



National Guarantor for the rights of persons detained or deprived of liberty

THE NATIONAL GUARANTOR FOR THE RIGHTS OF PERSONS DETAINED OR DEPRIVED OF LIBERTY – UPDATED ACTIVITIES

1. INTRODUCTION

Last year, Italy was under the UN Human Rights Council's third Universal Periodic Review. Of the 306 Recommendations received at the end of the Review, 45 concerned the establishment of the National Human Rights Institution (NHRI) which — in twenty-seven years from the approval of United Nations General Assembly Resolution 48/134 of 20 December 1993 — has not still seen the light in Italy. A draft law in this sense is, in fact, still pending at the Italian Chamber of Deputies making Italy one of the last countries in Europe not to have introduced a National Institution for the Promotion of Human Rights into its legal system, a body which should deal internally with all fundamental rights. Furthermore, not having established a national Ombudsman, for the protection of human rights, there is only one body compliant with the Paris Principles, and this is the National Guarantor for the rights of persons detained or deprived of liberty (from now on NG) being appointed as **NPM (National Preventive Mechanism) under UN - OPCAT (Optional Protocol to the Convention against Torture)**, ratified by Italy with **Law no. 195 of 9 November 2012**.

The NG was established by law in February 2014 (Law No. 10 of 21 February 2014). It is a **collegial body** with a President and two Members. The **NG Board** is assisted by a **technical body: the NG's Office**.

The NG has been designated as NPM compliant to the Opcat with Note Verbale of 25 April 2014. Its designation is today recalled (June 2020) in a law that specifies the different powers given on the one hand to the NG as NPM and on the other hand to the local Guarantors.

On the matter of the establishment of an NHRI, the hope of the NG, in line with what has been expressed since its establishment, is to recommend the adoption of a primary legislation establishing an independent body for the promotion and protection of human rights, in the sign of safeguarding the full autonomy of the independent Authorities already established and avoid overlaying levels of protection.

After four years of activity, the NG's functions and mandate are satisfactorily consolidated. Its appointment as UN preventive mechanism's 'final segment' has been applied to all scopes of intervention, which the NG has skillfully enhanced. In fact, it has not limited its mandate to police custody or criminal detention of adults and juveniles, but its action has been extended to immigration administrative detention, their retention in non-traditional places - such as vessels and the so called "suitable premises", by way of example - up to the deprivation of liberty connected with healthcare issues. Furthermore, the Italian Government has confirmed the NG's primary oversight role in the fulfillment of conventional obligations stemming from the *UN Convention on the rights of people with disabilities* (in particular Article 15 which establishes that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment) in psychiatric institutions and other residential structures for people with disabilities or the elderly.

Two more considerations are to be pinpointed, along with the NG's powers as National Preventive Mechanism:

a) Despite its Board's short first mandate (the first decree of the President of the Republic on the appointment of the NG is of 1 February 2016) — which is non-renewable — the NG's overall structure has been gradually improved.

The technical body which bolsters the NG's Board, **the NG's Office**, is operational since March 2016. It has 25 persons assigned (20 from the Ministry of Justice, one of which has not been recruited yet; 2 from the Ministry of the Interior; 3 from the Ministry of Health that are about to be recruited through a public competition). The **NG Office's new organisation** has recently been published in the Official Gazette No. 193 of 19 August 2019, adopted by the Decree of the President of the Council of Ministers no. 89 of 10 April 2019 (hereafter DPCM). The NG Office's staff has been selected by the NG's Board in full autonomy and independence. It is assigned on an exclusive basis to the NG and reports to it only. Any request of being

assigned to other offices shall be authorised by the NG's Chairman (article 2, § 4, of the aforementioned DPCM) who has, moreover, the power to re-admit the staff requesting the different assignment.

b) The second consideration concerns the **network of local Guarantors** (regional, provincial, metropolitan and municipal cities). It is an important support to the NG's monitoring activities. Since its establishment, the NG has tried to enhance the local Guarantors and their supportive action, considered their proximity and analytical knowledge of the deprivation of liberty contexts, although, in many cases, limited to criminal detention. Therefore, starting from the situation at the beginning of the NG's mandate, already previously reported to CAT in 2017 — when there were 12 regional, 9 provincial and 41 city Guarantors, the NG has engaged in a direct and continuous dialogue with local authorities in order to suggest amendments to the local provisions on the appointment of the Guarantors to make them the more possible Opcat compliant. To date, there are 72 guarantors of which 17 are regional - it should be remembered here that the Italian regions are a total of 20 - 3 provincial, 1 metropolitan and 51 municipal. Of particular note, the increase in the number of regional Guarantors having features required by Opcat been itemised as follows:

1. the local Guarantor shall meet **appropriate criteria of independence and autonomy**. In particular, it must be elected by a Legislative Assembly and the duration of its mandate must be independent of the appointing institution's.
2. The mandate must refer to **any form of deprivation of liberty**, an extension of the mandate which justifies provisions of article 4 of OPCAT.
3. The **principle of cooperation with the authorities** must be respected as they are the first interlocutors of guaranteeing bodies.
4. The **principle of confidentiality** on information and documents gathered must be respect until their possible publication.

