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Regularity of OPCAT visits by NPMs in Europe

The Optional Protocol to the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is premised on the concept of prevention: that examination by independent national and international bodies of those detained and the institutions detaining them will reduce or eradicate torture, ill-treatment, cruel, inhuman or degrading treatment occurring (see de Vargas 1979; Evans and Morgan 1998; Haenni 1997; Evans and Haenni-Dale 2004; Nowak and McArthur 2008).

Article 1 of the OPCAT states:

'The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'.

In practice, the way the obligations in OPCAT have been interpreted is that it is a system of regular visits to places of detention by national preventive mechanisms (NPMs) or the UN Subcommittee on Prevention of Torture (SPT) which is the crux of the OPCAT regime.

This paper examines how NPMs in Europe¹ have interpreted the concept of 'regular' visits.

The highly respected civil society organisation operating in this area, the Association for the Prevention of Torture, (APT) notes: "Generally speaking, the more frequent and regular the visits, the more effective the monitoring programme will be as a preventive tool" (APT 2010).

As we shall see, this statement is not as simple or self-evident as it might seem.

While the OPCAT itself, the SPT's guidance and academic and practitioner literature have addressed the concepts of 'independence', 'deprivation of liberty' and 'prevention' in an OPCAT context, relatively little published material addresses the concept of 'regular' visits.

By July 2018, 38 NPMs had been designated in Europe, the largest number in any region. As will be seen below, the practice of these NPMs varies considerably, with a number of factors

¹ Defined as member states of the Council of Europe

coming into play when one is trying to identify what is regular, and the extent to which, even if one could define regularity, any NPM is fulfilling this requirement. We hope this paper will encourage existing NPMs to assess their own practice and assist newly designated NPMs to critically think through the factors that may influence the regularity of their visit programmes and the options they have for organising them.

A. Methodology

This paper draws upon desk-based research including documents of international and regional human rights treaty bodies and non-governmental organisations, as well as European NPMs themselves and a survey of NPMs in Europe.

Information provided by NPMs in their annual reports

One challenge in trying to identify the regularity and frequency of the visits undertaken by NPMs is the variability in the amount and type of information provided by them in their reports to the SPT. Some reports of NPMs give the number of places visited and the types of institutions (German NPM 2016). For example, the NPM of Bulgaria noted that it conducted inspections in 66 places (32 with prior notice and 34 without) in the period from 1 January 2015 to 31 December 2015 (Bulgarian NPM 2014), and in 2017, it inspected 61 places of which were five prisons and six prison hostels, among other facilities for youth, accommodation of foreigners, psychiatric institutions and mental health centres, and social institutions for children and adults (Bulgarian NPM 2017). However, other NPMs in their report to the SPT do not give the number of visits per year (UK NPM 2018).

2. The survey

Questionnaires were sent in English and French to 32 European NPMs that asked some simple questions about the NPM itself, the average number of adult prisons and prisoners in 2017 in the state concerned and the frequency, duration and size of prison visits undertaken by the NPM in 2017. Recipients were told that individual responses would be confidential so any reference

to a named NPM in this paper is taken from publicly available sources. To avoid confusion about the definition of terms, the survey focussed on visits to adult prisons. Eighteen out of the 38 NPMs in Europe responded and provided some detail about the frequency of visits to 155 prisons.

Care needs to be taken in interpreting the survey results. Despite our best efforts, there was some scope to understand the responses in different ways. We do not always know what visits to other types of places of deprivation of liberty an NPM undertook during the year and what effect this may have had on the resources available for their prison visits. Some respondents provided data for thematic visits which monitored a particular aspect of a prison, some did not. We did not have complete data from some NPMs that comprised more than one organisation, and therefore for some of these the frequency of visits may be higher than recorded on our survey. In almost all cases we relied on the data supplied by the NPMs themselves but in one or two we added additional information when this was not supplied by the NPM itself or corrected obvious misunderstandings where we could verify the correct information from other sources. Nevertheless, we believe the data we have collected provides a good overview of how a cross-section of NPMs in Europe have interpreted the regularity aspect of their mandate.

B. Characteristics of NPM survey responders

1. Overview

Appendix A summarises the main results of our survey concerning the characteristics of the NPM, the resources available to it and the size of the prison population and the number of prisons in the state concerned.

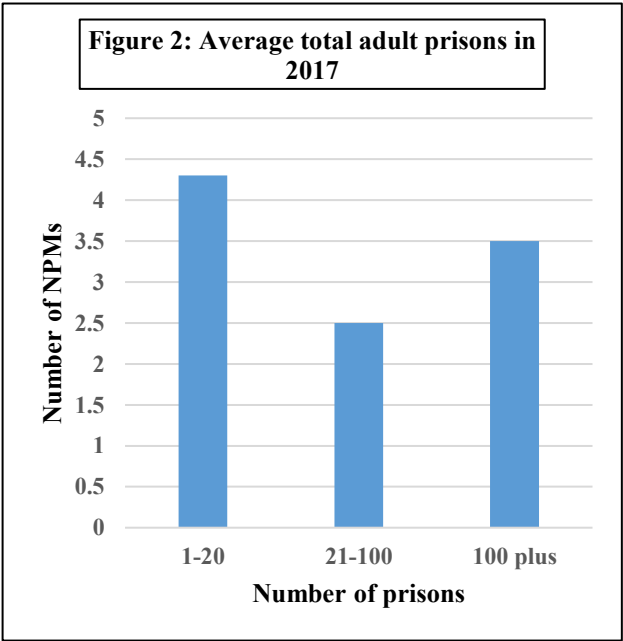
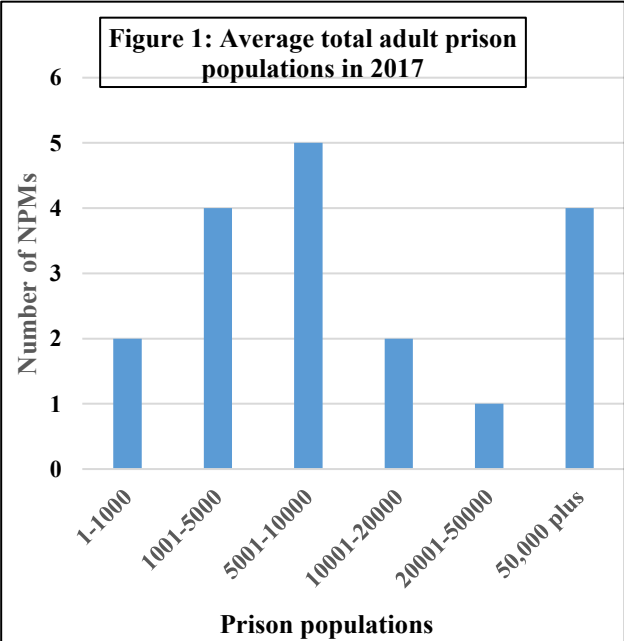
2. Location, type and year of designation

Respondents included NPMs from all parts of the region and which were designated between 2005 and 2014; ten were designated before 2010 and eight were designated in 2010 or later. We asked the NPMs to describe themselves using the typology suggested by the Association

for the Prevention of Torture (APT) (APT 2006). Three were new bodies, 11 were ombudsmen or national human rights institutions (NHRIs), three were the 'ombudsman plus' model (an ombudsman with formal co-operation from NGOs or other organisations) and one was a multi-body NPM.

