

ITALIAN MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding between
The Ministry of Justice,
The National Ombudsman for Childhood and
Adolescence
and Bambinisenzasbarre ONLUS
(COPE member, Italy)

- With regard to Articles 2 and 3 of the Italian Constitution, which guarantee respect for human dignity;
- With regard to Article 27 of the Italian Constitution, which promotes the principle of education and resettlement as two of the objectives of a custodial sentence;
- With regard to Constitutional Law 18 October 2001, n°3;
- With regard to the United Nations Convention on the Rights of the Child of 20 November 1989, ratified and brought into effect in Italy through Law 27-05-1991, n°176, in particular articles 1, 2, 3, 9, 12 and 30;
- With regard to the Standard Minimum Rules for the Administration of Juvenile Justice, United Nations, New York, 29 November 1985;
- With regard to the European Convention on Human Rights, in particular Article 8, which stresses the right to respect for private and family life;
- With regard to the European Resolution 2007/2116 (INI), adopted in Strasbourg on 13 March 2008, in particular Article 24,

which reaffirms the importance of respecting the rights of the child irrespective of their parent's legal status;

- With regard to Resolution n°1663/2009 of the Parliamentary Assembly of the Council of Europe;
- With regard to the European Prison Rules, updated on 11 January 2006 with Recommendation R(2006)2, in particular with regard to paragraph 36 concerning policies supporting parenting and paragraph 24(4), which prescribes visiting rules that allow prisoners to “maintain and develop family relationships in as normal a manner as possible”;
- With regard to the goals of the Council of Europe Strategy for the Rights of the Child (2016-2021);
- With regard to Law 26 July 1975, n°354 in the section which regulates a prisoner's relationships with the external world and with his/her family, especially with regard to preserving child-parent relations;
- With regard to DPR (Italian Presidential Decree) 30 June 2000 n°230: “Regulations concerning provisions in the Penitentiary Act and on the measures entailing restrictions on, and deprivation of personal liberty”;
- With regard to Law 8 March 2001, n°40 “Alternative measures to detention protecting the relationship between female prisoners and their children”, Article 5;
- With regard to Law 21 April 2011, n°62, and in particular the agreement according to Article 4 paragraph 1, as well as Decree

8 March 2013 “Requirements for Protected Foster Homes”;

- With regard to Circular 10 December 2009 of the Ministry of Justice, Prison Administration Department, Directorate-General for Prisoners and Treatment, entitled “Prison treatment and parenting: facilitating the procedure and prison visit for a child visiting his or her imprisoned parent”;
- With regard to Law 12 June 2011, n°112, establishing the “Autorità garante per l’infanzia e l’adolescenza” (Ombudsman for Childhood and Adolescence);
- With regard to the Ministry of Justice Decree of 5 December 2012, entitled “Approval of the Charter of Prisoners’ and Detainees’ Rights and Duties”;
- With regard to the “Charter of Rights and Duties for Minors who are entering Juvenile Justice Services” issued on 23 April 2013 by the Department of Juvenile Justice;
- With regard to Recommendation CM/Rec(2012)12 of the Committee of Ministers of the Council of Europe to Member States on foreign prisoners and in particular the chapter entitled “Women”;
- With regard to the “Charter of Rights and Duties for Minors who are entering Juvenile Justice Services” drafted on 23 April 2013 by the department of Juvenile Justice (General Direction for the implementation of judicial measures);
- With regard to the Memorandum of Understanding signed on 28 January 2014, in the presence of the Minister of the Interior

and between the Chief of Police—General Director of Public Security—and the Ombudsman for Childhood and Adolescence;

- With regard to 23 December 2013 Law n°146, which was modified by the 21 February 2014 Law n°10, establishing the Ombudsman for the Rights of Persons Detained or Deprived of Liberty.

CONSIDERING

The Parties agree on the importance and necessity of renewing the Memorandum of Understanding, signed on 21 March 2014, with the aim to reinforce and expand on the results achieved thus far and to pinpoint new areas and methods of action.

