The amendments to the Law of the Human Rights Commissioner of Ukraine, related to the National Preventive Mechanisms for the Prevention of Torture (NPM) under the Optional Protocol to the UN Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment (OPCAT), were elaborated in 2011 with the participation of the group of experts invited by the Council of Europe, composed of the consultants with the working experience in the European Committee for the Prevention of Torture (CPT), UN Sub-committee for the Prevention of Torture (SPT), Association of the Prevention of Torture (APT), National Torture Preventive mechanisms of European Countries and representatives of the Ukrainian Civil Society.

In May 2012 NPM department was formed in the Office of the Commissioner and already in July 2012 first visits to the places for the deprivation of liberty were carried out in the NPM capacity.

The package of amendments submitted to the Parliament of Ukraine by the P r e s i d e n t ' s o f U k r a i n e i w a s i n c o r p o r a t e d i n t o t h e L a w o n C o m m i s s i o n a i r e a n d p a s s e d b y t h e P a r l i a m e n t o f U k r a i n e i n N o v e m b e r 2012².

It has to be noted that the Commissioner had the mandate to visit places for the deprivation of the liberty before the adoption of the amendments. Amendments to the Law officially designated the Commissionaire as the National Preventive

Mechanism under Optional Protocol and increased the powers and the competences of the Commissionaire to carry out the work to prevent torture and all other types of ill-treatment in the places for the deprivation of liberty.

Changes made to the Law on Commissioner laid a solid foundation for the creation of the NPM in Ukraine. Following the visit to Ukraine in 2012, The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) emphasized in their letter of 18 January 2013, that the Ukrainian authorities have drawn the CPT's attention to the need for a preventive mechanism in order to fulfill their obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). "The Ukrainian authorities opted for the setting-up of an "Ombudsman" (i.e. by extending the pre-existing functions of the Parliamentary Commissioner for Human Rights to encompass the mandate of a national preventive mechanism with the involvement of civil society actors) and amended the Law on the Parliamentary Commissioner to that effect. An expert council, which includes NGO representatives, was put in place within the Secretariat of the Parliamentary Commissioner and held its first meeting in January 2013.

The term of the office of the Human Rights Commissioner Ms Valeria Lutkovska expired on 28 April 2017. On 15 March 2018, Verkhovna Rada of Ukraine elected Ms Liudmyla Denisova on the post of the Commissioner.

With the election of new Commissioner and departure of the previous one some structural changes and staff reshuffles took place in the office, partially affecting NPM as well.

It has to be noted that since designation as NPM, until 2019, the Commissioner has not received significant additional budgetary funds for the mechanism in line with the commitments of the Government of Ukraine under the OPCAT. Since the very day of its establishment NPM has largely relied on the funds provided by various donors. At the end of 2018 in the course of preparation of the State budget of Ukraine for 2019 the decision was made to provide additional financial allocations to the office of the Commissioner in the amount of 2.6 MLN UAH to be spent on the operation of the NPM. As a result, the NPM now has a separate line in the budget of the Commissioner with funds for the operational activities. This is indeed a welcome development.

In 2015, Council of Europe commissioned the assessment of the operational capacities of the NPM of Ukraine. Report was produced based on the contributions of the Council of Europe Consultant. The report included number of recommendations addressed to

the Commissioner and leadership of the NPM. More specifically following recommendations were provided in 2015:

- Continue work to achieve financial sustainability of the NPM and increase the amount of funds provided from a state budget on NPM operation;
- Make more effective use of internal and external resources (SPT/CPT) to achieve the financial sustainability of the NPM;
- Develop alternatives for the transportation and travel of NPM members through increase of the number of vehicles in the office. Procurement of additional mini vans can be considered as an option;
- Pursue further efforts to better develop internal communication within the NPM, through elaboration of precise strategy;
- Develop general communication strategy for external actors on a domestic and international level;
- Develop coherent strategy to minimize the work on individual complaints and focus more on preventive visits, follow-up visits and report writing;
- Increase the general number of visiting days;
- Significantly increase the time allocated for the visits to particular institutions;
- Strengthen the pool of public monitors and increase their ability to work independently;
- Enlarge the pool of external experts and involve them in the work of NPM
- Continue work on detailed manuals/guidelines on visits to different institutions, with a special focus on prevention and handling possible reprisals;
- Conduct a full-fledged training needs assessment for the NPM and its experts;
- Provide specialized training and integrate Commissioner' s Regional Representatives in the work of the NPM;
- Provide training to the entire staff and monitors of the NPM in different areas of NPM mandate mainly based on the outcome of the training needs assessment;
- Start working on the elaboration of the NPM Strategic Development Plan for 2015-2020;
- Re-establish the inter-agency group to facilitate the implementation of the NPM recommendations.

As it transpires, by 2020 significant number of the recommendations from the previous report was implemented and this has contributed to the strengthening and further development of the NPM in a number of directions. Specific issues will be elaborated further in this report.

NPM legal framework

In accordance with OPCAT article 19 the law should grant the NPM at least the following powers:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention, 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 legislation³.

Current Law on **the Ukrainian Parliament Commissioner for Human Rights** grants the NPM of Ukraine broad range of competences. In accordance with Article 19-1 of the Law, the Commissioner is entrusted with functions of national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

To perform the functions of the national preventive mechanism the Commissioner:

1) makes regular visits to places mentioned in paragraph 8 of Article 13 of this Law, without prior notice of the time and purpose of such visits and without limits of their quantity;

2) Interviews persons kept in places referred to in paragraph 8 of Article 13 of this Law, in order to obtain information regarding their treatment and detention conditions as well as interviews other persons who may provide such information;

3) Submits proposals to public authorities, state bodies, enterprises, institutions and organizations regardless the form of their ownership, including those referred to in paragraph 8 of Article 13 of this Law with regard to prevention of torture and other cruel, inhuman or degrading treatment or punishment;

4) Draws on a contract basis (on a monetary or free of charge basis) representatives of civil society organizations, experts, scholars and professionals, including those from abroad, to regular visits to places referred to in paragraph 8 of Article 13 of this Law;

5) Performs other duties prescribed by this Law.

