

**APPLICATION FOR RE-ACCREDITATION
OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS
TO THE INTERNATIONAL COORDINATING COMMITTEE OF NATIONAL INSTITUTIONS FOR THE
PROMOTION AND PROTECTION OF HUMAN RIGHTS**

- March 2009 -

I. BACKGROUND

The Office of the Ukrainian Parliament Commissioner for Human Rights (hereinafter UPCHR) has submitted its application for re-accreditation to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The formal application for “A status” accreditation was sent on 26 December 2008.

The following sections provide background information on the UPCHR based on supporting documentation submitted by the UPCHR to the Secretariat of the ICC, in accordance with Article 3 of the ICC Rules of Procedure.

II. DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION

To permit the ICC to make a determination as to the compliance of the UPCHR with the Paris Principles, the following documentation has been submitted by the UPCHR in support of its application:

- Constitution of Ukraine (extract);
- Law of Ukraine on the Ukrainian PCHR (23 December 1997);
- The State Budget of Ukraine under Expenditure Classification Codes of the Secretariat of the Ukrainian PCHR in 2008 and its Implementation;
- State of Observance and Protection of Human Rights and Freedoms in Ukraine, 2006-2007 (in Ukrainian, Summary in English);
- Special Report of the Ukrainian Parliament Commissioner for Human Rights “Observance of the international standards in the area of human rights and freedoms by Ukraine”;
- Statement of compliance with the Paris Principles of the Ukrainian PCHR (14 December 2008).

Additional documentation received by the ICC Secretariat includes:

- Information on the complaints received by the Ukrainian PCHR (as of 1 December 2008);
- Kyiv Declaration of the International Conference “Current Challenges to Human Rights and Freedoms”;
- Ukraine’s First Ombudsman Stands Up for Human Rights; Collection of Documents 1998-2006.
- Letter UPCHR 30 January 2009

III. CHARACTER OF THE NHRI

1. Establishment

Law n. 776/97-BP “On the Ukrainian Parliament Commissioner for Human Rights”, hereinafter referred to as “the Law”, was adopted on 23 December 1997 and came into force on 15 January 1998.

Article 4 of the Law states that the Commissioner shall have a seal, featuring a Small State Coat of Arms of Ukraine and his or her appellation, and that the capital of Ukraine, Kyiv, shall be the seat of the Commissioner.

2. Independence

Article 101 of the Ukrainian Constitution enables the UPCHR to exercise parliamentary control over the observance of constitutional human and citizens’ rights and freedoms.

Article 4 of the Law states that “the Commissioner shall be an official, whose status is determined by the Constitution of Ukraine, this Law and the Law of Ukraine on State Service”. It states that “the Commissioner

shall be independent of other state bodies and officials in the exercise of his or her operation. The activity of the Commissioner shall be supplementary to the existing measures of protection of constitutional human and citizens' rights and freedoms, it neither repeals them nor results in reviewing the competence of state bodies, which ensure the protection, and restoration of violated rights and freedoms”.

Article 4 of the Law also states that “the authorities of the Commissioner cannot be terminated or restricted in the event of expiration of term of the authorities of the Verkhovna Rada of Ukraine or its dissolution (self-dissolution), declaration of martial law or the state of emergency in Ukraine or in its separate areas”.

Article 14 of the Law states the duties of the Commissioner; “The Commissioner shall be obligated to honour the Constitution of Ukraine and the laws of Ukraine, other legal acts, rights and human and citizens' interests protected by law, ensure the exercise of functions conferred on him or her and fully utilize the rights given him or her. The Commissioner shall be obligated to maintain the confidentiality of information. This obligation shall remain effective after the termination of his or her authorities. In the event that the Commissioner has disclosed this information, he or she shall be liable in accordance with the procedure established by legislation. The Commissioner shall not be entitled to disclose information that was obtained concerning the personal life of a petitioner and other persons related to the petition, without their prior consent.”

Article 20 of the Law states that “Interference from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their form of ownership, their officials and officers into the activity of the Commissioner shall be prohibited. The Commissioner shall not be obligated to provide explanations on details of cases that he or she has settled or cases that he or she is involved in settling.”

Article 20 goes on to specify that: “The Commissioner shall enjoy the rights to immunity during the entire period of his or her authorities. He or she cannot be held criminally liable, without consent from the Verkhovna Rada of Ukraine, or be subject to administrative punishment imposed in accordance with judicial procedure, be detained, arrested, searched as well as be subject to personal examination. No one except the Procurator General of Ukraine can initiate criminal proceedings against the Commissioner. Should the legislation on guarantees of activity of the Commissioner, his or her delegates and secretariat staff members be violated, the offending persons shall be held responsible in accordance with effective legislation.”

Article 8 of the Law addresses the issue of incompatibility with the post of the Commissioner by specifying that the Commissioner “cannot be given a Commissioner mandate, hold any other positions at bodies of state power, perform any other work, paid or unpaid, at bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, except teaching, scholarly or any other creative activity”. It mentions that the Commissioner cannot be a member of any political party. The UPCHR clarified in a letter dated 27 February 2009 that “the Commissioner cannot be given a representative mandate” as provided for by law.