There is agreement among the Parties that the work outlined in the MOU should be continued, with the intent of:

- Maintaining and enhancing contact between children and their imprisoned parents, while safeguarding the child’s best interests;
- Highlighting the unique situation of children with imprisoned parents, so that regulatory interventions and measures are promoted to support and strengthen child-parent relationships, while at the same time ensuring that these children are not stigmatised and/or discriminated against;
- Protecting the child’s right to an emotional bond with their imprisoned parent, who has a duty and a right to fulfill

his/her parental role;

- Supporting family and child-parent relationships during and after imprisonment, assisting the family and, in particular, supporting the children who may face emotional, social and economic instability, with potential negative repercussions on their health and schooling;
- Overcoming barriers linked to prejudice and discrimination with a view to instigating a process of social integration and cultural change, which is necessary in order to build a supportive and inclusive society;
- Considering the articles signed in this Memorandum of Understanding as references for decision-making and in establishing the *modus operandi* as to measures concerning all parents—including those under the age of 18—who are subjected to restrictions on their liberty;
- Ensuring that adequate support is offered to mothers and fathers in prison, in order for them to feel confident in their role as a parent.

THE PARTIES, EACH WITHIN THEIR AREA OF RESPONSIBILITY, AGREE ON THE FOLLOWING:

Article 1

(Decisions concerning judicial orders, judgments and sentences)

The importance of the following provisions will be brought to the attention of judicial authorities, who will be asked to:

1. Take into account the rights and needs of underage children when a possible precautionary measure is being decided upon following the arrest of their parent or primary caretaker. Priority should be given to alternative measures to pre-trial detention in prison;
2. Ensure that restrictions on contact with the outside world imposed on pre-trial detainees do not violate the right of children to remain in contact with their parent, as stipulated in the United Nations Convention on the Rights of the Child;
3. Choose sentencing measures that take into consideration the child's best interests when a parent or primary caregiver of underage children is being sentenced;
4. Consider the significance of children's needs when granting imprisoned parents with temporary permissions and leaves of absence (bonus or necessity). It is important that parents be present at special occasions such as birthdays and the first day of school, as well as if their child is hospitalised, for example.

Article 2 (Children visiting prisons)

The Ministry of Justice, in collaboration with the Ombudsman for Childhood and Adolescence and the association Bambinisenzasbarre ONLUS, commits to taking all necessary steps to ensure that:

1. The choice of prison for a parent with underage children takes into account the need to guarantee quality and regular contact between a child and their imprisoned parent;
2. A child can visit his/her imprisoned parent within a week after their arrest and on a regular basis from then on;
3. All waiting rooms are equipped with a suitable area for children, where children feel welcomed and acknowledged. In these spaces, staff will welcome families, providing them with such items as bottle warmers or changing tables that may be required during the wait, as well as providing young children with resources such as toys or drawing tables;
4. Every visits room—irrespective of size—has a “children’s space” reserved for playing. Space permitting, a designated area should be provided as a playroom. These spaces will be established gradually, with priority given to prisons where longer sentences are served;
5. Buildings are accessible to children with disabilities or to those with special mobility needs;
6. Visits are organised six days a week, allowing at least two afternoons so that

children do not have to miss school to visit. Visits should also be scheduled on Sundays and public holidays;

7. Children are given age-appropriate information about visiting procedures and rules, as well as information on what can be taken to visits and on how security check procedures are handled on their arrival at the prison. This information must be provided in various languages and various formats, such as posters and videos that can be easily understood by younger children;
8. Security checks take into account child rights, in particular their right to privacy, to physical and psychological integrity and to safety;
9. When children visit their parents, visits can take place in a private setting if requested, determined on a case-by-case basis;
10. Children are given information about their parent’s life in prison and—where the facilities allow it and it is in the child’s best interests—have the opportunity to visit some of the areas their parent spends time in, such as the canteen, recreation rooms, workshops or places of worship.
11. Alternative arrangements are provided to accompany children under 12 years old, if their parent or guardian is not available. This accompaniment can be carried out by qualified social workers. Members of non-governmental organisations (NGOs) or associations active in this field can also be given permission to accompany the children;
12. Where possible, child discussion groups should be regularly organised, with special

attention placed on younger children, in order to assess how children experience prison visits; to discuss how to promote contact using alternative means to physical visits; and to allow the children to provide advice about eventual improvements to facilities and procedures.

Article 3

(Other types of contact with the imprisoned parent)

The Parties also agree to:

1. Avoid considering additional contacts with underage children as “rewards” granted on the basis of the prisoner’s behaviour;
2. Develop specific guidelines for situations in which it is complicated for underage children to visit their parent in prison. In these cases, regulations should be in place which systematically allow the use of mobile telephone systems and the Internet, including webcam and chat communications.