³ OPCAT Art.19

Interview of persons referred to in paragraph 2 of part 2 of this Article shall be carried out in private and under conditions that preclude the possibility of wiretapping or eavesdropping. At the request of the Commissioner, if necessary, such interview can be carried out in the presence of an interpreter, a doctor, workers of institutions mentioned in paragraph 8 of Article 13 of this Law, and in case of an interview of a minor, his or her legal representative, teacher or a psychologist.

Representatives of civil society organizations, experts, scholars and professionals involved by the Commissioner on a contractual basis to perform functions of the national preventive mechanism, on the grounds of a separate written order of the Commissioner visit places mentioned in paragraph 8 of Article 13 of this Law and in compliance with requirements of part 3 of this Article may interview persons kept in such places with the view of obtaining information about treatment of those persons and their detention conditions.

Classified information, as well as confidential information obtained by the Commissioner, representatives of civil society organizations, experts, scholars and professionals engaged by the Commissioner to perform functions of the national preventive mechanism during interview of persons kept in places specified in paragraph 8 of Article 13 of this Law, is used in compliance with legislation of Ukraine on information.

At the request of the Commissioner state authorities, state bodies, enterprises, institutions and organizations regardless of form of ownership shall provide information on the number of persons kept in places specified in paragraph 8 of Article 13 of this Law, the quantity of such places and their location as well as any other information concerning the treatment of people and their detention conditions.

A separate structural unit for the prevention of torture and other cruel, inhuman or degrading treatment or punishment shall be established in the Secretariat of the Commissioner. This structural unit shall be established on the basis of the equal representation of men and women as well as national minorities. The unit shall consist of experts from various areas who possess professional qualifications.

Every year the Commissioner prepares a special report on the state of affairs in relation to prevention of torture and other cruel, inhuman or degrading treatment or punishment. This report shall be published in the media and sent to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine in compliance with the legislation of Ukraine on information.

When performing the functions of the national preventive mechanism the Commissioner cooperates with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture formed under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as with the international organizations and relevant bodies of foreign states working in this area.

Expenditures on financing the national preventive mechanism shall be provided in the State budget of Ukraine⁴.

Structure and operation of the NPM of Ukraine

Where the body designated as the NPM performs other functions in addition to those under the OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and separated budget.⁵

In the course of the last few years, despite the constant lack of financial resources the NPM of Ukraine got established as a solid and operational mechanism with the capacity to fulfill its mandate under the domestic Laws and the OPCAT.

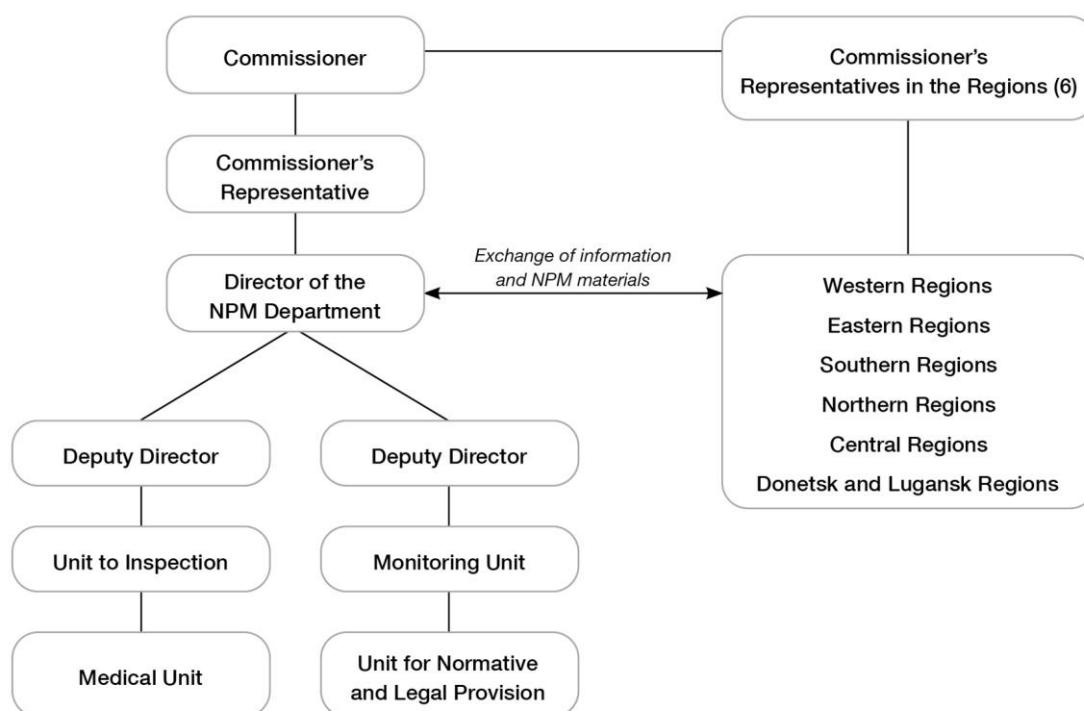
Initially the NPM Department formed within the Human Rights Office consisted of 30 staff members working in 5 divisions of the NPM. Later the NPM Department functioned with 4 divisions. Head of the Department with 3 deputies supervised the work of the mechanism and directly reported to the Commissionaire on all NPM related matters.

As mentioned above, as of 2018 some structural changes were enforced in the entire office of the Commissionaire resulting in changes of the NPM structure and mode of operation. As a result of the reform the NPM Department on the central level has a Director with 2 deputies supervising the activities of 4 separate units within the Department. Currently the Department has 21 approved posts and 2 posts remain vacant. More specifically the NPM Department has following structural entities:

- Unit for Inspection (7 staff members);
- Unit for monitoring (5 staff members, 1 vacant post);
- Medical Unit (4 staff members, 1 vacant post);
- Unit for Legal and Normative provision (4 staff members).

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As to the competences of the units within the NPM, the main role of the **Inspection Unit** is to implement visiting activities and prepare related reports. Staff members of this unit are specialized in different types of the institutions visited by the mechanism.

The **Monitoring Unit** mainly carries out analytical function via analyzing the results of all visits and ensuring proper follow-up to each NPM activity. However, the staff members of this Unit might also go on a visit. Visiting activities might form up to 30 % of their annual activities of the Unit. The unit also identifies systemic issues and proposes follow-up actions to the Commissioner.