Article 8 of the Law also states that the Commissioner “should eliminate any encumbrances within a period of ten days following his or her appointment” and that the Commissioner cannot take the oath until the encumbrances are eliminated. If the encumbrances noted in the first and second part of article 8 emerge during the term of activity of the Commissioner, they should be eliminated within a period of ten days commencing from the day of disclosure. If elimination of the encumbrances be impossible within the period of ten days, the Commissioner is obligated to make, within the established period, a statement on the refusal to follow any instructions or exercise any other authorities than that which is given to the Commissioner. Article 8 finally states that “the authorities of the Commissioner shall be terminated and the Verkhovna Rada of Ukraine shall be obligated to remove him or her from the post, in the event the Commissioner has not complied with established requirements within the aforesaid period.”

Financial independence

Article 12 of the Law states that “financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine and will annually receive its own distinction. The Commissioner shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and comply with his or her budgetary outlays. The Commissioner shall submit his or her financial report in accordance with the procedure established by the legislation of Ukraine. The Verkhovna Rada of Ukraine and respective bodies of executive power and bodies of local self-government shall form the necessary environment in which the Commissioner, his or her secretariat and delegates shall operate.”

Article 10 of the Law states, inter alia, that the Secretariat shall have its own bank account.

In its statement of compliance, the UPCHR mentions that, in practice, the budget elaborated by the Commissioner is not submitted directly to the Verkhovna Rada of Ukraine. Firstly, "it is given to the Ministry of Finance, which elaborates the draft law on the State Budget of Ukraine for a particular year, submits it for consideration to the Ukrainian Government, which is the only legal entity, according to the Budgetary Code of Ukraine, that can submit the draft law on the State Budget of Ukraine to the Verkhovna Rada for approval". The statement of compliance mentions that it is the Commissioner who manages the budget funds allocated for securing the activities. It also mentions that there has been an improvement in the financing of the activities of the Commissioner, enabling proper conditions for receiving citizens in the Office of the Commissioner and improve the working conditions of the Secretariat staff members.

The document "The State Budget of Ukraine under Expenditure Classification Codes of the Secretariat of the Ukrainian Parliament Commissioner for Human Rights in 2008 and its Implementation" mentions in its footnote that the general financial requirements of the UPCHR are 31, 214,800 hryvnas (Ukraine currency), de facto 28,382,400 hryvnas was allocated for the needs of the institution, which is equal to 90,9 % of the requirements.

3. Appointments processes and organisational infrastructure

3.1. Composition of the NHRI's membership and appointment processes

The Ukrainian Parliament, according to article 85 (17) of the Constitution and article 5 of the Law, has the authority to appoint and dismiss the Ukrainian Parliament Commissioner for Human Rights, through a secret ballot vote.

Article 5 of the Law also lists the requirements for the candidate to the post of Commissioner. The candidate should be "a citizen of Ukraine, who has attained the age of 40 on the day of voting, has a good command of the state language, high moral qualities, experience in human rights protection, and has been residing in Ukraine for the last five years can be appointed to the post of Commissioner". It also states that "a person who has a criminal record for committing a crime cannot be appointed Commissioner if the record is not cancelled or erased by the procedure established by law.

Article 5 of the Law states that the Commissioner shall be appointed for the term of five years, commencing from the day of his or her taking oath at the session of the Verkhovna Rada of Ukraine.

Article 6 of the Law states the nomination procedure:

"Proposals for candidate(s) to the post of Commissioner shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine. A respective Committee of the Verkhovna Rada of Ukraine shall submit its conclusions to the Verkhovna Rada of Ukraine on each candidate to the post of Commissioner, on how the candidate meets the requirements envisaged by the Law, and on the absence of reasons, which would prevent the candidate from holding this post.

The candidate shall be nominated for appointment to the post of Commissioner within twenty days, commencing from the next day after:

- 1) this Law has entered into force;
- 2) the term of appointment for the Commissioner has expired, his or her authorities has been terminated or in the event of his or her dismissal;
- 3) the results of voting have been announced, in the event that the Commissioner has not been appointed.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine in the form of a secret ballot vote but no earlier than ten days and no later than twenty days upon the expiration of term for the nomination of candidates for participation in elections.

The candidate shall not be deemed appointed until he or she receives the majority of votes from National Deputies of Ukraine making up the constitutional composition of the Verkhovna Rada of Ukraine, with the resolution adopted thereof.

Should more than two candidates be nominated to the post of Commissioner and none of them are appointed, the Verkhovna Rada of Ukraine shall repeat voting between the two candidates who have received the largest number of votes.

Voting on the appointment of the Commissioner shall be repeated in accordance with the procedure established by this Article.

Candidates for the appointment to the post of Commissioner shall be nominated again in the event that none of the candidates received the required number of votes.

In its statement of compliance, the UPCHR mentions that according to the results of a secret ballot, Ms. Nina Karpachova was elected to the post of Commissioner by a majority vote of National Deputies of Ukraine on 8 February 2007.

Article 9 addresses the termination of authorities and dismissal of the Commissioner for the post. It states that “the authorities of the Commissioner shall be terminated in the event of:

1. the refusal of the Commissioner to further comply with his or her duties through the submission of a statement of resignation;
2. the entry into legal force of a court verdict of guilty against him or her;
3. a declaration by the court that the person holding the post of Commissioner is missing or the pronouncement that he or she is dead has entered legal force;
4. the taking of oath by the newly-elected Commissioner;
5. the death of the person holding the post of Commissioner.”

Article 9 also states that “the Verkhovna Rada of Ukraine shall adopt the resolution on dismissal from the post of Commissioner prior to the expiration of term that he or she has been elected for in the event of:

1. violation of the oath;
2. incompliance with the requirements on incompatible activities;
3. termination of citizenship of Ukraine;
4. inability to comply with duties for a period exceeding four months due to unsatisfactory health conditions or the loss of ability to work.