3. Total average prison population and number of prisons in 2017

Average total adult prison populations in 2017 (Figure 1) ranged in size from c.600 to over 85000 in between 1 and c.300 prisons (Figure 2).



C. OPCAT requirements and the SPT practice

The preamble in OPCAT, reminds us that

the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention.

As set out above, this is then underscored by Article 1 which details the objective of OPCAT.

This provision mentions ‘regular visits by international and national’ bodies, and subsequent articles explicitly reiterate the regularity of SPT visits (Article 13(1)), but not those of NPMs.

Given how infrequently the SPT visits a state, this appears surprising until one considers the

context in which the OPCAT was drafted and its initial focus being on an international body undertaking visits, with the idea of national bodies being proposed later in the drafting as a way of overcoming an impasse by those States reluctant to permit an international body onto their territory (Murray, Steinerte, Evans and Hallo de Wolf, 2011). In reality, the SPT has undertaken a number of different types of visits (SPT, <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>) but given that the states parties to the OPCAT are now 88 and the number of (part time) members of the SPT are only 25, it is unlikely that a state, let alone every place of detention within it, is going to be receiving visits from the international body for several years. The SPT undertook just ten official visits in 2017 lasting between six and 12 days and these visits may include every type of place of deprivation of liberty and so the chances of a return to any individual institution are very small (Office of the High Commissioner for Human Rights, tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f63%2f4&Lang=en). Indeed, as early as its second year the SPT recognised that it had already needed to reduce the number of visits it would be able to carry out and ‘wishes to state categorically that it does not consider this periodicity of regular visits adequate to fulfil its mandate under the OPCAT’ (SPT 2009).

The presumptions on which the requirement for regular visits (however defined are based have their origins in the practice of the regional visiting mechanism, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (Murray, Steinerte, Evans and Hallo de Wolf, 2011). The CPT does at least have the ability to return to individual states, if not places of deprivation of liberty, on a reasonably frequent basis and this experience was drawn on in the drafting of the OPCAT. The capacity of NPMs to visit individual places of deprivation of liberty more regularly than the SPT or CPT has implications for the methodology that underpins those visits. The practical experience of both the SPT and

CPT is likely to have had considerable influence on the early guidance issued to NPMs - but that may not reflect the greater capacity of most NPMs to make much more regular visits. For example, an understandable preoccupation of the SPT is how to follow up its visits and check progress on the implementation of its recommendations (The Future Direction of the Subcommittee on Prevention of Torture, 2017) and this is reflected in its guidance to NPMs discussed below. The capacity of most NPMs to make regular visits to the same place of deprivation of liberty however, means they can take very different approaches to this issue. For example, our anecdotal experience in the UK is that the inevitability of a return visit and public report means most impact arises from what a place of deprivation of liberty does in *advance* of an unannounced visit to meet the appropriate standards and ensure a positive report rather than from recommendations for improvement made *after* a visit. We are not aware of any literature that explores in-depth how the preventive impact of NPM visits can be enhanced or otherwise by their ability to return to and report on a place of deprivation of liberty time and time again. This paper does not answer that question but we hope it will suggest avenues for further research into how the preventive potential of NPMs can be fully realised.

D. Defining and understanding 'regular'

1. Definitions and interpretations

Definitions of 'regular' in the Oxford English Dictionary (www.oed.com) include but are not limited to:

- Arranged in or constituting a constant or definite pattern, especially with the same space between individual instances.
- Recurring at uniform intervals.
- Done or happening frequently.
- Conforming to or governed by an accepted standard of procedure or convention.

Elements of all these definitions appear to be reflected in how the OPCAT and NPMs have interpreted the term. Article 13 (4) of the OPCAT distinguishes between 'regular' and 'follow

up' visits for instance, noting "If the Subcommittee on Prevention considers it appropriate, it may propose a short follow- up visit after a regular visit."

'Regular' was cited in the reports but often by simply repeating what OPCAT and the SPT have said is required. Some equate regularity with frequency, for example, the Polish NPM noting that as Poland has '2600 places of detention...and that the NPM visiting team is currently composed of 10 persons, despite their high commitment the Commissioner for Human Rights is, unfortunately, unable to guarantee compliance with the minimum international standards of frequency of preventive visits' (Polish Commissioner for Human Rights 2017).

2. *Types of NPM visit*

Perhaps most crucially for our analysis is that NPMs, may undertake different types of visits which they label in ways which are not necessarily comparable. The NPM of Serbia distinguishes between 'regular, 'control' and 'emergency' visits for example (NPM of Serbia 2012). The Czech Republic NPM makes 'systematic visits' as well as 'regular monitoring'; it therefore conducted: 22 'systematic visits' in 2016 of which two were to prisons (Czech Public Defender of Human Rights 2016):

The team of the Defender performed 22 systematic visits – both as part of a focus series as well as regular monitoring. The objective of nine of the visits was to more deeply examine the standard of treatment in facilities for children requiring immediate assistance, two visits focused on the execution of protective treatment in a prison. Regular monitoring was carried out in police and foreigners' facilities, social service facility and facility for institutional and protective education. The repeated visit to a hospital for long-term patients focused on monitoring the implementation of the previous recommendations. The facilities for children requiring immediate assistance were visited within a single project (9 visits). They were performed by a special team of lawyers and external experts. The lawyers did an internship in facilities with good practice beforehand, while the Office prepared training for the experts regarding the methodology of visits and prevention of ill-treatment. The Defender will present the findings from the visits along with the recommendations in a summary report in 2017.

Similarly, Slovenia cites 'regular visits', 'control visits', and 'thematic visits' (Slovenian NPM 2017); In Montenegro, these are: 'regular', 'follow-up', 'emergency' and 'thematic' (Protector

of Human Rights and Freedoms of Montenegro 2017). The Albanian Ombudsman labels its visits as: ‘re-inspections’, ‘special thematic checks’ and ‘administrative inspections’ (Albanian Ombudsman Office 2015). For example:

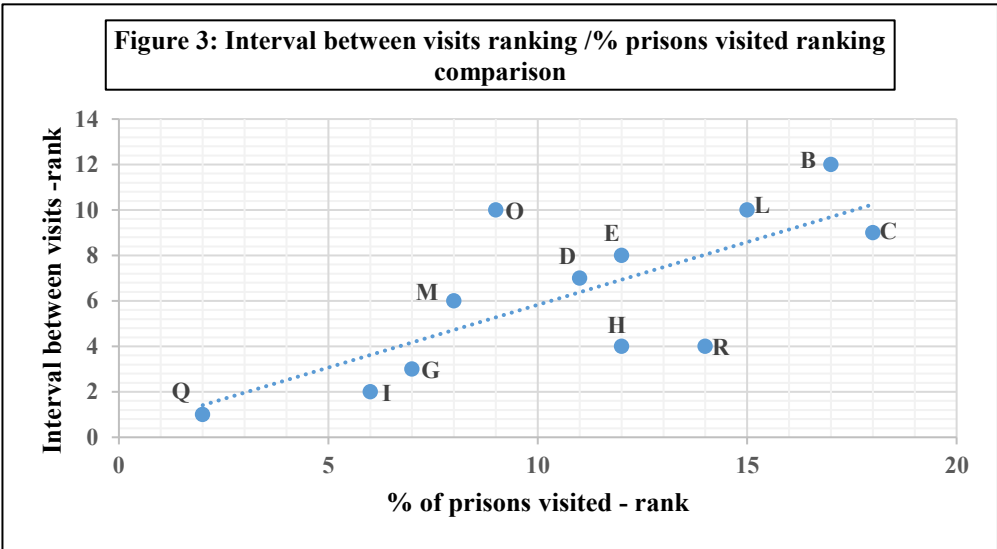
During 2015, the Ombudsman in its role as the National Preventive Mechanism for Torture Prevention conducted 130 visits, out of which 83 monitoring visits performed on the basis of the approved plan of inspections for the year 2015, and 47 re-inspections, special thematic checks and administrative investigations, to all institutions where individual’s freedom is deprived or may be deprived, including penitentiary institutions, police stations, psychiatric hospitals, military bases containing security rooms, centres handling foreigners, asylum seekers and victims of trafficking, and border crossing points and premises where temporary migrant handling had been anticipated.

Other NPMs have different categories, with the Lithuanian Seimas Ombudsman Office, for instance, conducting ‘questionnaire-based inspections’, ‘in-depth inspections’, ‘thematic inspections’ and ‘follow-up visits’ (Lithuanian Seimas Ombudsman Office 2016).

3. Visit frequency and proportion of prisons visited

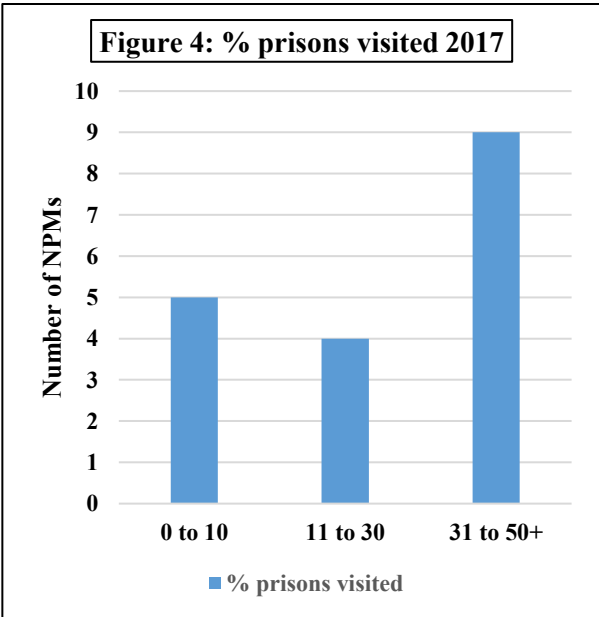
In this paper however, we have taken 'regular' to refer to the frequency of visits or the intervals between them, the most usual sense of the word within the OPCAT and the other material we have examined while recognising this covers many different types of visit. 65% of the 155 visits included in our survey responses were described by the NPM as 'regular' visits and in our survey analysis we have usually attempted to smooth out some of these differences by averaging the data from the individual visits undertaken by one NPM.

In our survey we used two basic measures to indicate the regularity of NPMs' visits. First, the number of



adult prisons visited by the NPM in 2017 as a proportion of the total number of such prisons in the jurisdiction concerned. Second, the average interval between each visit in 2017 and up to the three previous visits to the same prison. Figure 3 ranks the regularity of visits undertaken by each NPM (identified from A to R) indicated by both these measures. As expected, overall there is a correlation between the proportion of visits undertaken in 2017 and the intervals between visits. Those NPMs that visited the greatest proportion of the total number of prisons in 2017 also tended to have the shortest intervals between visits.

We had data on the proportion of prisons visited in 2017 for every NPM that responded but as some of the visits undertaken were the first to the prison concerned we did not have data on the frequency of visits for every NPM. We have therefore used the percentage of prisons visited in 2017 as the best and widest measure of the regularity of NPM



visits and we have grouped the results in three categories shown in Figure 4.

E. Factors determining regularity

1. SPT and other guidance

In a context where the SPT is unable to fulfil its own mandate to conduct regular visits, the objective of the OPCAT to prevent torture and ill-treatment is heavily dependent on NPMs ensuring the regularity of their own visits however that is precisely defined. In the articles relating to the functions and powers of the NPM, the regularity of visits is not expressly mentioned. Instead the focus is on the ‘regular examin[ation]’ of the treatment of detainees through visits, with Article 19(a) reading: ‘The national preventive mechanisms shall be granted at a minimum the power: (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention’.

Similarly, the NPM Guidelines produced by the SPT do not prescribe a set frequency, leaving it to the discretion of the particular NPM with the requirement that it maintain its focus on prevention (SPT 2010):

The State should ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty, in accordance with the provisions of the Optional Protocol.

And further:

The NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment.

The SPT also identifies a range of factors which should be taken into account by the NPM when assessing the frequency of its visits (SPT 2016):

The mechanism should ensure that it has criteria for selecting the places to be visited and for deciding on thematic visits that ensure that all places of detention are visited regularly, taking into account the type and size of institutions, their security level and the nature of known human rights problems, while leaving room for flexibility in the allocation

of resources to ensure that follow-up and urgent visits can be undertaken. Such criteria should be transparent, clear and published.

Furthermore, such assessment of what is an appropriate level of frequency ideally should also need to address the requirement that the NPM, according to the SPT's Analytical Assessment Tool, that it:

regularly verify the implementation of recommendations, primarily through follow-up visits to problematic institutions, but also based on relevant information from, among others, human rights bodies, governmental institutions and civil society. In order to facilitate effective follow-up, the mechanism should put in place a follow-up strategy that is clear and impact-oriented and develop the practices and tools necessary to implement the strategy

This means a 'regular appraisal' by the NPM and the State as to the NPM's effectiveness (SPT 2010).

Advice from APT, on the one hand, is not prescriptive. In addition to encouraging 'frequent and regular' visits as noted above, it stresses the 'repetition' as 'an essential element of any effective preventive system', with repeat visits to a particular place of detention, and the 'degree of frequency', as determined by the NPM, being such as to ensure that they are 'truly preventive' (APT 2010). Recognising that the OPCAT does not explain what the frequency should be, it suggests further factors that NPMs should employ to 'tailor their programme of preventive monitoring to meet the challenges of the national context' (APT 2010). Therefore, it recommends that NPMs should 'define a certain minimum frequency for visiting each place of detention' (APT 2010), listing the following to assist (APT 2004):

- the type of place of detention;
- pre-trial detention facilities such as police stations should generally be visited more frequently than penal establishments because: interrogations are held there; detainees' contacts with the outside world are limited; there is a rapid turnover of detainees;
- the risks – known or presumed – to which persons deprived of their liberty are exposed, or any protection related problems noted;

- the balance to be struck, over time, between the needs of the visiting body and the needs of the officials in charge in order to carry out their work. Frequently repeated routine visits can, in the long run, be counterproductive if they disrupt the work of the staff without valid reason.