The constructive work of the NG aimed at cooperating with the network of territorial Guarantors has given good results, among which the construction of a **network with the territorial Guarantors for the monitoring of forced returns**.

The NG is developing similar networks starting from *social care homes*.

In particular, in the field of deprivation of liberty of migrant persons, the NG has set up a system of monitoring forced returns pursuant to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, laying down rules and common procedures applicable to the Member States for the return of illegally staying third-country nationals.

For this task, from April 2017 to February 2020, the NG was able to count on the additional support of the resources made available by the Asylum Migration Integration Fund (AMIF) 2014/2020 through the project "Implementation of a forced-return monitoring".

This additional financing has made it possible to significantly strengthen, both qualitatively and quantitatively, the institutional *mission* for monitoring forced returns.

Among the main actions of the project there was, in fact, the construction of a national monitoring network involving the Guarantors of persons deprived of their liberty in the regions Emilia-Romagna, Latium, Marche, Campania, Piedmont (in collaboration with the Guarantor of Turin), Apulia, Sicily and Tuscany. Their established collaboration ensured well-timed access to most of the places from which forced return operations start in the Italian territory and the extension of the monitoring activity to all the operation's phases. This constituted a considerable step forward in terms of reliability, awareness and recognition of the role of the territorial Guarantors in the prevention of torture and inhuman, cruel or degrading treatment.

2. ON THE CRIME OF TORTURE: THE POSITION OF THE NG AFTER THE INTRODUCTION OF THE CRIME IN THE CRIMINAL CODE

As known, in July 2017, Italy introduced the crime of torture to article 613-bis of the Criminal Code, also to the NG's work to raise awareness on the matter. This important innovation began to prove itself in the course of 2019, at least in terms of the initiation of investigations into facts that have taken place in some places of deprivation of liberty. At least three Public Prosecutors — from Naples, Siena and Turin — have opened a criminal procedure over allegations of torture by some prison police officers on detainees. Moreover, the NG, which appeared as the offended party in criminal proceedings relevant to allegation of torture against persons deprived of liberty, receives information on the initiation and status of these proceedings.

The first criminal proceedings and relevant judgements, in addition to determining the interruption, in specific cases, of the events pursued, also with the adoption of precautionary measures against some

persons under judgement, immediately produced the result of a first concrete outline of the elements that integrate the crime, overcoming, in fact and in law, the doubts about the definition set forth in article 613-bis of the Criminal Code raised at its very outset.

3. THE ENHANCEMENT OF THE ROLE OF THE NG

3.1. Its monitoring activities

3.1.1. Deprivation of liberty and migrant persons

In this context, the NG has experienced a growing consent of its role played both at the legal and institutional levels.

Law-Decree no. 113 of 4 October 2018, converted with amendments into Law no. 132 of December 2018, have added powers to the NG with regard to 'hotspots' and first reception governmental centers, intended to enforce the detention of asylum seekers for identification purposes. With this provision, the Parliament therefore made explicit the power of the NG in the 'hotspots', now also functioning as detention facilities for asylum seekers, reaffirming its unconditional powers of access and visit to these structures that the monitoring Authority, however, already had even before approval of said provision.

The NG's exercise of rights and visiting powers in all places of deprivation of personal freedom, both *de jure* and *de facto*, have in fact also found wide recognition in practice. In particular in 2018 and 2019, in the sector of deprivation of freedom of migrant persons, the NG has carried out its supervisory mandate to protect people rescued at sea who are unable to disembark under the decisions of the Italian Authorities not to assign a *Place of safety* (POS) to the ships that had saved them.

The NG differently intervened in many occasions as in the well-known case that concerned the Coast Guard "Ubaldo Diciotti" patrol vessel on 23 August 2018. On that circumstance, the NG in the full exercise of its mandate, however, conducted a visit to check the conditions of foreign citizens detained on board.

The visit on board the ship has sanctioned the access power of the NG also to those structures (be they ships, planes or premises presumably defined as 'suitable') where the deprivation of liberty does not have a *formal* definition, but is the outcome of the situation that has in fact resulted from contingent choices, due to lack of compliance or due to decisions taken informally.

In other cases, the NG involved other NPMs in a formal cooperation initiative about monitoring rescue at sea by vessels from different nationalities, but did not find substantial support from concerned NPMs.

Moreover, the SPT, in the wake of the NG's initiative, has recently launched a debate on monitoring rescue ships, while considering them as *de facto* places of deprivation of liberty.

In 2019, the NG also focused on the detention rooms at the disposal of law enforcement officials at the border checkpoints. It noted how the foreign nationals pushed back at the border's forced stay in these premises — waiting for a carrier to bring them back to their country of origin — may amount to a *de facto* deprivation of liberty, lacking a legal basis. For this reason, the NG's report on the oversight visits to the holding places in Rome Fiumicino, Milan Malpensa and the port of Civitavecchia has also been sent to the legislative body.

During all the visits conducted to *de facto* places of deprivation of liberty, the responsible Authorities were cooperative with the NG and did not counter its free access to spaces, documents and retained persons.