Article 9 goes on to specify that the Temporary Special Commission of the Verkhovna Rada of Ukraine shall conclude whether there are grounds available to dismiss the Commissioner from his or her post. If the grounds apply, the Verkhovna Rada of Ukraine shall review the issues and adopt a respective resolution on dismissing the Commissioner from his or her post following an application by the Chairman of the Verkhovna Rada of Ukraine or no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine. The Commissioner shall be deemed to be dismissed from his or her post, if the majority of National Deputies of Ukraine, making up the constitutional composition of the Verkhovna Rada of Ukraine, voted in favour thereof. Termination of authorities and dismissal of the Commissioner from his or her post shall be legalized by a respective resolution of the Verkhovna Rada of Ukraine.

Article 20 of the Law states that “Upon the expiration of the term of authorities for which the person has been elected to the post of Commissioner, he or she shall be provided with the job (post) previously held before the appointment and which is safeguarded for him or she during the period that he or she performs the duties of Commissioner, or he or she shall be provided with another equivalent job (post) at the same enterprise or, if this should prove impossible, with his or her consent, at another enterprise, institution, organization.

It also states that “In the event of death, trauma, disability or illness developed during the performance of official duties, the life and health of the Commissioner, his or her delegates employed on a permanent basis, shall be indemnified in the form of a mandatory state insurance. Procedure and terms of insurance shall be established by the Cabinet of Ministers of Ukraine.”

3.2. Pluralism

In its statement of compliance, the UPCHR mentions that its staff members are appointed on a competitive basis, taking into account recommendations of NGOs, observing the principle of gender equality. It mentions that Ukrainians, Belarusians, Jews, and representatives of other nationalities work in the Secretariat.

3.3. Organisational infrastructure

3.3.1. Organisational Structure

Article 11 of the Law states that the Commissioner shall be entitled to appoint his or her delegates within the allocated funds approved by the Verkhovna Rada of Ukraine. The organization of activity

and scope of authorities for the delegates of the Commissioner shall be governed by Regulations on Delegates of the Ukrainian Parliament Commissioner for human rights of the Verkhovna Rada of Ukraine, which are approved by the Commissioner.

In its statement of compliance, the UPCHR mentions that at present there are 2 delegates; Mr. Valerii Terets and Mr. Volodymyr Yatsenko.

Article 10 of the Law states that “a secretariat, which is a legal entity and has its own bank account and established seal, shall be formed in order to secure the activity of the Commissioner.” The structure of the secretariat, distribution of duties and other issues concerning the organization of its activity shall be governed by the Regulations on the Secretariat of the Ukrainian Parliament Commissioner of the Verkhovna Rada of Ukraine.

The statement of compliance of the UPCHR outlines the organizational infrastructure as follows:

- The Commissioner for Human Rights
 - Delegates of the Commissioner (2)
 - Advisors to the Commissioner (11)
- Secretariat of the Commissioner
 - Head of the Secretariat
 - Chancellery of the Commissioner
 - Press Secretary of the Commissioner
 - Press Service of the Commissioner
- Department for Economic, Social and Cultural Rights
 - Unit for economic rights
 - Unit for social and cultural rights
 - Unit for the rights of the child and gender equality
 - Unit for the rights of military men, war veterans and members of their families
- Department for Civil, Criminal, Administrative Law and Penitentiaries
 - Unit for civil and administrative law
 - Unit for criminal law
 - Unit for penitentiaries (observance and protection of rights of persons deprived of their liberty)
- Department for Relations with Bodies of State Power and Local Self-Government
 - Unit for relations with bodies of state power
 - Unit for relations with bodies of local self-government
- Department of International Law Affairs
- Department of Informational and Analytical Activity
- Accounts Department
- Human Resources Unit
- Administrative Unit (responsible in particular for receiving and processing applications/complaints)
- Maintenance Department.

3.3.2. Staffing

Article 10 of the Law states that “the Law of Ukraine on State Service shall apply to secretariat staff members. The Regulations and the budget of the secretariat shall be approved by the Commissioner within the scope of budget expenses allotted for the Commissioner's activity. The appointment and dismissal of secretariat staff members shall be exercised by the Commissioner.”

In its statement of compliance, the UPCHR mentions that at present there are 114 employees on a regular basis. It also mentions that the salary of staff is set at the level of higher constitutional bodies officials such as the Verkhovna Rada of Ukraine, the Cabinet of Ministers or the Constitutional Court.

The statement of compliance also mentions that “while hiring staff members, the Commissioner first and foremost gives preference to professionals having experience in specific human rights areas, taking into account such aspects as: representation of different regions of Ukraine and national minorities, gender balance (no less than 40 percent of men or women)”.

3.3.3. Regular meetings

In its statement of compliance, the UPCHR mentions that “every day the Commissioner holds a number of meetings with the delegates, advisors, heads of structural units, professional staff members on particular problems of human rights protection.”

4. Relations with Civil Society and human rights institutions

4.1. Formal Relationships with Civil Society

The statement of compliance of the UPCHR mentions that on specific human rights cases, the Commissioner always cooperates with relevant human rights organizations. It also mentions that in 2008, the Commissioner received 358 appeals from NGOs, that were considered and responded to.