The frequency of visits also largely depends on the gravity of the protection problems encountered. In cases where the visiting mechanism fears that reprisals might be taken against the detainees who talked to them, it is important to carry out a follow-up visit without delay and to meet the same detainees visited previously.

However, in other publications, it has proposed that NPMs, for example with respect to police stations (APT 2006):

as a strict minimum, conduct one in-depth visit per year, with ad-hoc visits in between, to each police station with known problems, while at the same time carrying out in-depth and ad-hoc visits to other randomly selected police stations during the course of the year.

Further,

[p]laces of detention with high concentrations of especially vulnerable categories of detainee should also receive an in-depth visit at least once a year (again with the possibility of ad-hoc visits in between).

This ‘once a year’ approach has been considered a yardstick by some NPMs (Polish Commissioner for Human Rights 2017).

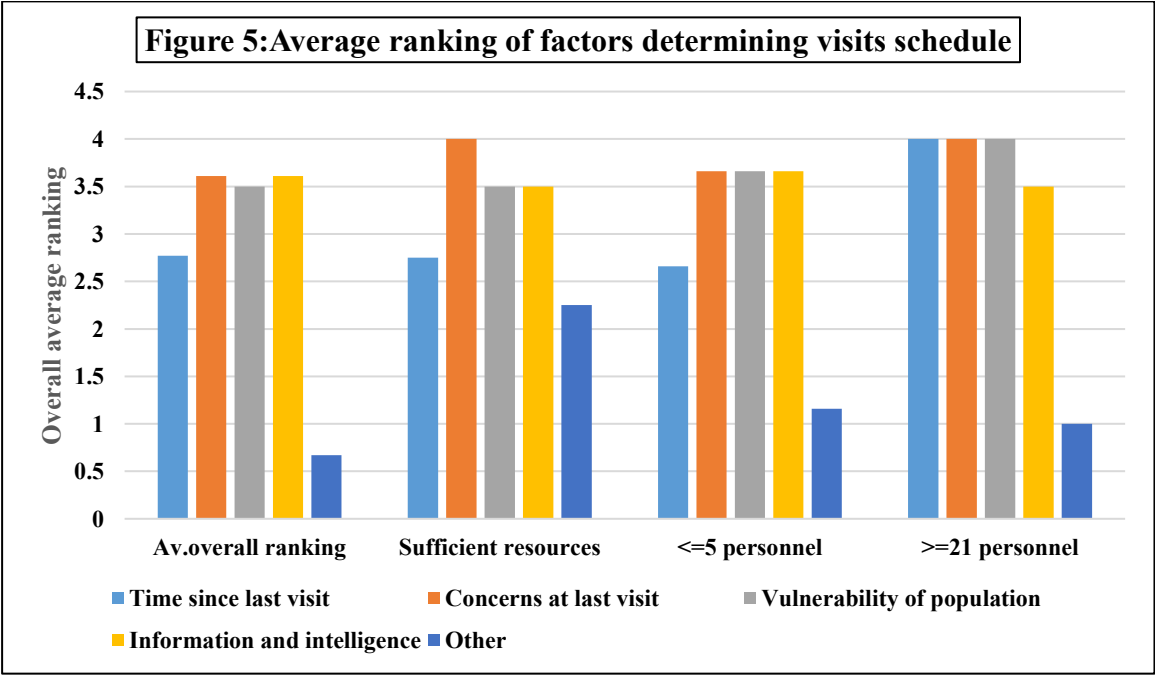
2. *NPMs criteria determining the regularity of visits*

We asked NPMs whether they had a policy setting out the minimum and a maximum frequency of their visits and whether it was published. We also asked them to rank the factors they used in deciding the regularity of their visits.

Six NPMs told us they had an explicit policy that set out the maximum and minimum periods between visits; twelve did not. The intervals between visits for those who had a policy were:

- Two years or less (n.1)
- More than one but less than two years (n.2)
- Less than four years (n.1)
- Less than five more than three years (n.1)
- Less than five years and more than eighteen months (n.1)

Figure 5 sets out how the average ranking that respondents as a whole gave to the factors that determined their visits schedule with 'five' being the highest and 'one' the lowest. Overall, the time since the last visit was the least important factor. We compared this with the results from respondents who said they had sufficient resources and those with the least (<=5) or most (>=21) personnel. It was noteworthy that NPMs which considered they had sufficient resources ranked concerns from the last visit more highly than other NPMs - perhaps indicating their greater capacity to undertake follow-up visits. The largest NPMs ranked the time since the last visit more equally with other factors than other respondents, which may reflect their capacity to operate a more comprehensive visits programme.



The annual reports and individual survey responses of NPMs elaborate the factors used to determine the regularity of their visits described above.

As accepted by OPCAT and the SPT, the criteria NPMs apply to decide which institutions to visit in any one year and the frequency with which they do so vary from NPM to NPM. For

example, it may be based on themes, rather than regularity/frequency (Danish Parliamentary Ombudsman 2014).

It therefore becomes difficult to compare ‘regularity’ of visits as visits may differ in their purpose. As noted by the Danish NPM (Danish Parliamentary Ombudsman 2014):

In the case of monitoring visits to the facilities of the Prison and Probation Service, where all facilities have been inspected before, the monitoring visit may proceed in a different (more limited) fashion. For example, inspection of the buildings may only be included if interviews or general information give cause to do so.

One respondent to our survey noted that it was "impossible to rank" the factors in order of importance, as all were taken into account.

Further, in Estonia (Chancellor of Justice 2015):

The Chancellor inspects places of detention regularly. The choice of institutions to be inspected and the frequency of inspections is based on certain criteria, such as the nature of an institution, the number of persons detained, how often detained persons change in the institution, the risk of ill-treatment. The Chancellor tries to visit each place of detention at least once every three years. Inspection visits may be either announced or unannounced, take place during the day or at night, on weekdays or weekends. If necessary, the Chancellor involves experts from different fields (e.g. general practitioners, psychiatrists) or persons with personal situational experience (e.g. a wheelchair user) in the inspection visits, or carry out the inspections in cooperation with a national supervisory authority (e.g. the State Agency of Medicines, the Social Insurance Board, the Rescue Board).

For the Slovenian NPM, its system (Slovenian NPM 2017):

is particularly based on *regular visits* to places of deprivation of liberty. These are preventive visits, the purpose of which is to prevent torture or other ill-treatment before it occurs. In addition to the Sub-Committee on Prevention against Torture (SPT) established by the United Nations, the Optional Protocol introduces the so-called NPM, whose task is to regularly visit all, or any, places where persons are or could be accommodated where deprivation of liberty is suspected.