The main task of the **Unit for Normative and Legal Provision** is to analyze newly initiated drafts of legal and normative acts as well as existing ones on their compliance with human rights standards. Draft laws and normative acts can be analyzed ex officio as well on the initiative of the Commissioner's office. Relevant conclusions prepared by the Office of the Commissioner on each and every legal act are communicated with relevant state bodies including Cabinet of the Ministers and Verkhovna Rada of Ukraine.

Unit for **Medical Provision** is tasked with looking into health provision issues in the places for deprivation of liberty as well as visits to those places. At the present time, 2/3 of all staff members of this Unit are specialised in medicine.

Overall supervision and coordination of the NPM and its operation is the responsibility of the Representative of the Commissioner supervising the operation of the Mechanism.

Other pillars directly involved in the NPM work are regional offices of the Commissioner and public monitors selected for this purpose. The NPM is also planning to increase the involvement of external experts to assist the mechanism in its work as with recent positive financial developments the NPM should be able to better attract experts and pay their work.

In 2019 around 232 individuals were selected to assist NPM and its core team in its activities. More specifically, 175 pre-selected public monitors, 25 free legal aid experts, 23 persons specialized in medicine, psychology, rights of disabled people and psychiatry, 9 experts provided by office of the UN Commissioner for Refugees were available to participate in the visits of the NPM.

Regional representatives of the Commissioner since 2014 are authorized to independently visit the places for the deprivation of the liberty Regional Offices of the Commissioner currently employ around 55 people and they are also provided with the mandate of the NPM. Regional coordinators, whose activities are funded by the UNDP can also participate in the NPM visits as all of them are certified as public monitors.

As it transpires the involvement of the regional offices of the Commissioner in the work of the NPM has been gradually increasing and in 2019 number of visits to the places for the deprivation of liberty carried out by the regional offices far exceeded the number of visits carried out by the NPM Department in Kyiv.

Reinforcement of the regional offices and their activation in the work of the NPM contributed to the expansion of the NPM activities as well as alleviating pressure on the NPM Department in Kyiv. However, shortage of human resources remains as a challenge for the NPM.

As a matter of priority all available vacant posts within NPM Department should be filled and further reinforcement of the Inspections Unit and Medical Unit should be considered. As to medical unit, recruitment of at least part time psychiatrist or of a trained psychiatric nurse and a forensic doctor should be a priority. Lack of medical specialists can be also compensated via resorting to the services of short-term experts specialized in those areas.

The Coordination Council for the Implementation of the NPM

The Council is established in accordance with the regulation approved by the Commissioner and acts as a consultative/advisory body assisting the Commissioner in the implementation of the NPM functions. Council has a rather broad mandate and among other matters is authorized to analyze systemic issues related to the prevention of torture and ill-treatment, prepare recommendations to be included in the reports of the Commissioner as well as recommendations for the state bodies to improve the situation related to the prevention of torture and ill-treatment, do investigations into the cases of torture and ill-treatment, engage in awareness raising activities, analyze international practice in the same area, analyze legislation on its compliance with OPCAT and other international documents, promote communication with the Subcommittee for the Prevention of Torture (SPT), carry out pre-selection activities for the designation of public monitors, approve the code of ethics for the monitors and in case of violations deprive the monitor of mandate, etc.

Composition of the Council is rather broad and multidisciplinary, includes representatives from the Commissioner's office, legislative and executive branches of the Government as well as prosecution service and persons responsible for the management of the places for the deprivation of liberty, representatives of the civil society and public, as well as specialists in the field of torture prevention and human rights. Council can form specialized working groups to deal with particular matters.

In 2019 the Council managed to meet at least twice, while specialized working groups formed under the auspices of the Council held 9 meetings. It is planned to gradually increase the role of the Council in the work of the NPM and follow up activities.

Financial sustainability

State Parties should make available the necessary resources for the functioning of the national preventive mechanisms.⁶ NPM should prioritise its own use of resources, on the basis of a regular analysis of its practice and experience, and in the light of its evaluation of its needs and the means necessary for it to exercise its mandate appropriately. The NPM should advocate for the provision of the resources necessary for the effective exercise of its mandate. In this process the NPM can largely benefit from the assistance of the SPT and other international and local actors supporting the operation of the NPM⁷.

As stated above one of the main impediments on the way of development of the NPM in Ukraine and enlargement of its operation and impact has been the lack of sufficient

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⁷ Analytical assessment tool of National Preventive Mechanisms (NPM), A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM, para 15.

financial and human resources. Despite minor increase of the budgetary funds in 2015 budgetary allocations remained insignificant and reliance on outside funding was very high. Considering good institutional and personal relations of the Commissioner's Office and the NPM with the donor community the NPM managed to survive and even develop further. Finally, in 2018 decision was made to provide NPM additional financial resources from the State Budget. As a result of this decision separate budget line was introduced in the budget of Commissioner's Office and NPM is provided 2.6 MLN UAH to be spent on its annual operational costs. This is indeed a welcome development, which should ensure NPMs increased financial sustainability. It goes without saying that the Commissioner should aim at further increase of the budget and continue using of external funding avenues and donor assistance. Combination of budgetary funds and donor support should provide NPM with more resources to be invested in various areas for its development and activities including training and education.

Handling of Individual Complaints by the NPM

NPM of Ukraine used to receive and process around 1700 complaints annually related to various issues falling within the mandate of the NPM. Most part of the complaints was related to the health-care issues within the penitentiary system and occupied much time of the NPM Medical Division. Since May 2019 the NPM stopped handling individual complaints and this function was transferred to Department of Procedural Rights. This significant change alleviated NPM workload and provided it with the possibility to allocate more time for the visiting and other related activities which is indeed a welcome development.

Planning and implementation of visiting activities

One of the most important areas in the operation of any NPM is proper planning capacity. The NPM should ensure that it has criteria for selection of places to be visited and also deciding on thematic visits which ensure that all places of detention are visited regularly, taking into account the type and size of institutions and their level and character of known human rights problem whilst leaving room for flexibility in the allocation of resources to ensure that follow-up and urgent visits can be undertaken. In addition, the NPM should be able to make resource planning, allocate sufficient financial and human resources for the annual plan of operations. The NPM should also make a tentative plan for the compositions of delegations used for different types of visits and secure experts needed for such visits.