In its statement of compliance, it mentions that “the Commissioner cooperates with public organizations, particularly the Council of National Societies of Ukraine, the National Council of Women of Ukraine, the International Committee of Human Rights Protection, the Vinnytsia Human Rights Group, a human rights organization of blind lawyers “Face to the Reality”, and international non-governmental organization “International Antiterrorism Unity”, the Union of Advocates of Ukraine, and the Union of Lawyers of Ukraine”. The Commissioner has also signed the Agreement on Cooperation with the Federation of Trade Unions of Ukraine.

The statement of compliance further mentions that the UPCHR cooperates with “the National Taras Shevchenko University of Kyiv, the Yaroslav the Wise Law Academy in Kharkiv, the Volodymyr Koretskyi Institute of State and Law, the Kyiv University of law, the Institute for Legislation of the Verkhovna Rada of Ukraine, the Lviv Laboratory on Human Rights and other scientific institutions”.

4.2. Regular Consultations

In a letter dated 24 February 2009, the UPCHR indicated that there is no other national institution for human rights in Ukraine, but the Ukraine Parliament Commissioner for Human Rights. The UPCHR also indicated it cooperates with the Ukraine courts, the High Council of Justice of Ukraine and has been involved in the work of the qualification of commissions of judges.

4.3. Cooperation with the United Nations, regional and national institutions

Article 3(5) of the Law states that one of the purposes of the Commissioner should be to improve and further develop international cooperation in the area of the protection of human and citizens' rights and freedoms.

Article 19 of the Law states that “The Commissioner shall participate in the preparation of reports on human rights which will be submitted by Ukraine to international organizations in accordance with effective international agreements that the Verkhovna Rada of Ukraine has given consent to comply with on a mandatory basis.”

In its statement of compliance, the UPCHR mentions the following examples of involvement:

- *“The 5th (2001) and the 6th (2006) reports – by the UN Committee for Human Rights (participation in the discussions and presentation of the Ombudsman’s position);*
- *The 17th and 18th reports (2006) – by the UN Committee on the Elimination of Racial Discrimination (participation in the discussions and presentation of the Ombudsman’s position);*
- *The 5th report (May 2007)- by the UN Committee against Torture (submission of written information upon request of the Committee, participation in the Committee’s meeting during consideration of the report);*
- *The initial report (May 2006) – by the UN Committee on the Rights of the Child on the implementation of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (submission of written information upon request of the Committee, participation in the Committee’s meeting during consideration of the report);*
- *The first national periodic report (May-June 2008) – by the UN Human Rights Council under the Universal Periodic Review (submission of written information upon request of the UN Human Rights Council, participation in the Committee’s meeting, presentation of the Ombudsman’s position and participation in discussions).*

In its Concluding Observations adopted after consideration of the 6th periodic report of Ukraine, the Human Rights Committee states that it “has benefited from the presence of 2 representatives of the Office of the ombudsman, and notes the productive nature of the Ombudsman’s recommendations”.”

The statement of compliance also mentions the following areas of cooperation:

“The UPCHR, together with the Office of the United Nations in Ukraine, has conducted a number of projects within the last 5 years, in particular: publication of the collection of Concluding Observations and recommendations of the UN Treaty Bodies on periodic reports of Ukraine in the file of human rights in English, Ukrainian and Russian; a successful course of lectures on the UN Treaty Bodies system carried out at the Office of the Commissioner by Roman Wieruszewski, Deputy Chairman of the UN Human Rights Committee, for the staff of the Office, with officials involved in the process of reports drafting; publication of the Bulletin of the Commissioner, as well as its translations; regular joint conferences and round tables with national and regional human rights NGOs and mass media in order to discuss the situation with human rights’ observance in Ukraine; technical assistance.

In 2004, the UPCHR jointly with the OSCE High Commissioner on National Minorities conducted a special project on the protection of national minorities’ rights in Ukraine.

On the occasion of the 6^{0th} anniversary of the UDHR, Mr. Francis M. O’Donnel, the UN Resident Coordinator in Ukraine, and Ms. Nina Karpachova, the Ukrainian Parliament Commissioner for Human Rights signed the Memorandum of Understanding between the Ukrainian Parliament Commissioner for Human Rights and the UN Office in Ukraine on 10 December 2007.

The aim of the Memorandum was to encourage cooperation of the parties in the field of promotion and protection of human rights, enhance public understanding of the historical significance of the UDHR and its role in further development of the Ukrainian society. There was created the Plan of Joint Action with this aim. In the framework of this Plan, priority was given to the ratification of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Moreover, both parties have given special attention to the rights of HIV positive persons, homeless children and orphans. These categories of the Ukrainian citizens need special protection. The parties also outlined other particular tasks: information campaigns on the issues of overcoming racism, xenophobia, neo-nazism and anti-Semitism; publication of the new collection of the concluding observations and recommendations of UN Treaty Bodies regarding reports of Ukraine in the field of human rights.

The Memorandum started joint campaign of the Ukrainian Parliament Commissioner for Human Rights and the Office of the UN in Ukraine titled “Dignity and Justice for all of us”, that was planned for the period of one year.

On the 10th of December 2008, the Commissioner presented to the Verkhovna Rada her special report “The Status of implementation of the International Standards of Human Rights and Freedoms in Ukraine”. It provides a collection of all concluding observations and recommendations of UN Treaty Bodies on the periodic reports of Ukraine over the whole period of Ukraine’s independence, as well as information on the status of their implementation.