3.1.2. Deprivation of liberty and health protection

The NG was fully committed to the field of deprivation of liberty and health protection since the last period of year 2017. The NG started first to map and then to visit places holding persons with disabilities and the non-autonomous elderly. In addition, the Deprivation of liberty and health protection operational unit is also responsible for monitoring the Psychiatric diagnosis and treatment service (SPDC) of the National Health Service in particular the enforcement of Involuntary Health Treatments (hereafter TSO) and for conducting oversight visits to the Residences for the Enforcement of Security Measures (REMS).

Concerning the nursing homes for persons with disabilities or the elderly, the NG has been recently entrusted to monitoring them as an NPM, after some recommendations made by the UN Committee on the rights of persons with disabilities (para 42 of the CRPD's Concluding Observations on the initial Report of Italy¹). Those are indeed to be considered as places where institutionalisation and segregation result in a *de facto* deprivation of liberty after a voluntary arrival to the same structure — due to the person losing the

¹ Para 42 "The Committee recommends that the national preventive mechanism immediately visit and report on the situation in psychiatric institutions or other residential facilities for persons with disabilities, especially those with intellectual and/or psychosocial disabilities" – 6 October 2016.

ability of self-determination or any family reference and support. This condition can take on aspects of exposure to the risk of violation of the integrity of the person's rights.

Mapping the many places of deprivation of freedom in the health sector (more than 13,000) has been possible thanks to the implementation of the *GNPL National Register*, a "Registry of socio-health and socio-welfare structures (health and social care homes) for persons with disabilities" available nationwide. The *GNLP National Register* activated, the monitoring of said mapped structures became an ordinary activity of the NG.

Another peculiar aspect that must be taken into account is the articulation of the Italian social and health system, which involves different regional regulations. Moreover, this regionalization has also produced a system of classification of structures fragmented into a multiplicity of typologies that are only partially coincident and comparable on a regional basis.

It should also be pointed out that the positive reception that the Guarantor has so far encountered during the visits, as well as the appreciation for the unquestionably new approach and the extensive collaboration put in place with Universities, research Centres and even volunteer organisations involved in the field of disabilities are important signs of a need and a willingness to work together to create improved and renewed criteria and actions to ensure the rights of everyone.

The NG has achieved different results from its monitoring activities to places and people undergoing involuntary health treatment. As known, Italy has somehow been avant-garde about the protection of persons subjected to this type of hospitalisation.

The first visits were mainly indicative of the willingness of the healthcare staff, at different levels, to overcome the logic of the mini-department hidden out of sight and often located in cramped places. But fortunately, alongside these situations, the Guarantor has verified a strong desire for change, especially in personnel with more recent training, less focused on the dual aspect: 1) of the patient who is incapable of self-determination and, therefore, becomes the mere object of pre-defined plans with no involvement of his own; 2) of the place where the overlap of security and care unequally favours the former. Finally, according to the NG, national guidelines could be useful for making the use of TSO more uniform throughout Italy, assisting to replace the regional disparities in the use of such an extreme measure.

The lack of clear data concerning the TSO procedure and functioning has been identified by the NG, which makes monitoring activity more difficult. The national data available come, in fact, from ISTAT² statistics, with three significant limitations: they are not up to date, so that the most recent data refers to the year 2016; only discharges are reported; and they do not include cases in which the patient gives his consent during the course of treatment, thus transforming involuntary treatment into voluntary treatment.

Another place of deprivation of liberty considered in the field of health safeguard is the Residence for the Enforcement of Security Measures (REMS), the monitoring of which continued in parallel with the other structures. The collaboration with the health structures that are responsible for the management of these places is extensive to the point that recently the manager of a REMS has requested the intervention of the NG for a case of a patient detained in the residence for more than twenty years.

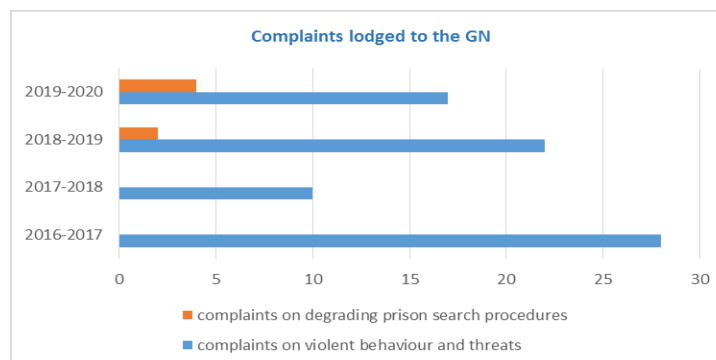
3.1.3. Deprivation of liberty and criminal detention

Law-Decree no. 146 of 23 December 2013 (converted into Law no. 10 of 21 February 2014), which also established the NG, introduced the so-called 'jurisdictional complaint' by inserting the new article 35 bis in the Prison Act. It has also strengthened the first level of protection — the non-jurisdictional level — by reinforcing the already existing 'generic complaint' (art. 35 of the Prison Act) that a prisoner can address to a variety of Authorities, including the NG and the local Guarantors. A 'generic complaint' can be resolved through the Prison Administration's timely and clear dialogue with respect to the requests of prisoners that do not reach that seriousness threshold of a possible violation of art. 3 of the Convention. Indeed, they represent a sign for those situations that simply require a more targeted and effective intervention, so as not to resort to the 'jurisdictional complaint'.