As it transpires the NPM prepares a quarterly plan for the visits, while the regional offices come up with their plan and sent it to Kyiv office to avoid duplication. Ad hoc visits are approved by the Commissioner based on the requests submitted for

consideration. One of the tasks of the Commission's Representative based in the central office in charge of the NPM is to ensure coordination between regional offices and NPM Department as well as support smooth operation of the entire mechanism. The NPM Department tries to cover big institutions and render full-fledged visits to them. While the regional offices do mostly shorter and targeted visits.

It has to be noted that in the last 2 years the NPM has significantly increased the number of the visits to different parts of Ukraine and various types of institutions. Regional offices were provided with the authority to do NPM visits with local resources and this also contributed to increase of the number of the visits as well as broader coverage of different types of institutions.

Table below presents the statistical data of the visits carried out by the NPM to different types of institutions in the course of 2018 and 2019 years:

State Authority	2018	2019
Migration Service	3	6
Border Guard Service	7	6
Penitentiary Service	57	103
Court Administration	56	108
Internal Affairs Ministry	64	164
Social Affairs Ministry	103	143
Health Care Ministry	34	33
Education Ministry	40	143
Ministry of Defense	10	5
State Security Service	1	0

Total:	375	711
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Considering that some 5000 different places of detention fall under the mandate of Ukrainian NPM, number of visits rendered is impressive to say the least.

Visiting activities of the NPM are governed by the Regulation on Organization and Implementation of Visits (Regulation) approved by the Commissioner on 14 August 2019. The Regulation provides detailed guidance on planning, implementation and after visit activities for the mechanism. More specifically the Regulation address the matters related to the all types of the visits (including visits conducted by the regional offices) and their preparation, visiting activity, publication of the after visit information, preparation of the visit report, follow-up activities related to the implementation of the NPM recommendations⁸.

According to the Regulation the NPM can carry out four types of visits: planned, unplanned, targeted and follow-up. While planned visits are conducted based on plan approved by the Commissioner in advance, unplanned ones are usually based on a written, justified request by the Head of NPM Department or the Regional Representative of the Commissioner. Targeted visits are usually addressing a specific issue or a case while follow-up visits can be both planned and unplanned targeting a place visited more than 2 years ago to check the implementation of previous recommendations made by the NPM⁹.

Same Regulation establishes the rules for forming the visiting monitoring groups as well as work to be done during the visits. Head of the NPM Department is responsible for the selection of the head of the monitoring group. Designated head of the group is in charge of visit preparation including logistical arrangements. Five days prior to the visit email notifications are sent to all potential candidates to join the visit, including public monitors, regional representatives and experts. Available ones are invited to join the visit. Same regulation applies to the monitoring visits carried out by the regional offices with few specific exceptions. On a regional level, representative of the Commissioner is in charge of visit preparation and all related work¹⁰.

As it transpires most of the visiting groups are short of doctors and lack of psychiatrists is acute as well. Visits to psychiatric and social care institutions mostly take place without psychiatrists. Same applies to the visiting teams formed on the level of the

⁸ Regulations on organizing and conducting monitoring visits of the national preventive mechanism.

⁹ Ibid, Chapter 2.

¹⁰ Regulations on organizing and conducting monitoring visits of the national preventive mechanism

regions. To fill those gaps with the help of public monitors is not possible either as the shortage of doctors is an issue there as well. Doctors employed in the Medical Unit of the NPM join visits, but their capacities are also limited.

Visiting groups are as a rule formed with 2-4 people depending on the location and type of the institution. The NPM Department designates 2 members of staff and looks for public monitors available to join the group, which is not always an easy task as some public monitors are not available and do not respond on the email message sent 5 days prior to the visit. Same applies to the monitors in the regions. On a regional level, when no monitor is available, Regional Coordinator based in the same office is invited to join the visit as previously they were selected as public monitors and are allowed to visit the places for the deprivation of liberty. Most of the NPM groups try to cover visited institution maximum in 1 full working day as overnight stays are problematic especially for the places which are far from the regional centers. Public Monitors are not paid the DSA therefore they are unable to cover their living expenses while on a visit, unless they pay from their own pocket.

Transportation remains as a matter of concern both on central and regional levels. Reliance on public transport by the NPM is still very high and places which are not reachable by public transport represent a challenge. Some NPM members on a regional level use their own car to do the visits. In 2020 the office aims at procuring 2 more minibuses for the NPM. This will partly solve the problem and increase NPM mobility and efficiency. It goes without saying that whenever resources become available more vehicles should be purchased to provide more means of transportation to NPM and regional offices.

In the future the NPM can consider dropping the number of the visits and focus more on specific issues depending on identified priorities. This should allow NPM to invest more time and resources in the visits of problematic and big institutions located on a big distance from Kyiv and other regional centres.

Reporting and follow-up

Visit reports represent one of the main elements of the work of the NPM. Quality of the reports largely depends on the visits carried out and report-drafting skills of the NPM team. The reports should focus on the most important issues, i.e. reporting ill treatment, gaps in policies, regulations, and practices, as well as the appropriateness of conditions under which detainees are living, reflecting systematic lack of protection of the rights of detainees. Reports should include recommendations to the authorities for the improvement of the situation in the institutions visited. Recommendations should be well founded reflecting i.a relevant international norms and practises. In general recommendations should have a preventive focus, addressing systematic gaps and practices (root causes), and be feasible in practice. Recommendations should be

adequately addressed, precise and non-complex so as to avoid confusion in the dialogue about their implementation.

The NPM continues publishing annual reports, which as a rule forms part of the Commission's oral reports submitted to the Parliament. Up to date the NPM has published 10 special reports¹¹ covering various institutions falling under the mandate of the NPM. In 2019 the NPM published following report:

- Special report on the state of implementation of the national preventive mechanism in 2018;
- Special report on the state of observance of the right to health care and medical care in prisons and institutions of execution of sentences of the State Penitentiary Service of Ukraine in 2018;
- Special report on the state of human rights in palliative care institutions in 2018;
- Special report on the state of observance of children's rights in institutional care institutions in Ukraine following the monitoring visits of the national preventive mechanism in 2018.