The Commissioner cooperates on a regular basis with Mr. Thomas Hammarberg, the Council of Europe Commissioner for Human Rights. An officer from the Office of the UPCHR is responsible for permanent communication with the national institutions unit of the Council of Europe Commissioner for Human Rights. [...]

The Ombudsman of Ukraine conducts regular monitoring jointly with the European Committee on prevention of torture (CPT) [...].

The Commissioner closely cooperates with the ombudsmen of other countries. In particular, Ms. Nina Karpachova is a member of the Executive Board of the European Ombudsmen Institute and a member of the International Ombudsmen Institute. The Commissioner has signed bilateral agreements on cooperation with the Ombudsmen of Azerbaijan, Spain, Poland, Portugal, Russia, France and Argentine (regional office).

In April 2008, in Kyiv, on the initiative of the Ombudsman of Ukraine, events on the occasion of the 60th anniversary of the UDHR and the 10th anniversary of the institution of the UPCHR took place on the state level. The International Conference “Modern Challenges to Human Rights and Freedoms” that took place on 14 April 2008 in the plenary sessions hall of the Ukrainian Parliament was the key event. [...]. One of the outcomes of the conference was the adoption of the Kyiv Declaration.

5. Accessibility

5.1. Procedures and mechanisms to ensure accessibility

The UPCHR mentions in its statement of compliance that it currently has regional offices in 4 regions (Lugansk, Simpheropol, Uzhgorod and Dnipropetrovs'k) and that steps are taken to establish regional offices in Lviv, Zaporizhzhya, Kharkiv, and Zhytomyr.

In its statement of compliance, the UPCHR also mentions that the Office of the Commissioner is equipped in a way to allow persons with "special needs (in particular with wheel-chairs) to enter and move freely". There is also a 24-hour hot-line, and people can send their complaints to the Commissioner via internet. Furthermore, there are:

- Weekly radio programs of the Commissioner broadcast on the first national radio channel about different aspects of human rights protection, regular press conferences and special interviews of the Commissioner to many popular TV and radio channels, newspapers and magazines, press releases on activities of the UPCHR;
- Comprehensive monitoring visits of the Commissioner to regions
- Reception and consideration of complaints in regional offices of the UPCHR; and
- Regular and extraordinary visits to detention centers, penitentiary institutions and hospitals.

5.2. Procedures and mechanisms for addressing public opinion

The statement of compliance mentions that the Commissioner regularly holds hearings, round tables and press conferences involving public society, scholars and mass media. She informs the public on her activities through internet, print media, interviews, press conferences, participation in a weekly radio program during prime-time. There is also an internet page of the UPCHR, with acts of submission, statements, press releases and other documents. Publications are translated into Russian and English, depending upon the availability of funds. It mentions that the founding legislation of the UPCHR has been translated into Ukrainian, Russian and English. With the financial support of UNDP Ukraine, the UPCHR published the "Concluding observations and recommendations of UN Treaty Bodies on periodic reports of Ukraine in the field of human rights" and the first annual report of the UPCHR (2000) in Ukrainian, Russian and English. The first special report of the UPCHR "On the Status of Observance and Protection of the Rights of Ukrainian Citizens Abroad" was published in Ukrainian, Russian and English with the support of the Swiss Embassy in Ukraine.

5.3. Working Groups

Article 10 of the Law states that "a board of advisors (which can also operate on a voluntary basis), made up of persons having practical experience in the area of protection of human and citizens' rights and freedoms, can be formed under the Commissioner with the aim of offering consultation, conducting scientific investigations as well as examining proposals on how to improve the situation with regard to the protection of human and citizens' rights and freedoms."

In its statement of compliance, the UPCHR mentions that working groups are created to promptly address the violations of the human rights and freedoms and to monitor particular issues. Working Groups are comprised of staff members of the UPCHR, scientists, and experts from bodies of state power and local self-government. The statement of compliance further states that, in 2008, working groups of the Commissioner made 53 visits to monitor situations in the field and to prepare recommendations for the Commissioner to take relevant measures.

It also mentions that there is a National Coordinating Council for the Prevention of Trafficking in Human Beings, comprising representatives of state bodies and NGOs.

IV. COMPETENCE AND RESPONSIBILITIES

6. General Jurisdiction and Functions

6.1. Mandate to promote and protect human rights.

Article 55 of the Constitution states that everyone has the right to appeal for the protection of his or her rights to the UPCHR.

Article 150 of the Constitution states that, inter alia, the UPCHR can appeal to the Constitutional Court for a decision on issues of constitutionality of (1) laws and other legal acts of the Verkhovna Rada of

Ukraine; (2) acts of the President of Ukraine; (3) acts of the Cabinet of ministers of Ukraine; and (4) legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea.

According to Article 1 of the Law, the UPCHR, governed in its operation by the Constitution, the laws of Ukraine and effective international agreements that the Verkhovna Rada has agreed to comply with on a mandatory basis, shall permanently exercise its parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction.

Article 2 of the Law states that the scope of application of the Law "shall extend to relations emerging from the implementation of human and citizens' rights and freedoms between a citizen of Ukraine, irrespective of his or her dwelling place, a foreigner or a stateless person, who are on the territory of Ukraine and bodies of state power and local self-government, their officials and officers".