A substantial part of the 'general complaints' sent to the NG is relevant to health issues and prisoners' transfers to other facilities. However, it should be noted that since 2016, as reported in the table below, the number of complaints received for possible violent behaviour and threats has been a total of 77, while those addressing degrading prison search procedures, i.e. those more which were conducted disrespectful of the prisoner's dignity, have been overall 6. Though low figures, they should take into account the possibility to lodge a 'jurisdictional complaint'.

² The Italian National Institute of Statistics, a public research organisation, which is the main producer of official statistics in the service of citizens and policy-makers. It operates in complete independence and continuous interaction with the academic and scientific communities.

Years	complaints on violent behaviour and threats	complaints on degrading prison search procedures
2016-2017	28	0
2017-2018	10	0
2018-2019	22	2
2019-2020	17	4
	77	6



3.1.3.1. The 'special detention' regime ex art. 41 bis of the Prison Act

In 2018, the NG completed its visit plan to all sections with special prison regime pursuant to article 41-bis of the Prison Act, which was started at the beginning of its activity. In this way, the NPM obtained a nationwide vision on places and persons subjected to this special detention regime. The programme completed, the NG prepared its thematic report, which published on its website³, together with the replies received from the Department of Prison Administration and the Cabinet of the Ministry of Justice. The intervention of the NG on said maximum security regime, therefore, does not call into question the current regulatory provision, but analyzes and compares the concrete application of the measures referred to in article 41-bis of the Prison Act and its being congruent with the legal parameters defined by the Constitutional Court, as well as by the ECtHR.

Finally, with the above mentioned law of June 2020, the Italian Parliament wanted to reaffirm the full power of the NG as NPM to conduct confidential interviews — **with no audio or visual control** — with all prisoners placed under the special detention regime ex 41 bis and the different power **assigned only to the regional Guarantors to exclusively conduct videotaped interviews** with the only 41 bis prisoners held in their region of competence while the rest of the local Guarantors do not have said power.

Thus, obtaining a global vision on the application of this institution in Italy. The completion of the visits was followed by the drafting of the Thematic Report on the special prison regime, published on the website of the NG, together with the responses received from the Department of Prison Administration and the Cabinet of the Ministry of Justice. The attention paid by the NG to this prison circuit, as to all those characterized by 'specialties' with respect to ordinary regimes, is within the perimeter outlined by the Constitutional Court defining the terms of legitimacy of the special regime within the framework of the principles that regulate the execution of the penalty in our system. The intervention on the subject, therefore, does not call into question the current regulatory provision, but analyzes the congruence of the concrete application of the measures referred to in article 41-bis op with the legitimacy parameters defined by the Constitutional Court, as well as by the Court Edu.

3.1.3.2. Deaths in custody: the action of the NG

Over the years, the relationship of the NG with the judicial bodies has taken on particular relevance: in this regard, the dialogue developed with the Supervisory Court⁴ and the positive feedback from all Public Prosecutors relevant to the active role offered by the NG in investigations concerning cases of suicides in prison, by appearing as offended party in corresponding investigation procedures and trials since 2017.

³ <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/a5db4acf7c430ee2221c5453720730c2.pdf>.

⁴ The Supervisory Court is a dedicated jurisdictional body that oversees the execution of detention sentences and addresses all matters that may be affecting the full exercise of the prisoner's fundamental rights.

The dialogue with the judicial bodies was strengthened during two meetings with the Presidents of the Italian Supervisory Courts addressing penitentiary matters. A third meeting is scheduled shortly.

The high number of suicides in prison considered, the NG wanted to contribute somehow to the suicide prevention system developed by the Ministry of Justice with the internal procedural communication of 3 May 2016, notwithstanding the difficulty of bringing such events back to a single root cause. To this end, in any case of suicide in prison, the NG therefore sends a request on the state of play of investigations to the competent Public Prosecutor's Office.

Over time, the NG has positively recorded the feedback of the Public Prosecutor's Office to its requests for information on the outcomes of ongoing investigations into cases of suicide in prison, which, in addition to allowing active participation in the proceedings, has highlighted the awareness on the NG's role in protecting the rights of detained persons. However, the Guarantor had already included in its Self-regulation Code the "obligation to promptly communicate to the competent judicial authority information gathered about crimes perpetrated against a person detained or deprived of liberty which it may come across while performing its institutional tasks".

3.1.4. Deprivation of liberty and police forces

Over the years, the NG exercised its supervisory mandate on the guarantees, rights and obligations deriving from the deprivation of liberty not only in the places of temporary detention of people arrested or apprehended, such as the police holding cells, but also in others rooms where detention can be carried out: the interrogation rooms, the so-called 'suitable premises' for the detention of irregular foreigners if places are not available in the CPR⁵, the *waiting rooms* at ports and airports, for those who are not admitted to the national territory.

According to the findings gathered by the NG during its monitoring visits to the State Police and Carabinieri holding cells and to the premises where interrogations are carried out, the trinity of fundamental rights to be guaranteed to the arrested or detained person are fully protected.