The Regulation on the Organization and Implementation of Visits (Regulation) establishes clear framework for the publication of the after the visit information and general reporting procedures.

In accordance with the Regulation the group leader is responsible for summarizing the key finding from the visit to be submitted for publication to the Information and Communication Department of the Commissioner's Office. Summary should be prepared within a day following the visit¹². Summary is then uploaded to the web page of the Commissioner in the form of the press release.

As to report drafting, the Regulations introduce sample for the report (Annex 3) as well as strict deadlines for the submission of notes and delivery of the after the visit report. Participants of the visit from the NPM Department have to submit their notes from the visit to the head of the group within 2 days after the visit to the head of the monitoring group. The head of the monitoring group shall prepare the visit report within 3 days after the visit and submit the draft to the Head of the NPM Department. The term for the preparation of the report can be extended up to five days based on the complexity of the report and amount of violations revealed during the visit¹³.

¹¹ <http://www.ombudsman.gov.ua/ua/page/npm/provisions/reports/>

¹² Regulations on organizing and conducting monitoring visits of the national preventive mechanism, Chapter 4.

¹³ Ibid, Chapter 5, Article 5.4.

When visit is carried out by a regional office, head of the group has 5 days to prepare and submit the report.

All reports are analyzed by the relevant NPM Department Unit to identify systemic issues and prepare letters to be sent to relevant responsible bodies. The report can be returned back to the head of the monitoring team by the head of the relevant department for revision. When the NPM visit is done by the Regional Representation of the Commissioner, responsible person has 5 days to submit the report¹⁴.

Approved reports from the visits implemented by the NPM Department are published on the web page of the Commissioner. Based on the recent decision of the Commissioner, reports from the visits implemented by the regional offices will be uploaded to web as well.

According to the Regulation the Monitoring Unit of the NPM is responsible for the follow-up activities after the reports are published and relevant letters and recommendations communicated to the relevant authorities and entities¹⁵.

Implementation of the NPM recommendations is monitored through the exchange of correspondence with relevant authorities as well as in the course of follow-up visits which take place regularly.

Based on the interviews with the members of the NPM core team as well as representatives of the Commissioner in the Regions and their teams it is obvious that deadlines provided in the Regulation for the preparation of the visit notes and drafting of the reports should be revised.

It goes without saying that the visiting team should be provided adequate time after the visit to collect notes from all group members, analyze the information collected, collect any additional data and information required for the report and then draft the report to be submitted to the relevant supervisor.

Current terms established in the Regulation are rather strict and demanding to the extent that can negatively influence the quality of the reports as well as operational capacities of the staff members in charge.

When revising the Regulation, preferably flexible approach should be adopted, allowing the teams visiting big institutions more time for the preparation of the reports. While teams visiting small institutions like some of the ITTs, Border Guard detention facilities and other types of places with capacity below 50 inmates especially visited in the past should be able to prepare the reports within 3-7 working days.

¹⁴Ibid, Chapter 7, Article 7.3.

¹⁵ Ibid, Chapter 6.

Another criterion that can be applied is the type of the visit. For example, if it is a first time visit to the institution, then the visiting team might require more time to prepare quality report than after the follow-up visit.

If it is a full-fledged visit to cover all aspects under the NPM mandate then the visiting team might again require more time to draft proper report than from a targeted visit, where the visiting team might have to address only limited and isolated issues, such as for example situation of juveniles in the remand prison or situation with lifers in the colony, access to healthcare or rights of inmates placed in PKT, foreign prisoners or similar matters.

It goes without saying that the matter falls under full discretion of the Commissionaire when revisiting the Regulation.

Public monitors and their role in the work of NPM

As mentioned above the NPM of Ukraine is c the permanent staff of the NPM based in Kyiv as well as regional offices are supported by the public monitors, selected through an open competition. While in 2015 the NPM worked with around 100 public monitors in different regions of Ukraine by 2020 their number increased to 175.

Selection of monitors is done in Kiev based on their applications. From some regions it is difficult to get pool of adequate candidates. Some monitors met in Kyiv support the idea of delegating the competence of selecting monitors to the respective regional offices of the Commissioner rather than selecting all monitors from Kyiv. In the opinion of monitors interviewed in Kyiv, they should be provided more independence enabling them to visit places of detention independently. Training and educational opportunities should be available to monitors in the same proportion as for NPM core team and they should also benefit from special materials produced for NPM, including methodological recommendations prepared with support of the Council of Europe. The monitors admit that professionalism of some monitors leaves much to be desired and not all of them are available to join the visits when requested.

As it transpires participation of the monitors in the visits entails some challenges and entire practice requires revision. According to the information provided by the NPM Department as well as regional representatives of the Commissioner, at least 5 days prior to the NPM visit, email notification is sent to the pool of public monitors from the respective region/city requesting their participation in the upcoming visit. Information on the exact target of the visit is not provided due to confidentiality reasons. Monitors who respond first, are invited to join the planned visit. On a regional level it happens that none of the monitors is available and, in this case, regional

c o o r d i n a t o r s a r e a s k e d t o j o i n t h e N P M v i s i t background. The NPM plans to enforce the rule that the monitors unable to participate at least in 2 visits per year will not get the extension of their NPM mandate as their credentials are subject to renewal every year.

As it transpires public monitors during the visits are closely mentored by the NPM staff and regional representatives and they rarely work independently. The level of their professionalism and NPM required skills varies to a large degree and not all monitors are equally professional. Induction training provided to them after selection for few days seems to be inadequate. However, the monitors still benefit from practical training when joining visits and working with experienced NPM members.

As to logistics and financing, public monitors are not entitled to receive daily subsistence allowance (DSA), their expenditures are not subject to reimbursement either, therefore they are short of resources to pay accommodation and living costs if the NPM group has to stay in a hotel close to the monitoring target. This deprives the NPM of the possibility to stay overnight close to the institution monitored and NPM is forced to limit the monitoring just to 1 full day in order to return back to the place of residence of the group members. It has to be noted that such issues arise only when the institution is located far from the urban center.