Article 3 of the Law states that "the parliamentary control exercised by the Commissioner shall be aimed at:

1. protecting human and citizens' rights and freedoms proclaimed by the Constitution of Ukraine, the laws of Ukraine and international agreements of Ukraine;
2. observing and respecting human and citizens' rights and freedoms through entities indicated in Article 2 of this Law;
3. preventing acts of violation against human and citizens' rights and freedoms or the facilitation of their renewal;
4. facilitating the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;
5. improving and further developing international cooperation in the area of the protection of human and citizens' rights and freedoms;
6. preventing any forms of discrimination with regard to a person's implementation of his or her rights and freedoms;
7. encouraging legal knowledge among the population and protecting confidential information about each person."

Article 7 of the Law states, inter alia, that the authorities of the Commissioner shall be effective from the moment of taking oath.

Article 13 of the Law lists the mandate of the Commissioner, as follows: "The Commissioner shall be entitled to:

1. be received, without any delay, by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the chairmen of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Procurator General of Ukraine, the chairmen of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers;
2. attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine, the collegium of procurators' offices of Ukraine and other collegiate bodies;
3. appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms; the official interpretation of the Constitution of Ukraine and the laws of Ukraine;
4. visit, without hindrance, bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, and be present at their sessions;
5. read documents, including classified (secret) ones and obtain copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, bodies of prosecution, including cases which have been filed in court. The access to information related to civil, military and state secrets shall be given in accordance with the procedure established by legislative acts of Ukraine;
6. demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, facilitation in conducting acts of inspection regarding the activity of enterprises, institutions and organizations

- under their control and subordination, and ensure that experts participate in acts of inspection, providing their expertise and respective conclusions;
7. invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;
 8. visit, at any time, places of detention, holding cells, various types of facilities where convicts are imprisoned and facilities where medical treatment and rehabilitation is forcefully applied, psychiatric hospitals, interview persons who are residing there and obtain information on their living conditions;
 9. attend court sessions of all instances, including court sessions held behind closed doors, in the event that the subject of the legal case at hand, in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;
 10. appeal to the court about protecting human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reason, and also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law;
 11. submit to respective bodies, documents containing the response of the Commissioner to instances of violation against human and citizens' rights and freedoms, for use in taking respective measures;
 12. supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those that conduct detective and search activity.”

Article 15 of the Law elaborates upon

“the acts concerning the response of the Commissioner to acts of violation against regulations of the Constitution of Ukraine, the laws of Ukraine, international agreements of Ukraine on human and citizens' rights and freedoms”,

stating that they:

“shall be constitutional acts of submission of the Commissioner and acts of submission to bodies of state power, bodies of local self-government, associations of citizens, enterprise, institutions and organizations, irrespective of their forms of ownership, and their officials and officers.

Constitutional acts of submission of the Commissioner shall be acts indicating his or her response directed to the Constitutional Court of Ukraine with regard to deciding on the issue of conformity with the Constitution of Ukraine (constitutionality) and a law of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, act issued by the President of Ukraine and the Cabinet of Ministers of Ukraine, legal act issued by the Autonomous Republic of Crimea; the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

The act of submission of the Commissioner shall be the document which is submitted by the Commissioner to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers for the purpose of assuming, within the period of one month, respective measures aimed at the elimination of uncovered acts of violation against human and citizens' rights and freedoms.”

Article 16 of the Law specifies that “The Commissioner shall exercise his or her functions on the basis of information regarding acts of violation against human and citizens' rights and freedoms which he or she obtains through: (1) the appeal of citizens of Ukraine, foreigners, stateless persons or their Commissioners; (2) the appeal of National Deputies of Ukraine; (3) his or her own initiative.”

6.2. The mandate in practice

In its statement of compliance, the UPCHR mentions that “an active participation in plenary sessions of the Verkhovna Rada of Ukraine during consideration of project laws, Government's reporting to the Parliament, Parliament proceedings, parliamentary committees meetings, as well as involvement of National Deputies of Ukraine, heads of parliamentary committees, leaders of deputy groups and fractions in round tables and other events conducted by the Commissioner for Human Rights, has become a common practice in the work of the Commissioner. The Commissioner regularly cooperates with governmental agencies on specific human rights issues as well. One holds regular consultations with ministries, governmental agencies on amending the legislation in force for ensuring constitutional human rights and fundamental freedoms”.

In its statement of compliance, the UPCHR also states that “the Commissioner regularly cooperates with the Constitutional Court of Ukraine, the Supreme Court of Ukraine, the Higher Administrative Court of Ukraine, the Higher Economic Court of Ukraine, the High Council of Justice of Ukraine and the Council of Judges of Ukraine, particularly by means of consultations, acts of submission, appeals, explanations. The Commissioner and officers of the Secretariat are members of the Higher qualification commission of judges and other judicial qualifications commissions”.

The statement of compliance also mentions that nearly 80,000 citizens of Ukraine, foreigners and stateless persons appeal to the Commissioner for the protection of their rights every year. Over 20,000 complaints are received in written form every year. It also mentions that “during 2007-2008, the Commissioner submitted 5 constitutional acts of submission and 58 acts of submission to bodies of state power, bodies of local self-government concerning the elimination of systematic violations of human rights in Ukraine, in particular: the President – 15; the Prime Minister – 13; the Chairman of the Parliament of Ukraine – 1; the Prosecutor General of Ukraine – 14; the Chairman of the Supreme Court of Ukraine – 2; the heads of bodies of executive power of a higher level – 6; the President of the National Bank of Ukraine – 1; the heads of bodies of local self-government – 4; the local courts – 1; the local prosecuting offices – 1.”