The most relevant critical aspects have been observed about the incorrect recording of logbooks, which sometimes are lacking entry and exit times from the place of deprivation of liberty, the signature to confirm that detained persons have received the 'Letter of Rights', and that they have had the opportunity to have a meal.

The presence on the territory of law enforcement holding cells equipped with the characteristics that make them effectively accessible — i.e. suitable for overnight stay and organized in order to make the fundamental rights of the person arrested concretely enjoyed — is therefore an element of high relevance in the attention of the NG.

However, shortages of holding cells have been found in many regions, mostly in the province of Catania or the Apulia region, due or to the real lack of such structures in the law enforcement headquarters or to the unsuitability of the existing ones. This situation has as a consequence the increased resort to the use of custody in prison — the phenomenon of the so-called 'revolving doors', that is the transit in prison for very short times, from few hours at most, currently, two days, of people before appearing to court in a summary trial. In 2011, a Law-Decree was issued to counter this phenomenon and showed its effectiveness in terms of reducing prison transits and time spent in prison custody⁶.

Together with the lack of facilities, the NG had again to point out the shortage of the essential requirements in many of the existing and used holding cells that make them suitable for spending more than one day.

It is, in short, a set of standards identified by the NG during its oversight visits and that are dealing with the very external and material conditions of the visited places, standards that are resulting from the "act of observing"⁷. As seen, even in newly built or better maintained structures these criteria are only partially respected: so, the NG keeps on addressing the Public Administrations concerned recommendations to provide for the construction of new facilities or the complete renovation of those existing, to make them

⁵ Introduced by art.4 (1) of the decree-law 4 October 2018, n.113, converted into law n.132 of 1 December 2018.

⁶ Law Decree 22 December 2011, no. 211 converted into law 17 February 2012, n. 9 on «Urgent interventions to contrast the prison tension caused by the overcrowding of prisons». Paragraph 4-bis of article 558 of the criminal code introduced with the reform provides that the arrested person must be guarded primarily in his home or in an equivalent place and in the absence of these "at suitable facilities in the availability of officers or judicial police officers who have carried out the arrest and that the arrested person was handed over ». The same reform reduced the time within which the arrest validation hearing and the simultaneous judgment to 48 hours from the previous 72 hours.

⁷ Here the reference is to the famous Italian jurist Piero Calamandrei, *L'inchiesta sulle carceri e sulla tortura*, in *Il Ponte*, Florence, 1949, No. 3.

fully compliant with the standards internationally and nationally defined, and to give a concrete and rapid application of the principles of legal civilization which are the basis of the aforementioned law to contrast the 'revolving doors' phenomenon in the Italian prisons.

3.2. The follow-up on the NG's recommendations: the 'Norms and Normativity' collection

Article 3 of the NG's Self-regulation Code explicitly states that the Authority freely exercises its mandate by conducting **unannounced** visits to places of deprivation of liberty, without any interference from government authorities (national or local).

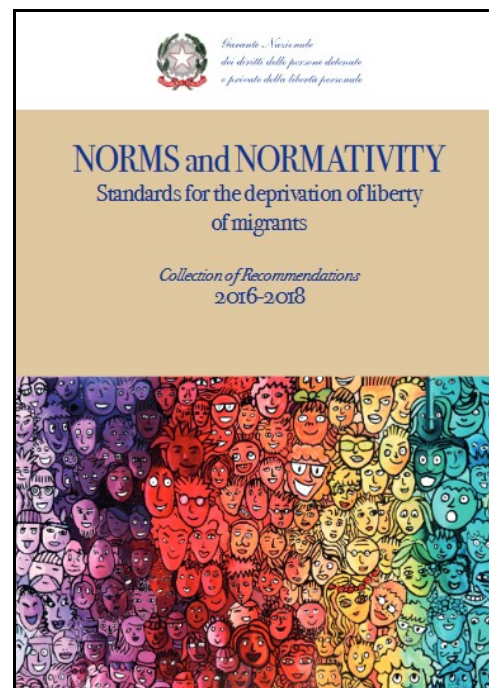
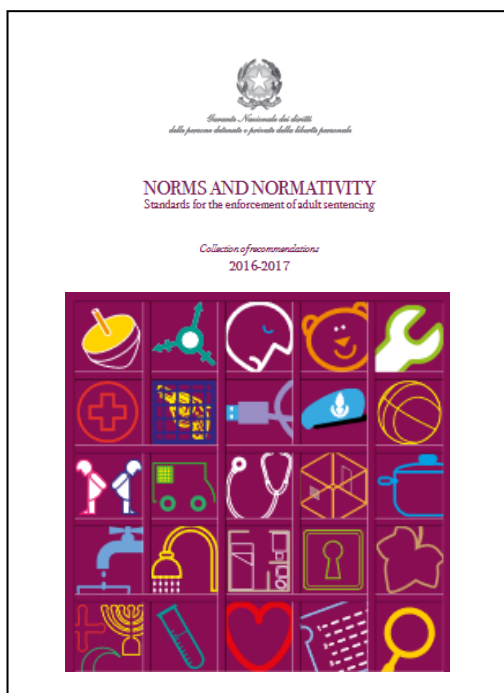
The exchange of views with the Authorities concerned, the full access to documents as well as free and private interviews with people are crucial elements in the exercise of the NG's remit.