3. Additional factors

The extent to which an NPM will be able to visit all places of detention within the jurisdiction will depend on the geographical spread of the detention facilities. As the Finnish NPM noted with respect to its visits in 2016 (Finnish NPM 2016):

Finland is one of the most sparsely inhabited country in Europe. Population distribution is very uneven. Most of the population and the places where persons are deprived of their liberty are concentrated on the southern and western part of Finland.

The breadth of types of institution to be visited, as well as the number on the inspection teams are also other issues that impact on frequency of visits and are illustrated by the Swedish NPM (Swedish Parliamentary Ombudsman 2017):

The composition of the inspection team has varied and was mainly dependent on the visited institution's size, target group and possible security classification. For example, child and youth psychiatric services in Stockholm were inspected over five days, which included one weekend. It is valuable that inspections take place during every day of the week.

F. The type and designation of the NPM

1. The relationship between complaints and OPCAT visits and the broader mandate

Many of the bodies that have been designated as NPMs were already undertaking visits prior to their designation. In addition, many also have mandates which extend beyond that of OPCAT. This has several implications for the regularity of visits.

Firstly, the relationship between complaints mechanisms, where the NPM has this remit, and the visits and broader work undertaken in response to those also makes it difficult to identify 'regularity'. As was noted by the Republic of Croatia Ombudsman (Republic of Croatia Ombudsman 2016):

In 2016 we worked on 497 cases and conducted 32 visits. In 2016, we received 158 complaints, carried out 40 investigative procedures in the field and visited eight penal institutions. ...In 2016, we received 18 complaints pertaining to involuntary hospitalization, conducted two investigative procedures in the field and visited four healthcare institutions that offer psychiatric treatment.

Secondly, there is also a question of whether an NPM may visit prisons or other places of detention but this may not be considered to be part of its OPCAT mandate. So, for example, the Danish NPM publishes in its monitoring report visits which it splits into several categories, including 'general monitoring' and 'OPCAT monitoring', as well as some thematic ones

(Danish Parliamentary Ombudsman (2014)). Related to this, therefore, some NPMs distinguish between ‘OPCAT’ functions and non-OPCAT visits. For example, the Finnish NPM’s report notes that (Finnish NPM 2017):

During 2015, the NPM’s first full year of operation, the Office conducted a total of 152 visits, of which 82 within the NPM mandate. A clear majority of these were carried out unannounced. Visits conducted outside the mandate of the NPM may concern facilities that closely resemble the places visited in the role of the NPM (e.g. certain residential units for the elderly and reception centres for asylum seekers).

Similarly Sweden (Swedish Parliamentary Ombudsman 2017):

The number of inspections during the fiscal year amounted to a total of 18 within my areas of responsibility, of which 11 were within the scope of the Parliamentary Ombudsmen’s mission as the national preventive mechanism according to the optional protocol OPCAT to the UN Convention against Torture. I have personally conducted three ordinary inspections and two together with the OPCAT unit. Another four inspections were conducted by a delegated head of division and nine by the OPCAT unit. One visit to an authority was conducted during the year.²

The UK NPM is a multi-body NPM. In England and Wales for instance, the NPM includes the prison inspectorate (HM Inspectorate of Prisons (HMIP)), the health regulator (The Care Quality Commission (CQC)) and the schools and training inspectorate (Ofsted). In addition, personnel from the Probation Inspectorate, which is not part of the NPM, may also join the visit team. Personnel from all these bodies combine to make joint visit to adult prisons with more than 20 personnel contributing at some point to a recent visit to HMP Wandsworth, a large prison in south London that held nearly 1,500 men (Her Majesty’s Chief Inspector of Prisons 2018). They all contribute to one main report but the CQC and Ofsted will produce their own specialist reports in addition. It is arguable that the role of some of the personnel on a visit such as this extends beyond the OPCAT mandate.

² See also ‘Statistics’ on p.67, which categorises inspections undertaken in 2016 2017 as ‘Regular inspections’ and ‘OPCAT inspections’.

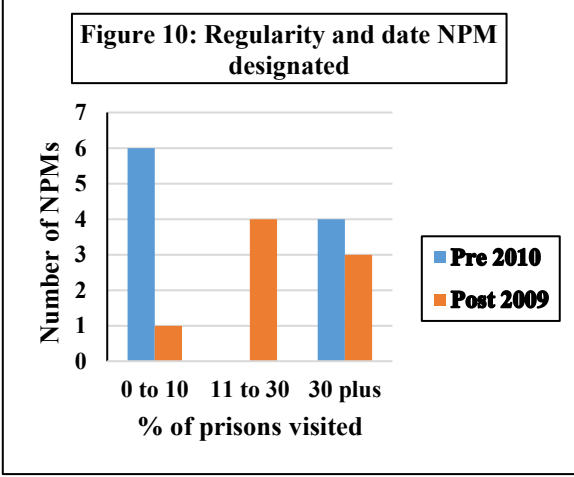
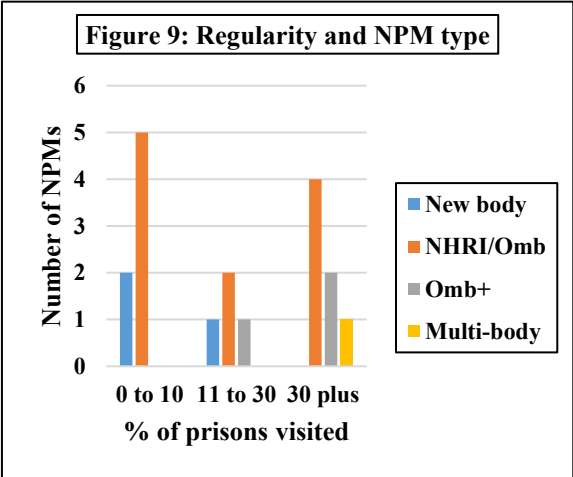
2. Increases or decreases in the number of visits year-on-year

An NPM may increase its visiting to particular institutions or types of institutions year on year. For example, the Finnish NPM notes that (Finnish NPM 2016):

The role of an NPM requires conducting regular visits. The Office of the Parliamentary Ombudsman has made a conscious effort to increase the number of visits carried out. In 2014, the Office carried out a total of 111 visits, which was nearly 25 per cent more than in the year before.

In some instances NPMs have mentioned this in their reports, as Denmark did having increased its ‘annual monitoring visits to prisons, psychiatric wards and other institutions’ from 50 to 60 (Danish Parliamentary Ombudsman 2016); and the Ombudsman in Croatia recording a 227% increase to various detention facilities compared to the previous year (Republic of Croatia Ombudsman 2016).

In our survey we examined whether there was a link between the regularity of visits and the type of NPM or how long the NPM has been designated as shown in Figures 9 and 10.