Article 4

(Staff training)

1. Prison administration staff, as well as Juvenile Justice and Rehabilitation Youth Centre staff who are present in prisons, should receive specific training on the impact that a parent or relative’s imprisonment and the prison environment can have on children.
2. In particular, prison staff must be specifically trained about appropriate security procedures for children and

adolescents, so that specially trained prison officers are present in every prison and juvenile detention centre, and are thus available to support children and families during prison visits.

Article 5

(Information, assistance and support)

Each of the Parties undersigned, within its scope and through its own procedures, will strive to:

1. Give prisoners, their relatives and their children, appropriate, up-to-date and relevant information at every phase of the process, from arrest to release. The information provided should outline procedures and possibilities for maintaining contact, as well as the support that is available to families before, during and after the relative’s imprisonment, identifying the NGOs and other qualified associations that are available to provide this support;
2. Offer assistance to imprisoned parents, who may be worried about the impact prison visits may have on their children and/or themselves, so as to encourage regular contact with their children using the available means of communication, especially during the period of time between the arrest and the first possible physical visit;
3. Offer programmes that support parenting, helping to foster a positive child-parent relationship;
4. Encourage imprisoned parents to assume and/or maintain their parental role and

responsibility for their child and explore the possibility of providing leave permits—to go home and spend time with family—as an integral part of preparation for release;

5. Support services for parents in prison and in juvenile detention centres that inform them of the social support and educational services provided for families by local authorities and help them fill out official documents pertaining to their family and social situations;

6. Make full use of and cooperate with NGOs and associations to ensure positive child-parent relationships are maintained in all prisons and that priority is given to the NGO whose work most closely aligns with the needs of the prison in question.

Article 6

(Data collection)

1. The Department of Prison Administration and the Department for Juvenile Justice and Rehabilitation Youth Centres will systematically collect any relevant information about the number and age of children whose parents are imprisoned—on remand or in prison—as well as information on the number of family visits that take place on a yearly basis.

2. Statistics on the number of underage children who have one or both parents in prison should be compiled according to age, and must be made available to the public.

Article 7

(Temporary provisions for children living with their imprisoned parents)

Ultimately, children should not reside in correctional centres. Until the goal of having no children living in prison is attained, however, the Parties will imperatively and scrupulously verify that:

1. All children living in prison with their parents can freely access open air spaces;

2. Procedures and agreements with NGOs and associations are carried out so that children are able to spend time outside the prison grounds (if necessary, under the supervision of qualified staff wearing civilian clothes);

3. Children attend nursery schools and schools outside the prison, ensuring that they are always accompanied;

4. The staff working in prisons where children are living includes qualified personnel, trained in the psychological and physical development of children, as well as in their education;

5. Educational and support facilities are offered, preferably outside the prison;

6. Imprisoned parents living with their children in prison are supported in the development of their parenting skills; and have the opportunity to care for and look after their children, by cooking meals for them, getting them ready for nursery school and school, spending time playing with them and participating in other activities both inside the

prison and in the open air areas;

7. Psychological and social support measures are provided in order to support the imprisoned parent and child at the point where the child can no longer live in the prison and to ensure that these measures aim to reduce any potential negative impact of the separation.

Article 8 (Creation of a permanent working group)

A permanent working group will be established, composed of representatives from the Ministry of Justice, the Ombudsman for Childhood and Adolescence, the Ombudsman for the Rights of Persons Detained or Deprived of Liberty and the Association Bambinisenzasbarre ONLUS, which is convened every three months by the Ombudsman for Childhood and Adolescence, and which:

1. Will periodically monitor the implementation of this Memorandum of Understanding;
2. Will promote the cooperation of the institutional and non-institutional agencies involved in various ways, with particular attention given to the arrest phase, as well as to informing and raising awareness among school staff who are in contact with children with imprisoned parents;
3. Will encourage the exchange of good

practice, of evaluations and of ideas on the national and European level.

Article 9 (Validity)

This Memorandum of Understanding has a validity of two years from the date of signing; can be modified and updated at any time if the Parties agree; and can be renewed upon expiration.

Rome, 6 September 2016

THE MINISTER OF JUSTICE (ANDREA ORLANDO)

THE PRESIDENT OF THE ASSOCIATION
BAMBINISENZASBARRE ONLUS (LIA ROSA
SACERDOTE)

THE NATIONAL OMBUDSMAN FOR
CHILDHOOD AND ADOLESCENCE (FILOMENA
ALBANO)