In addition, the exchange of information and cooperation with the *Subcommittee on the Prevention of Torture* (SPT) and with the NPMs of other States that have ratified the OPCAT, as well as the ongoing dialogue with the European Committee for the Prevention of Torture (CPT) at regional level are of paramount importance for the coordination of the system envisaged by the Protocol and the adoption of equal standards in the various countries. The result would be a stronger protection from torture and degrading treatments or punishments at national, regional and global levels.

As mentioned, oversight activities on places of deprivation of liberty, whether *de iure* or *de facto*, have determined and increased the general awareness of the consistency of the NG's duties and powers and the prospect of an effective collaboration with Public Administrations and Authorities that characterizes its activity. Starting from the consolidation of the dialogue with the Departments of the Authorities concerned, the figure and functions of the NG have been recognized as an integral part of the institutional layout: the overall system of deprivation of liberty is based precisely on the ability to be an '**external, but cooperative, eye**', which identifies the critical issues and can provide independent recommendations aimed at facilitating solutions and catering for internationally recognized parameters in the protection of detained persons.

The NG's reports drafted after each visit are sent to the Authorities concerned and then published on its website, after a period of maximum 30 days. If replies are received, they are published together with the report. The reports contain the Recommendations that the NG addresses to the interested public Administrations, in order to improve the level of protection of the rights of persons deprived of liberty, in close collaboration with all the actors involved.

In 2018 and 2019, the NG published the collections of recommendations, respectively, on criminal and administrative detention.



Starting from the principle that the deprivation of liberty of people must always be a measure of *last resort*, where other hypotheses do not seem viable, these two collections of recommendations constitute a *corpus* of *soft law* that has been widely appreciated by the institutions involved, by the judicial

authorities, by prisoners and by custodial and care staff, by the world of the third sector and the private social, by the academic world.

For both collections, the goal has been to define places of deprivation of liberty in their different structures, rules theoretically established and their practical implementation and, further, to draft a system of **national elementary standards** that are in line with and are comparable to the supranational ones (regional and global).

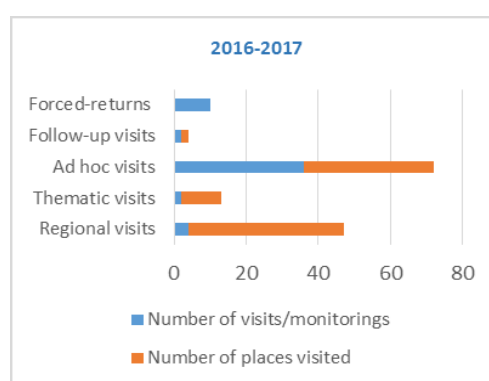
The **distinction between minimum and elementary** standard is not secondary. A **minimum standard** is limited to indicating the threshold below which a particular aspect of detention is unacceptable and risks becoming "inhuman or degrading treatment", a compulsory prohibition given by regional and global Conventions: nonetheless, a downward target. An **elementary standard**, on the contrary, indicates a reachable and accessible target and at the same time, it is the expression of a possible evolution, a progressive improvement.

Alongside the collections of Recommendations, there are, of course, the reports drafted by the NG, which have been the primary products for said collections.

The graphics below show the data on the number of visits carried out, distinguished in regional, thematic, ad hoc and follow-up. In addition, we have inserted the forced-return monitoring and in separate columns the number of reports produced and their relevant responses from the Authorities concerned.

Oversight activities conducted in 2016-2017

	Number of visits/monitorings	Number of places visited
Regional visits	4	43
Thematic visits	2	11
Ad hoc visits	36	36
Follow-up visits	2	2
Forced-returns	10	
Totals	54	92



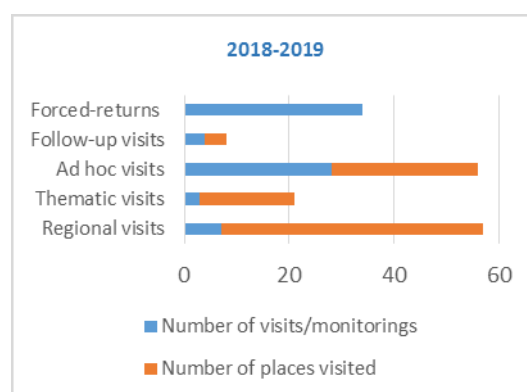
Oversight activities conducted in 2017-2018

	Number of visits/monitorings	Number of places visited
Regional visits	4	53
Thematic visits	12	19
Ad hoc visits	39	39
Follow-up visits	3	3
Forced-returns	20	
Totals	78	114



Oversight activities conducted in 2018-2019

	Number of visits/monitorings	Number of places visited
Regional visits	7	50
Thematic visits	3	18
Ad hoc visits	28	28
Follow-up visits	4	4
Forced-returns	34	
Totals	76	100