It is not possible to draw firm conclusions from a small sample but these results suggest that NPMs designated before 2010 tend to make less regular visits to prisons than those designated at a later date although, as illustrated in Appendix A, we did not find evidence of significant differences in the resources available to NPMs according to when they were designated. It

appears that NPMs made up of more than one body (Ombudsman plus NPMs and multi-body NPMs) tended to carry out more regular visits than single body NPMs and again we did not find indications that this was a product of the resources available to them.

G. Resources and how they are applied

1. Resources

The regularity of visits undertaken by NPMs will reflect how the NPM itself determines priorities and the constraints under which it operates. Clearly the resources available are likely to be a significant determinant of the regularity of an NPM's visits. We used what NPMs told us was the average total full-time-equivalent number of personnel available to them for visits throughout 2017 as a proxy for the resources they had available as we felt this was the best basis for comparison between NPMs. We asked NPMs to include members, full and part-time staff, experts and personnel from civil society and other organisations in their response to this question. We used the average total number of prisons in the state concerned in 2017 as the key variable against which the resources available for regular visits could be compared. We also asked NPMs whether they would make more visits if they had more resources available. In Table 1 below we compare responses to these questions.

Table 1

NPM capacity 2017														
		F.T.E personnel				Av. total adult prisons			% prisons visited			Wish to do more		
		<=5	6-20	21-50	>50	1-20	21-100	100+	0-10	11-30	30+	Yes	No	
<i>TOTAL</i>		6	9	2	1	7	6	5	7	4	7	14	4	
f.t.e personnel	<=5	6				2	3	1	3	1	2	5	1	
	6-20	9				4	3	2	4	2	3	7	2	
	21-50	2				1	0	1	0	1	1	1	1	
	>50	1				0	0	1	0	0	1	1	0	
Av total adult prisons	1-20	7	2	4	1	0			1	1	5	6	1	
	21-100	6	3	3	0	0			3	2	1	5	1	
	100+	5	1	2	1	1			3	1	1	3	2	
% of prisons visited	0-10	7	3	4	0	0	1	3	3			5	2	
	11-30	4	1	2	1	0	1	2	1			3	1	
	30+	7	2	3	1	1	5	1	1			6	1	

Wish to do more	Yes	14	5	7	1	1	6	5	3	5	3	6		
	No	4	1	2	1	0	1	1	2	2	1	1		

Perhaps surprisingly, there do not appear to be any striking correlations between the NPM's resources, the number of prisons or the percentage of those visited in 2017. On the whole, NPMs with 20 or less personnel are slightly more likely to be found in states with 100 or less prisons (five NPMs in 13 states) than in states with more than 100 prisons (one NPM in five states). Similarly, smaller NPMs tend to visit a lower proportion of prisons. It is striking that two of the four NPMs that would not wish to do more visits if more resources were available visited 10% or less of the total number of prisons in 2017. In one case this can be explained by the very small number of prisons in the state concerned but the other was in a state with one of the largest numbers of prisons in our sample.

2. *Depth and length of visits*

A further factor that may impact on understanding frequency and regularity is the length of time taken on inspections which as the Finnish NPM notes, "the quality of visits remains high because that has an impact on their effectiveness" (Finnish NPM 2016). NPMs can spend varying amounts of time on each visit. The French CGLPL for example, in 2016, undertook 146 visits each lasting three days, which according to their calculations resulted in 456 days of direct contact with those deprived of their liberty and staff responsible for them (CGLPL 2016). Simply looking at headline figures of the number of visits per year may not be particularly helpful, therefore, in determining the depth of each of those visits. As a member of the Norwegian NPM has said, it is important to go 'long and deep' with a focus on quality not quantity and 'go deep to reach wide' (Ervik 2017). Nevertheless the Norwegian NPM still considers 'regular' visits to be a key competent of its work 'but other work methods are also emphasised', including a 'continuous dialogue' with different levels of authority, and with the length of visit lasting between one to four days (Norwegian Parliamentary Ombudsman 2017).

On the other hand, Prison 'C' in Table 3 below, told us they made 21 visits in 2017 despite there being only 13 prisons in the state concerned. This was because they returned to some prisons on more than one occasion as part of 'thematic' visits. In our analysis of the survey results we estimated the resources used in each visit by multiplying the average number of personnel participating in a visit by the number of days the visit lasted. We expressed this as 'personnel days'. This can then be compared with the percentage of prisons visited as set out in Table 3 and Figures 7³ and frequency of its visits in Figure 8⁴ below.

Table 3

	NPM																	
	A	P	Q	N	F	I	G	M	O	K	D	E	H	R	L	J	B	C
% prisons visited in 2017	0	2	2	3	7	8	9	12	17	22	30	33	33	37	38	50	100	162
Rank	1	2	2	4	5	6	7	8	9	10	11	12	12	14	15	16	17	18
Av. interval between visits (months)	-	-	71	-	-	57	43	28	14	-	26	24	30	30	14	-	12	20
Rank			1			2	3	6	10		7	8	4	4	2		11	9
Av. Personnel day/visit	-	3.8	7.2	10	26.64		16.71	2.34	19.01	4	22.18	15	18	68.42	5.64	27.36	236	9.56
		1	5	7	13		9	2	11	3	12	8	10	15	4	14	16	6

³ NPM 'I' is not included in Figure 7 because its survey response did not include information about the length of its visits. NPMs A, B, and C are outliers that are not included in Figure 7 to avoid distorting the graph's scale.

⁴ Figure 8 only includes those NPMs that provided data on the length of time between visits in 2017 and previous visits. Where this data was not available it was because 2017 was the first visit to the prison concerned or the NPM did not provide it in its survey response.