6.3. Functions regarding national legislation

Article 3(4) of the Law states that “the parliamentary control exercised by the Commissioner shall be aimed at [...] facilitating the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;

Article 13(3) of the Law states that the Commissioner is entitled to “appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms; the official interpretation of the Constitution of Ukraine and the laws of Ukraine;”

In its statement of compliance, the UPCHR mentions that in 2008, the Commissioner submitted 3 acts of submission to the Constitutional Court of Ukraine. These related to the constitutionality of some provisions of laws on work accident insurance, the norms of the Family Code of Ukraine, and the government resolutions on migration policy. It also mentions that “the Commissioner and her delegates are entitled (and do it in practice) to attend sessions of the Cabinet of Ministers of Ukraine and freely contribute suggestions and recommendations to the discussed draft laws.”

6.4. Encouraging ratification and implementation on international standards

Article 19 of the Law states that “The Commissioner shall participate in the preparation of reports on human rights which will be submitted by Ukraine to international organizations in accordance with effective international agreements that the Verkhovna Rada of Ukraine has given consent to comply with on a mandatory basis.”

The statement of compliance mentions that the Commissioner presented the report “The State of Implementation of the International Standards of Human Rights and Freedoms in Ukraine” to the Verkhovna Rada of Ukraine. The Commission clarified in a letter dated 24 February 2009, that the report was presented on 10 December 2008, on human rights day.

In its statement of compliance, the UPCHR mentions that over time it has encouraged ratification of the following instruments:

- The UN Convention on the Law of the Sea
- The UN Convention Relating to the Status of Refugees
- The UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially in Women and Children
- The Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The European Convention on the Legal Status of Migrant Workers
- The International Convention on the Protection of the Rights of all Migrant Workers and members of their Families
- The International Convention for the Protection of All Persons from Enforced Disappearance

- The UN Convention on the Rights of Persons with Disabilities and its Optional Protocol
- The ILO Occupational Safety and Health Convention No.155
- The ILO Prevention of Major Industrial Accidents Convention No.174

6.5. Programmes for teaching and research

Article 3(7) of the Law states that “the parliamentary control exercised by the Commissioner shall be aimed at encouraging legal knowledge among the population and protecting confidential information about each person.”

In its statement of compliance, the UPCHR mentions that it has contributed to the preparation of the study guide “Countering Trafficking in Human Beings” for workers in the sphere of prevention of trafficking in human beings, as well as “Prevention of Tortures in Ukraine” for staff of the law enforcement bodies and persons monitoring observance of human rights. It states that at present, the Commissioner together with the Ministry of Labor and Social Policy of Ukraine is working on the creation of the Ombudsman page for the electronic directory on career guidance for pupils and their parents, which will also provide information on the rights of the child. These directories are planned to be set in every secondary school of Ukraine.

6.6. General powers

Reporting

Article 85 (17) of the Constitution states that the authority of the Verkhovna Rada of Ukraine comprises the hearing the annual report of the UPHRC on the situation of the observance and protection of human rights and freedoms in Ukraine.

Article 18 of the Law elaborates upon the annual reports of the Commissioner: “During the first quarter of every year, the Commissioner shall provide the Verkhovna Rada of Ukraine with an annual report on the issue regarding the observance and protection of human and citizens' rights and freedoms in Ukraine by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers, whose acts (acts of omission) resulted in the violation of human and citizens' rights and freedoms, and on the drawbacks discovered in legislation concerning human and citizens' rights and freedoms. The annual report should refer to instances of violation against human and citizens' rights and freedoms in regard to which the Commissioner has taken necessary measures that resulted in acts of inspection conducted within the period of one year, conclusions and recommendations aimed at improving the situation with regard to securing human and citizens' rights and freedoms.

Article 18 also specifies the mandate of the Commissioner to submit special reports: “Should the need arise, the Commissioner shall provide the Verkhovna Rada of Ukraine with a special report (reports) on separate issues regarding the observance of human and citizens' rights and freedoms in Ukraine.”

Article 18 concludes by stating: “The Verkhovna Rada of Ukraine shall adopt a resolution based on the annual and special report (reports) delivered by the Commissioner. The annual and special reports, along with the resolution adopted by the Verkhovna Rada of Ukraine, shall be published in official publications of the Verkhovna Rada of Ukraine.”

The statement of compliance mentions that in 2003 the Commissioner provided the Parliament with the Special report "The State of Observance and Protection of Human Rights of the Ukrainian Citizens Abroad". As the result, on 3 April 2003, the Verkhovna Rada adopted the resolution "On Special report "The State of Observance and Protection of human rights of the Ukrainian citizens abroad". In this resolution the Verkhovna Rada of Ukraine requested its Committee on Human Rights, Committee on National Minorities and International Relationships, and other committees, the Cabinet of Ministers of Ukraine, appropriate ministries and central authorities to study the suggestions of the Ukrainian Parliament Commissioner for Human Rights. It also states that “to follow up the Parliament resolution the Cabinet of Ministers of Ukraine issued its decree "On approval of measures for further improvement of legislation on human rights and freedoms protection in compliance with international standards (according to annual and special reports of the Ukrainian Parliament Commissioner for Human Rights)".”

The statement of compliance furthermore mentions that “On 10 December 2008, the Commissioner presented her Special report "The Status of Implementation of the International Standards of Human Rights and Freedoms in Ukraine" to the Parliament. The document contains, in particular, analyses of

implementation of UN Treaty Bodies' concluding observations and recommendations as regards periodic reports of Ukraine. Another two Special reports are being prepared by the Commissioner: on the observance of the rights of national minorities and persons suffering from HIV/AIDS in Ukraine."