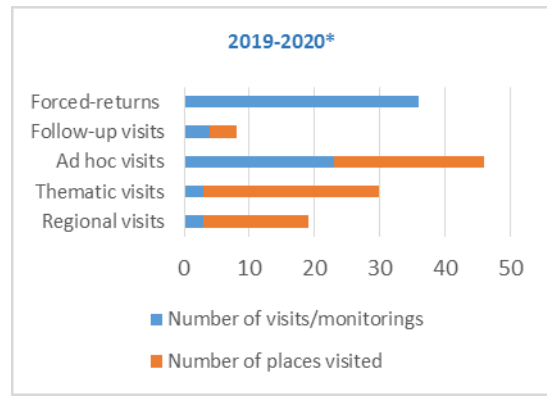


Oversight activities conducted in 2019-2020*

	Number of visits/monitorings	Number of places visited
Regional visits	3	16
Thematic visits	3	27
Ad hoc visits	23	23
Follow-up visits	4	4
Forced-returns	36	
Totals	69	70

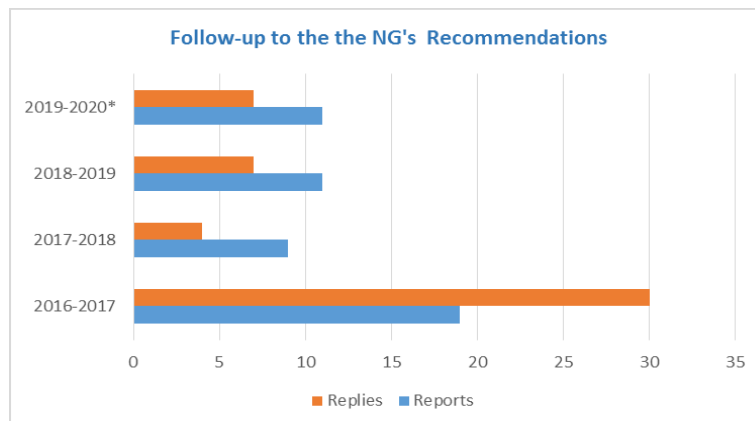
Source: National Guarantor for the Rights of Persons Detained or Deprived of Liberty

*From 1 January 2019 to 30 April 2020



Follow-up to the NG's Recommendations

Years	Drafted reports	Answers received
2016-2017	19	30
2017-2018	9	4
2018-2019	11	7
2019-2020 *	11	7
	50	48



* The time spectrum of the years considered is from March to March in the first three years of activity, while for the last year it is from March 2019 to April 2020.

However, it should be stressed that the follow-up to the NG's recommendations goes hand in hand with the enhancement of its role and the constant search for collaboration with the institutions and the other actors who are in charge of the application of measures of deprivation of liberty, regulation and management of places of detention and retention. The objective is to trace a shared path towards an ever greater knowledge of the critical issues detected during monitoring activities and towards building a system capable of keeping together legality, safety and rights of each person.

In the area of Deprivation of liberty and migrant persons, the Recommendations have been divided into three sections: one relating to the *de iure* deprivation of liberty, one for *de facto* deprivation, and one related to forced return flights. These represent three different worlds that the NG has observed and analysed, visiting all the Centres multiple times and monitoring all the phases of the procedures for returning migrants to their country following an expulsion or deferred refoulement.

The administrative detention for migrants is a reality in Italy. Even if its figures, as mentioned above, may seem small compared to those relating to penal detention, for example, unlike the latter, places and contexts where administrative detention is enforced are much less 'protected'. In fact, its daily life and safeguarding provisions have not yet been the subject of detailed rules and regulations, nor is there a

judiciary body called upon to watch over in a systematic way what happens inside the facilities and receive complaints about the single aspects of its enforcement.

In fact, there is no system that regulates daily life and protections in detail, nor a judiciary called to continuously monitor what is happening within them and destined to receive complaints on individual aspects of its development. These are places where civil society, and even the world of the media, are struggling to enter.

In addition, the publication of 'Norms and Normativity' in the field of migrants also contains a collection of *Standards for the Deprivation of Liberty of Migrants* drawn up by the NG in order to assist all stakeholders in ensuring the full respect for the basic rights of migrant persons in administrative detention. In their development, consideration was given, on the one hand, to the *draft European Rules on the Administrative Detention of Migrants*, still in development, and, on the other hand, to international standards applicable to the subject. The contributions and opinions of the organisations and bodies that accepted the Guarantor's invitation to participate in a moment of discussion on the text while it was being drafted were also of value.

Finally, the NG has developed and published the *Guidelines for the Monitoring of Forced Returns* which collect the main national and international references on the subject, with the aim to provide an easy-to-use guidance both for trainees and senior monitors.

3.3. Consultation activities on draft laws pursuant to art. 19 lett. c) of Opcat

Particularly intense was the drafting and formulation of proposals and observations on current legislation and draft laws on matters falling within the competence of the National Preventive Mechanism.