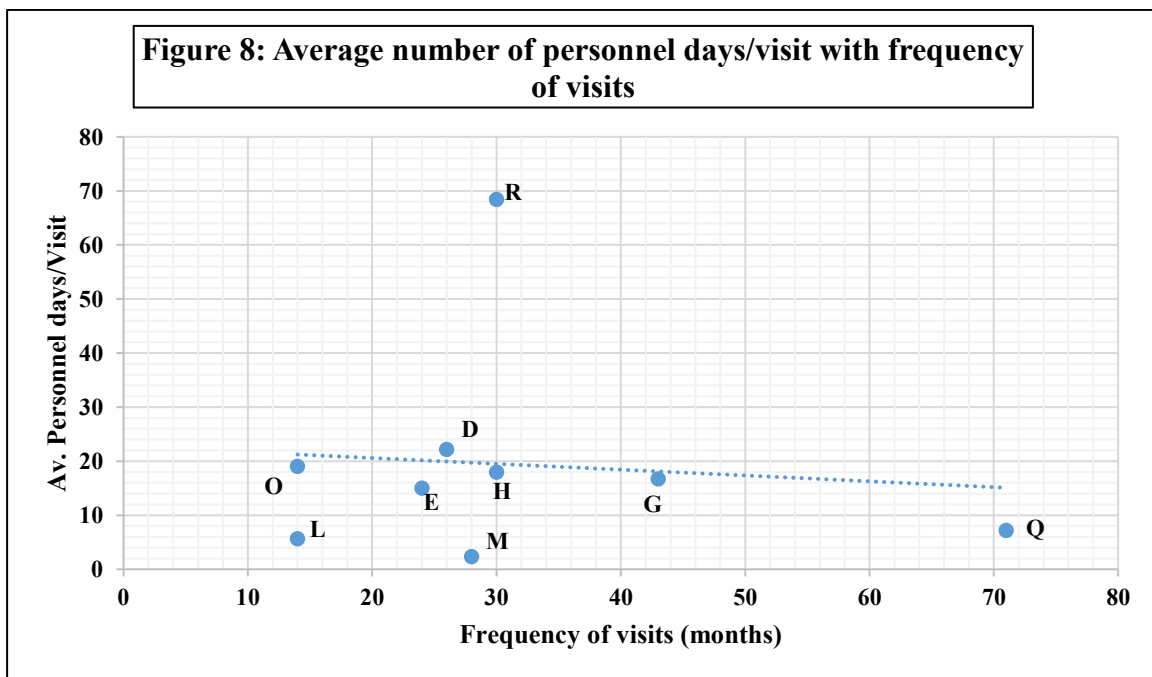
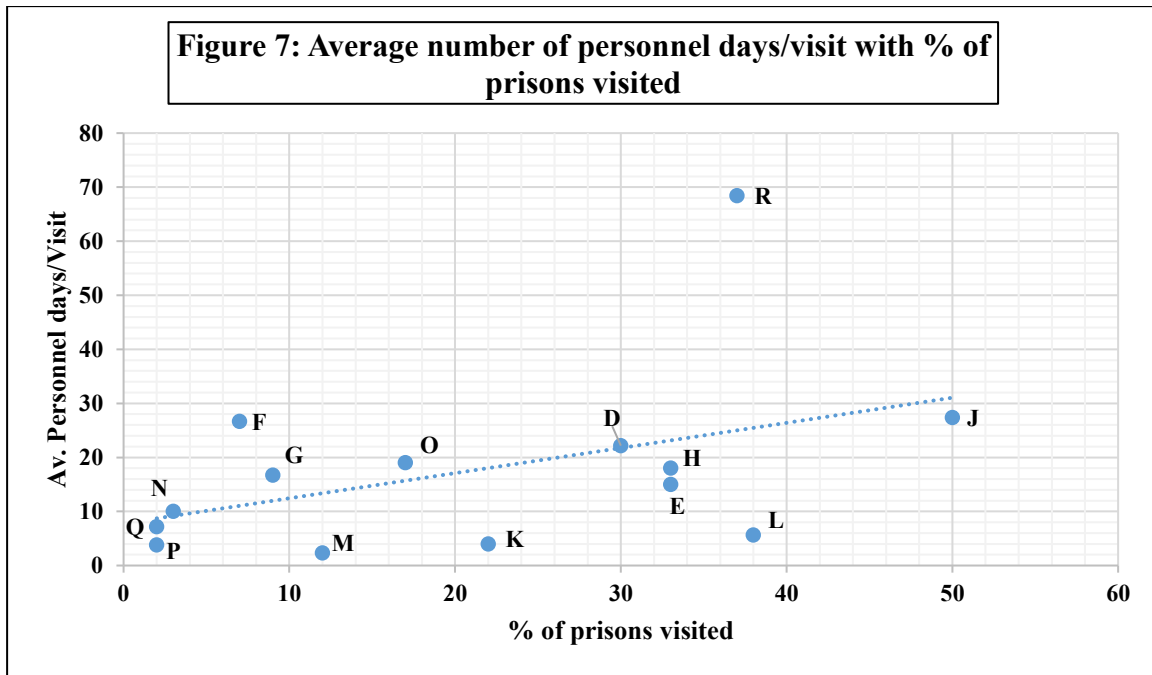


Figure 7 illustrates two distinct approaches: NPM F undertaking less regular visits than most NPMs in our survey (assessed by the proportion of prisons visited) but using more personnel days than others in each visit. NPM L on the other hand has a high degree of regularity (visiting a higher proportion of prison than most and making more frequent visits) but using less personnel days for each visit than almost any other NPM in our survey. Both Figures 7 and 8 raise the question of whether, for instance, NPM 'R' could or should do more regular

visits with smaller teams or of shorter duration. NPMs 'L' and 'M' might consider doing less regular visits of greater length and/or with larger visit teams.

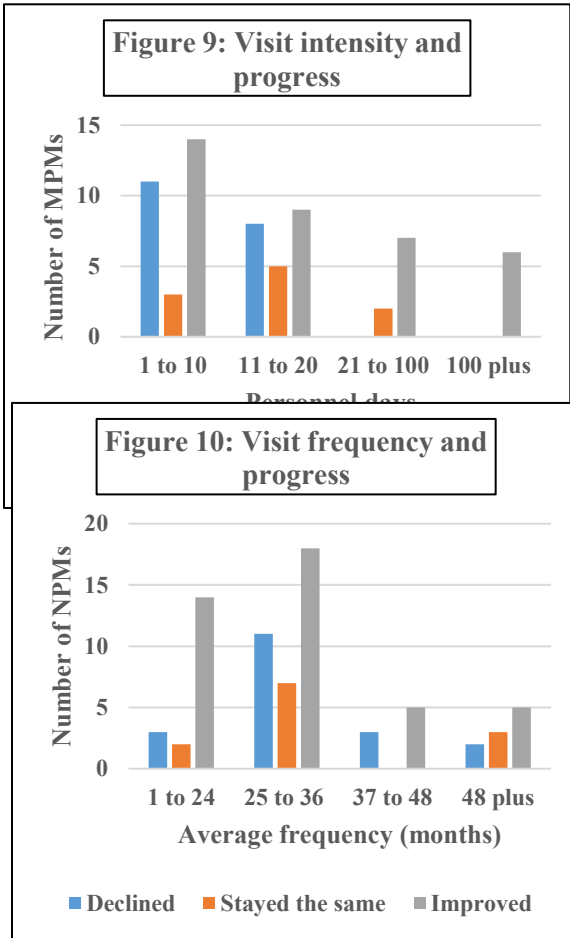
H. Impact

One of our hopes when we began this work was that we would be able to identify some relationship between the regularity of visits and their impact. It quickly became apparent that this would not be possible. It was clear from NPMs' own reports and the other literature we examined that there so many variables in how NPMs defined regularity and in the context in which they operating that it was not possible to draw any conclusion about impact. Indeed, it was clear that there was no consistent and objective measure of impact in any case.

Our survey results provided no further assistance. In our survey we asked NPMs to give us their assessment about whether the prison had improved in each visit they made in 2017. We asked them to categorise progress as 'improved' 'stayed the same' or 'declined'. The questionnaire noted:

NPMs have different ways of measuring the impact of their visits. This may include an overall assessment, analysis of recommendations implemented or some other way. We recognise that many NPMs will not make an overall judgement of this kind. Nevertheless, it would be helpful if we had some view from the NPM of whether the prison has made progress since the its last visit.