For the future, the NPM should consider revising the approach on the role of the public monitors in the work of the NPM. Preferably, public monitors should be entitled to receive daily allowance when working for the NPM, also be provided with sufficient access to education and continuous training. Public monitors possessing sufficient skills and knowledge to work independently should be provided the possibility to work with less supervision while on a visit. The NPM should also demand notes from the visit to be of sufficient quality and up to established standard. Those standards and reporting requirements can be established separately.

To ensure better coordination and cooperation with the public monitors the Commissionaire might consider as an option to designate a staff member from the central office (NPM Department) to deal with that matter on a full-time basis. Person in charge can also participate in the selection process and have a role in the training and educational part required for the monitors.

Involvement of external experts in the work of the NPM

The NPM rarely resorted to the involvement of external experts in the visits. External experts were more often invited to train the staff and monitors of the NPM. With the expansion of the NPM activities demand for certain professionals to assist the NPM

in its work is increasing. Despite broad pool of public monitors, the NPM is still short of specialists, such as psychiatrists, forensic doctors, psychologists, etc.

It is obvious that the NPM can largely benefit from the assistance of external experts specialized in various areas of the NPM mandate. Lack of funds was one the main reasons for the rather limited involvement of the experts in the work of the NPM.

With the improvement of the NPM budgetary situation it becomes realistic to recruit experts and involve them in more visits of the NPM. Selected experts should be also invited to participate in the trainings organized for the NPM. The experts should be acquainted with the working methods of the NPM and work based on clearly provided guidelines and requirements.

Visiting methodology

To achieve high standards in the work carried out, any NPM needs proper guidelines and methodology for the operation. Guidelines should be developed and updated permanently, include all types of places that can be visited by the NPM. Guidelines should include the criteria for the selection of the places to be visited, topics to be covered during the visit, techniques to conduct a private interview, issues to focus during the visit, information to be obtained and analysed, guide on handling individual cases, guide to handle issues related to possible reprisals, follow-up, etc¹⁶.

NPM of Ukraine has made significant progress when it comes to the elaboration of the guidelines for the visits to the places of detention. If in the past the NPM would mainly apply special checklists prepared for the monitoring of different types of institutions, currently the mechanisms benefit from the application of special methodological recommendations. Those recommendations were produced with direct support of the Council of Europe. Currently the NPM has methodology for the monitoring of mental health institutions and provision of psychiatric assistance, police stations, police isolators, places of psycho-social rehabilitation of children, special boarding schools, psycho-social boarding schools, houses for elderly and residential institutions for people with disabilities. All interviewed persons involved in the NPM work emphasized on the contribution of those methodological recommendations to the quality of their work.

It goes without saying that remaining areas falling under the mandate of the NPM should be also covered by new similar methodological recommendations to be elaborated in a due course. Despite availability of those recommendations on the web

¹⁶ Analytical assessment tool of National Preventive Mechanisms (NPM), A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM ' +

page of the Commissionaire some interviewed public monitors claimed that hard copies of the methodological recommendations are not provided to the monitors.

Public monitors and external experts should also benefit from such documents as much as possible.

The NPM, with the assistance of the Council of Europe should prioritise elaboration of the methodological recommendations to cover remaining places falling under the mandate of the NPM. Adequate number of copies should be printed, and public monitors and external experts should be provided the copies of relevant publications.

Training

The work of the NPM should be understood to be an on-going, context-based process of development that is based not only on the experience of the NPM itself but also on information, advice and experience from other relevant and reliable sources. Members, staff, external experts and other possible contributors should receive on-going training on, inter alia, methodological, strategic, and ethical issues and they should participate in developing working methods¹⁷.

Since the day of establishment, the NPM of Ukraine has participated in numerous training activities organized within the framework of international projects and support from the local civil society. With the assistance of the Council of Europe and OSCE Project Coordinator Office in Ukraine the NPM staff has travelled to number of European countries to share experience with their colleagues (Denmark, Serbia, Spain, UK, Czech Republic, Turkey, Georgia, Croatia, etc).

Number of training sessions took place in Ukraine. International Experts were invited to train the NPM members in monitoring techniques, working methodology of the international bodies, interviewing techniques, application of Istanbul Protocol, right to health of persons deprived of their liberty, persons deprived of their liberty in mental health institutions and their right to health, palliative care and other important aspects of the NPM activities. Current and former members of the CPT and SPT are actively involved in the training of the NPM members. Local NGOs have taken an active role in training local public monitors involved in the NPM activities.

Despite numerous training activities implemented both with the involvement of international and local experts there is still much to be desired when it comes to the development of the professional skills and working practices of the NPM members, especially the newcomers. Large number of public monitors involved in the NPM should be taken in the account. Considering that regional representatives of the

¹⁷/Analytical assessment tool of National Preventive Mechanisms (NPM), A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM ' +

Commissioner as well as public Monitors are more and more actively involved in the implementation of the NPM mandate, provision of sufficient training is becoming a priority.

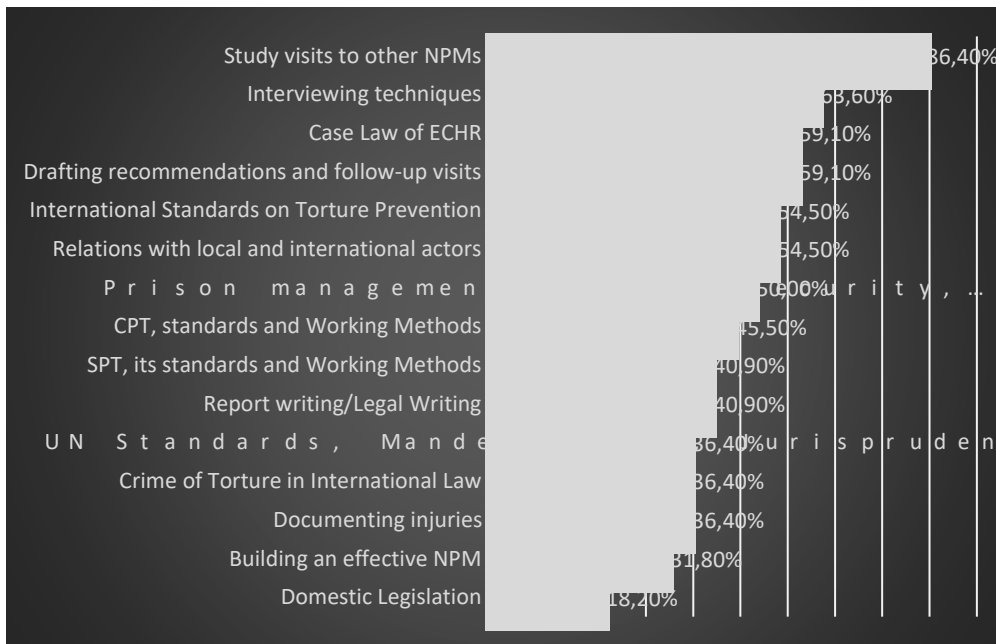
Based on the interviews we can assume that induction training of the public monitors provided by the local NGOs is inevitable but not enough. **Development of a full training course for the NPM covering all aspects of the NPM related activities should also cover training needs of the monitors as monitors involved in the work of the NPM require access to more training and educational avenues.** Participation in the visits with more experienced NPM members is also great source for training and professional development but more has to be done to improve skills of public monitors.