On the subject of **criminal detention**, the long and articulated reform work started with the National Assembly on the execution of sentences (so-called "Estates-General", a consultation open to all stakeholders) in 2015, aimed at building a new model of the enforcement of sentences, bringing back its value and effectiveness within the framework of the Italian Constitution, was translated into the enabling Act no. 103 of 23 June 2017 on "Changes to the penal and the criminal procedure codes and to the Prison Act". At para. 85 of article 1, it established the principles and guiding criteria of the legislative decrees to be adopted, acknowledging the essential and qualifying points of the 18 thematic panels of the National Assembly.

The legislative reform initiative was positively based on the method of sharing and reflection among the stakeholders within the juridical community, the political world and the civil society. The NG has actively participated in this process until the approval of the core articles of the reform plan.

Before being passed to the Government, the Decrees were submitted to the NG for its proposals and observations envisaged by the OPCAT (art.19, lett.c). In particular, proposals concerned the aspects of penitentiary health, the simplification of procedures and provisions on prison life.

On 2 October 2018, three legislative decrees were issued which, although only partially implementing the enabling Act, contain reference to the observations submitted by the NPM in the preamble.

In the context of **deprivation of liberty of migrant persons**, the NG on 15 October 2018 presented its **observations on the draft law converting the Law-Decree 113/2018 introducing significant changes on the regulation of administrative detention**.

The Parliament has positively considered two observations of the NG and has consequently modified the text introducing in the final version, approved with Law no. 132 of 1 December 2018, the compulsory judicial validation in a particular hypothesis of forced removal of foreign citizens (so-called deferred rejection) and recognizing for the protection of asylum seekers and migrants the independent control of the NG to **places where newly arrived migrants and asylum seekers are fingerprinted and undergo a reception screening** — that is, the 'hotspots' — and to the first reception centres. According to the observations expressed, they had become places of detention without a specific regulation of protections, conditions and methods of detention.

It should also be highlighted that the NG, in the same observation, intervened condemning the use of holding cells available to law enforcement officials as "premises" potentially "suitable" to host for a short time foreign nationals who have been subjected to a return decision. Indeed, upon the outcomes of the oversight visits conducted to said facilities, their material conditions were judged by the NG as being largely inadequate with respect to international standards. Based on the subsequent monitoring carried out by the NG on the implementation of the Law, this hypothesis has found sporadic application.

Finally, in the same opinion, the NG intervened on the introduction in Italy, albeit experimentally, of the *Thomas A. Swift's Electronic Rifle* (TASER), the electric impulse weapon, as ordinary equipment used by

the police. In this sense, the NG — by recalling the principles of proportionality, necessity and caution regarding the use of weapons by the police forces to which the TASER is assimilated — has also reiterated its absolute prohibition in places and situations where the use of weapons of any kind is inhibited, such as penal institutions or immigration detention centres. On a regulatory and practical level, the NG has verified that the introduction of this equipment has been possible by following a rigid, albeit gradual training, experimentation and monitoring process on the use and the effects that, year after year, are communicated to the NG.

In 2019, during two hearings, before the Constitutional Affairs and Justice Selected Committees of the Chamber on July 4th, and before the Constitutional Affairs Selected Committee of the Senate on July 30th, the NG made its **observation on the Law-Decree no. 53 of 14 June 2019** “Urgent provisions on public order and safety”. The regulation provides, in particular, the possibility for the Minister of the Interior, in consultation with the Minister of Defense and the Minister of Infrastructure and Transport, to prevent civilian boats from entering, passing through and stopping in the territorial waters for reasons of public order or safety or when the ship is engaged in embarking or disembarking people in violation of the immigration laws.

Moreover, in 2019, at the request of the Ministry of the Interior, **the NG issued an articulated proposal on the requirements that premises available to Police Forces must have for the short-term detention of third-country nationals prior to their expulsion** (detention hypothesis introduced by the Law-Decree 113/2018).

Finally, in June 2020, the NG was heard by the Constitutional Affairs Selected Committee of the Chamber, issuing an **opinion on the draft laws relating to the establishment of the NHRI and the establishment of an Authority to combat discriminations**.

3.4. Human rights training

Certainly, however, the introduction of a monitoring body is not in itself sufficient to prevent possible situations of non-respect for the dignity of the person, nor to the effective protection of the rights of those who, deprived of their liberty, are entrusted to the State responsibility. It is always necessary **to make the culture of rights growing**, first of all in those who work in these institutions and, in parallel, in the external society that entrusts them with not an easy delegated task. The NG’s specific background of knowledge and its approach were recognized as a central need to build upon the basic knowledge of those who work in the field of the individual’s liberty: the intensified participation in professional training courses was evident, also of a higher grade such as that of the "Piersanti Mattarella" Higher School of Criminal Execution, of the Higher School of the Judiciary, and within qualified occasions for scientific, social and political debates. Nonetheless, the training provided by the State Police, and the close collaboration with the Department for Civil Liberties and Immigration of the Ministry of the Interior, have also developed in continuous collaborations with Italian and foreign universities and with institutions and international associations, whose action is particularly addressed to social vulnerable groups and their effective exercise of their rights.

Its working methodology capable of delivering training to new contexts highly considered, the NG was involved as a positive experience within the networks put in place by the Council of Europe for the development of national preventive mechanisms in the countries that have ratified the OPCAT.

Rome, 24 June 2020

Mauro Palma
President