6.7. Power to gather information

Article 13, sections 1 and 4-9, of the Law all contain powers that allow the Commissioner to gather information (see paragraph 6.1 of this summary for full text).

In addition, article 22 of the Law specifies the obligation to cooperate with the Commissioner:

"Bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, officials and officers approached by the Commissioner shall be obligated to cooperate with him or her and assist him or her, as appropriate, in:

- 1) ensuring access to materials and documents, in that respect, on the basis of established normative acts with regard to the protection of state, military and civil secrets;
- 2) providing information and explanations with regard to the factual and legal basis of their acts and decisions.

Any refusal of cooperation by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers as well as deliberate concealment or the providing of false information, illegal interference into the activity of the Commissioner with the purpose of counteraction shall incur liability in accordance with effective legislation."

7. Quasi-jurisdictional competence

Article 17 of the Law specifies the power of the Commissioner to consider appeals:

"The Commissioner shall receive and consider appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine «On Citizens' Appeals».

Appeals shall be filed with the Commissioner in a written form within the period of one year after disclosure of the act of violation against human and citizens' rights and freedoms. In the case of exceptional circumstances, the period can be extended by the Commissioner but should not exceed two years.

The Commissioner considering the appeal shall:

- 1) initiate the case on the act of violation committed against human and citizens' rights and freedoms;
- 2) explain what measures the person who has filed the appeal with the Commissioner should take;
- 3) submit the appeal, as appropriate, to the body which is competent to consider the case, and control the consideration of this appeal;
- 4) decline consideration of the appeal.

The Commissioner shall not consider appeals which are under review in courts, shall terminate legal proceedings that have been initiated if the person concerned has filed an appeal, statement or complaint with the court.

Notification to accept the appeal for consideration or refusal to accept the appeal for consideration shall be submitted in a written form to the person who has filed it. There should be cause for refusal to accept an appeal for consideration."

Article 21 of the Law elaborates upon the guarantees of protection of human and civil rights during the process of petitioning the Commissioner. It states that "Everyone can petition the Commissioner, without any restriction and hindrance, in accordance with the procedure envisaged by effective legislation. There can be neither privileges nor restrictions related to race, skin colour, religious or other convictions, sex, ethnic and social origin, financial status, place of residence, language and other such factors during the process of petitioning the Commissioner. The person who has lost his or her personal freedom, can petition the Commissioner or his or her delegates in writing. In this instance, restrictions related to correspondence shall not apply to this individual. Correspondence from this individual shall be dispatched to the Commissioner within the period of twenty-four hours."

Article 21 of the Law also states that "Correspondence meant to the Commissioner and his or her delegates from those persons who are detained, arrested, in custody, or in various types of prison facilities and facilities where medical treatment is forcefully applied, as well as from other citizens of Ukraine, foreigners and stateless persons, irrespective of their dwelling place, shall not be subject to any censorship and inspection. Those persons who have committed acts prohibited by this Article shall be held accountable in accordance with effective legislation."

The document "Information on the complaints received by the Ukrainian PCHR (as of 1 December 2008)" gives the following details:

- Average of 22,000 written complaints per year (from 64,000 persons)
- Average of 5,500 persons per year came to the public reception office of the Commissioner
- Average 2,400 persons per year are heard away from office (in regions)
- Average of 11,000 persons per year receive legal advice by means of the hot-line of the Commissioner
- From January – November 2008, the UPCHR received 20,921 complaints.

V. SUMMARY OF THE ANNUAL REPORT

The ICC Secretariat has been provided with the annual report of 2006-2007. The report is structured in as follows:

- 1. Securing the right to appeal to the Commissioner for Human Rights**
 - a. Consideration of claims related to the protection of human rights by the Commissioner
 - b. Cooperation with the Verkhovna Rada of Ukraine and consideration of claims from people's deputies of Ukraine
 - c. Ensuring the rights of foreigners and stateless persons
- 2. Protection of civil and personal rights**
 - a. 2.1. State of judicial protection of human rights in Ukraine
 - b. 2.2. Rights of citizens to execution of judgments and legal assistance
 - c. Observance of the right of persons detained by law enforcement bodies to respect of their dignity and freedom from tortures
 - d. Observance of human rights and freedoms in institutions of the State punishment execution system
- 3. Political rights of citizens**
 - a. Protection of electoral rights of citizens and principles of parliamentarism in Ukraine
 - b. The right to freedom of speech and information, freedom of opinion and expression is an integral part of democracy
- 4. Protection of economic, social and cultural rights**
 - a. Ensuring the right to freedom from poverty and dignified standard of living
 - b. Right to employment and safe working conditions
 - c. Ensuring the land rights
 - d. Ensuring the housing rights
 - e. Observance and protection of the right to education
 - f. Ensuring the right to safe environment
- 5. Protection of the rights of the child is a special concern of the Commissioner for Human Rights**
- 6. Observance of constitutional rights and freedoms of servicepersons and members of their families**
 - a. Protection of the rights and freedoms of servicepersons in the context of reforming the Military organization and law enforcement bodies of Ukraine
 - b. Observance of the right to safe conditions of military activity
 - c. Ensuring the rights of servicepersons, regular and senior military persons and members of their families to a dignified standard of living
 - d. Enforcement of the rights of war veterans and ex-servicepersons to the State social protection guarantees

Closing remarks