As it transpired most of monitors are mentored during the visits by the Commissionaire's staff members and they raise the goal should be to allow monitors to work more independently while on the visits. Provision of sufficient training should be supportive for this development.

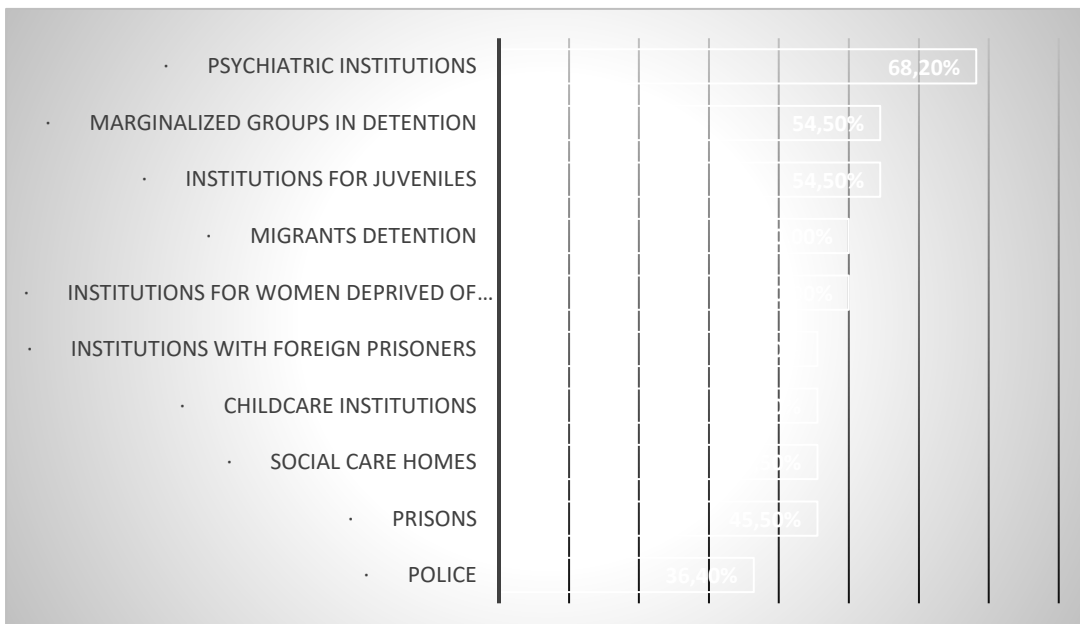
As to training needs, most of the persons working for the NPM have a clear vision on their training needs and demonstrate great commitment and desire to benefit more from such opportunities. Based on individual and group interviews as well as outcome of a special survey designed for this purpose it is clear that staff members working for the NPM demand trainings both in hard as well as soft skills. They could also largely benefit from a full training course designed for the NPM specifically.

All interviewed staff members of the Commissioner's office both from central and regional offices emphasized on the positive impact of methodological recommendations prepared with the assistance of the Council of Europe. Methodological guidelines on the monitoring of psychoneurological institutions and police detention facilities are applied in practice by the NPM teams in their daily work. Need for preparing similar methodological recommendations for the monitoring of all other types of places covered by the NPM is evident. Copies of those recommendations should be available for all persons participating in the work of the NPM, including public monitors.

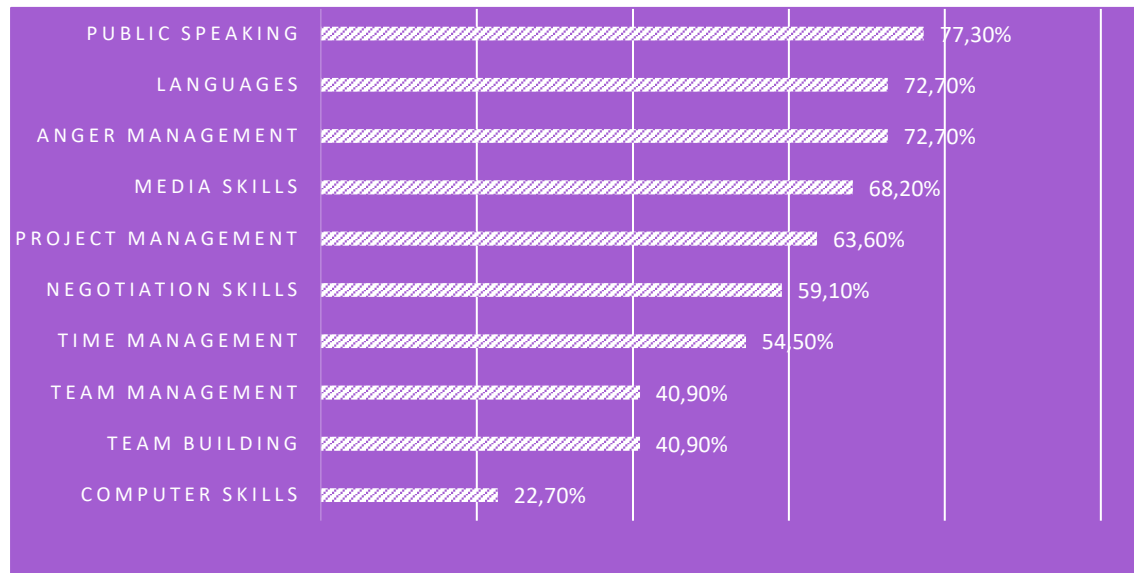
After analysing the responses on a special survey distributed to the 22 staff members of the Commissioner's office it transpired that study visits to foreign countries, interviewing techniques and training in ECHR case law, drafting of recommendations and follow-up activities and international standards on torture prevention remain as top 5 training priorities.