Twelve NPMs gave us their assessment for 81 visits undertaken in 2017 of whether the prisons concerned had made progress since the previous visit. In other cases, 2017 was the first visit to the prison concerned or the NPM was unable to provide



the assessment we requested for other reasons. We have examined this data in various ways and on the basis of the data available to us, no clear pattern emerged. Figures 9 and 10 illustrate progress against the intensity of the visit (the number of personnel days deployed) and the frequency of the visit (the average months between previous visits). Furthermore, it would seem from the survey that there was no consistency in the way that NPMs assessed progress, although we do recognise that more research needs to be done to determine the accuracy of this finding.

I. Conclusions

Across the world NPMs have been established at great speed. In Europe alone, in little more than a decade, 38 NPMs have been designated. Every year they are carrying out hundreds independent preventive visits to places of deprivation of liberty which in many cases were hidden from scrutiny before. The very speed of their development has meant there is relatively little detailed evidence of how NPMs have gone about their task and 'what works'. This limits the opportunity for new NPMs to draw on the experience of those that have gone before. The paper explored one of the most basic questions facing NPMs: how NPMs understand and apply the requirement to undertake 'regular' visits.

Undertaking 'regular' visits appears, on the face of OPCAT, to be one of the more concrete elements of an effective NPM and relatively easy to comprehend in terms of what an NPM is required to do. In reality, as we hope this paper has shown, the situation is more nuanced for a variety of reasons.

One clear conclusion from our research is that while many of the NPMs we examined used the term 'regular' in their annual reports, this meant different things to different organisations and regularity was not always equated with frequent.

Further, NPMs, as our survey has shown, take into consideration a number of elements not only in determining the frequency with which they visit a particular institution (the size of the team; the availability of resources; the range of places they may have to visit; the different types of visits they may undertake including whether they are announced or unannounced; and any concerns that may have been raised previously or by complaints, for example), and not simply the length of time since the last visit.

What meaningful conclusions can we give for those seeking to establish/designate an NPM and for existing NPMs as to how they can fulfil the OPCAT requirements on regularity? Firstly, we could draw no firm conclusions about how the ways in which NPMs scheduled their visits, either in terms of their regularity, the personnel used for each visit and its length or a combination of these factors, related to their impact. This strongly suggests both the need for more research and for attention to be given to how NPMs assess their impact and effectiveness. Nevertheless, we hope our findings will help existing and new NPMs think through the factors that should determine the regularity of their visits. In particular, it is apparent that some NPMs have made a clear choice between the frequency of their visits and their intensity (the length and the number of personnel participating). We make no judgement about what is the right balance but suggest this is something all NPMs need to consciously consider in their own contexts. Secondly, this leads us to conclude that it may not be helpful to set out a minimum frequency in which NPMs should visit each establishment. The practice outlined in this paper illustrates considerable diversity and a nuanced consideration of a range of factors to determine when it is appropriate to visit a particular place of detention.

What would appear to be helpful, therefore, would be for the SPT, for example, to provide and expand upon guidance as to the sorts of factors that NPMs may take into account when determining when to visit. This is an approach a number of the NPMs we examined already

appear to be doing, with the length of time since the last visit being only one factor among many.

Thirdly, ensuring regularity of visits should not detract from other aspects of the NPM as a preventive body. Visits are the most important aspect of an NPM's role. However, other means of engagement with detention institutions, which many NPMs utilise, may themselves result in regular interaction with the institutions and their staff. Whilst not detracting from the significance of visiting, focusing exclusively on this particular function therefore may not capture the entire picture of the NPM's work on prevention.

APPENDIX A – Key features of NPMS summary

		NPM designation		NPM type				f.t.e personnel				Av. Total adult prison population 2017						Av. Total adult Prisons			% prisons visited in 2017			Wish to do more	
		Pre 2010	Post 2009	New body	NHRI/Omb.	Ombuds+	Multi-body	<=5	6 - 20	21 - 50	>50	1 - 1000	1001 - 5000	5001 - 10000	10001 - 20000	20001 - 50000	50,000+	1-20	21 - 100	100+	0-10	11 - 30	30+	Yes	No
TOTAL		10	8	3	11	3	1	6	9	2	1	2	4	5	2	1	4	7	6	5	7	4	7	14	4
NPM designation	Pre 2010			2	6	1	1	3	5	1	1	1	2	3	0	1	3	4	2	4	6	0	4	9	1
	Post 2009			1	5	2	0	3	4	1	0	1	2	2	2	0	1	3	4	1	1	4	3	5	3
NPM type	New body	2	1					1	1	1	0	0	0	1	0	0	2	0	0	3	2	1	0	2	1
	NHRI/Omb	6	5					4	6	1	0	2	2	4	1	1	1	5	5	1	5	2	4	8	3
	Ombuds+	1	2					1	2	0	0	0	2	0	1	0	0	2	1	0	0	1	2	3	0
	Multi-body	1	0					0	0	0	1	0	0	0	0	1	0	0	0	1	0	0	1	1	0
f.t.e personnel	<=5	3	3	1	4	1	0					2	0	2	2	0	0	2	3	1	3	1	2	5	1
	6 - 20	5	4	1	6	2	0					0	4	2	0	1	2	4	3	2	4	2	3	7	2
	21 - 50	1	1	1	1	0	0					0	0	1	0	0	1	1	0	1	0	1	1	1	1
	>50	1	0	0	0	0	1					0	0	0	0	0	1	0	0	1	0	0	1	1	0
Av. Total adult prison population 2017	1-1,000	1	1	0	2	0	0	2	0	0	0							2	0	0	1	0	1	1	1
	1001-5000	2	2	0	2	2	0	0	4	0	0							3	1	0	1	1	2	3	1
	5001-10000	3	2	1	4	0	0	2	2	1	0							2	2	1	2	1	2	5	0
	10001-20000	0	2	0	1	1	0	2	0	0	0							0	2	0	0	1	1	2	0
	20001-50000	1	0	0	0	0	0	0	1	0	0							0	1	0	1	0	0	1	0
	50000+	3	1	2	0	0	1	0	2	1	1							0	0	4	2	1	1	2	2
Av. Total adult prisons	1 - 20	4	3	0	5	2	0	2	4	1	0	2	3	2	0	0	0				1	1	5	6	1
	21 - 100	2	4	0	5	1	0	3	3	0	0	0	1	2	2	1	0				3	2	1	5	1
	100+	4	1	3	1	0	1	1	2	1	1	0	0	1	0	4					3	1	1	3	2
% prisons visited in 2017	0 -10	6	1	2	5	0	0	3	4	0	0	1	1	2	0	1	2	1	3	3				5	2
	11 - 30	0	4	1	2	1	0	1	2	1	0	0	1	1	1	0	1	1	2	1				3	1
	30+	4	3	0	4	2	1	2	3	1	1	1	2	2	1	0	1	5	1	1				6	1
Wish to do more	Yes	9	5	2	8	3	1	5	7	1	1	1	3	5	2	1	2	6	5	3	5	3	6		
	No	1	3	1	3	0	0	1	2	1	0	1	1	0	0	0	2	1	1	2	2	1	1		