As to specific training areas closely related to the NPM activities, specific trainings on the monitoring of psychiatric institutions, visits to the marginalized groups in detention, places of detention for juveniles, places for the detention of migrants and women remain as top training priorities.



As to soft skills development, demand is rather high and within same survey it transpired that public speaking, foreign languages, anger management, media skills and project management are high on the list of demanded trainings.



While a lot of attention is paid to the training needs of the NPM core team and regional representatives, public monitors are mostly left with rather limited training opportunities. Newly selected public monitors benefit from induction training offered to them by the civil society organization but their options for continuous training and education remain rather limited.

Results of the survey are indicative of the training needs for the core staff of the NPM. During the interviews it transpired that both in Kyiv office and on a regional level staff is motivated to benefit from continuous education and training. Elaboration of the specific training strategy/plan for the future 5 years could assist the NPM in adopting more systemic approach regarding training and professional development of the NPM staff and other actors involved in the work of the mechanism.

Conducting separate training needs assessment for the public monitors and their inclusion in training activities to the extent possible, makes lots of sense. Better prepared monitors will contribute more to the work of the NPM and be able to work more independently.

Internal Communication

The NPM should develop a clear strategy on internal communication. Considering the structure and composition of the NPM of Ukraine, the effectiveness of the NPM will largely depend on the proper organization of communication.

Internal communication remains to be a challenge because of number of reasons, including the size of the country and number of public monitors and regional offices. Development of electronic database should largely assist the NPM in the improvement of internal communication and information sharing.

With the assistance of the donors in the past the NPM managed to organize NPM bi-annual forums and joint trainings, while trying to involve as many NPM members as possible. It goes without saying that training activities also serve as a good tool for developing internal communication while people from different units and regions get together and manage to discuss their challenges and working methods, also share experiences.

In the course of 2019, the NPM Department participated in quarterly meetings with the regional offices of the Commissionaire. Conducting such activities should be encouraged further and established as a regular practice.

With the assistance of the Council of Europe the NPM aims to hold number of trainings in 2020 covering the regions and those activities should be also used as tools for the improvement of internal communication and information sharing.

While NPM core staff in Kyiv meets weekly and discusses work related matters, regional offices also have the possibility to hold similar internal meetings. This has to be welcomed. However, such meetings cannot substitute largescale meetings to be organized at least annually, bringing all NPM actors under the same roof to discuss achievements and challenges, plans for future development, working methods and other related matters. Such activities are largely dependent on the availability of the financial resources and donor assistance should be considered as one of possible options for the organization of such activities. Such meetings can be also combined with particular training modules. Meetings on regional levels can be organized more often in the course of the reporting year.

Newly developed NPM electronic database should largely facilitate the collection, systematization and sharing of information as well as communication for all NPM members. Particular segments of the NPM will be granted full and limited access to the database. The database will include all necessary technical information; visit reports, recommendations and other data important for the work of the NPM. The NPM should consider granting access to the public monitors and external experts working for the NPM to the database.

Despite positive developments, internal communication should be enhanced and based on a strategy elaborated for this purpose. Electronic database/platform should be launched as a matter of priority.

Public Outreach

The NPM should consider forming partnerships with national and international actors in order to raise awareness of the obligations of the State Parties among decision makers and within the general public in order to encourage and facilitate change in legislation, policies of authorities, general attitudes, and conditions and practices in places of detention. NPM should also employ all tools to publicize its activities¹⁸.

After each visit, within a day, the NPM publishes press-release with brief description of main findings and recommendations for the authorities. Number of published reports is increased as well, and this trend should be maintained.

One of the good examples of the cooperation between NPM with the local civil society is the role of the local NGOs in the promotion and popularization of the NPM activities. The role of the NPM coordination Council should be fully utilized as well.

The NPM should strive to achieve as much publicity as possible to popularise its work and achievements. More effective use of social media and increasing the number of special events organised in different regions of Ukraine with the aim of discussing the existing challenges and presenting the achievements of the NPM, meetings with stakeholders and interested groups can be considered as effective tools.

Concluding remarks

It is evident that the NPM of Ukraine is making progress and despite numerous challenges managed to implement few important internal reforms, ensures broader coverage and regular visits to the places of deprivation liberty, despite economic problems in the country the NPM received additional budgetary funding. Public monitors participate in the work of the NPM and role of the regional offices in the work of the NPM is significantly increased. The NPM continues to cooperate with local and international actors, utilizing their support. The NPM still requires reinforcement of the central team, increased capacities to hire external experts, especially in the areas missing in the staff, revise internal regulations and provide NPM teams more generous time limits to work on the reports, look into the role of the public monitors and aim at increasing their contribution as well as providing them DSA when on visits, invest more resources in training and internal communication.

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Annex

List of persons met in the course of the mission:

Ms. Liudmyla Denisova, Ukrainian Parliament Commissioner for Human Rights

Ms. Liudmyla Levshun, Head of the Commissioner' Secretariat

Mr. Viacheslav Petliovanyi, Representative of the Commissioner

Ms. Olena Andriets, Head of the NPM Department

Ms. Iryna Savitska, Head of the NPM Monitoring Unit

Mr. Pavlo Lysianskyi, Representative of the Commissioner in Luhansk and Donetsk regions

Staff members of the regional offices:

Ms. Tetiana Koksharova

Ms. Liudmyla Nepyijvoda

Mr. Oleksandr Ostapenko

Mr. Petro Gryban

Ms. Liubov Sytovska

Ms. Oksana Kizaieva

Ms. Svitlana Odentsova

Public Monitors

Mr. Sergii Perykoza

Ms. Olena Borliukova

Mr. Andrii Dogdanenko

Ms. Margaryta Tarasova

Mr. Vadym Pyvovarov

Mr. Viktor Chuprov