



MEMORANDUM OF UNDERSTANDING (MOU)

ON MIGRATION MATTERS

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF MALTA

AND

**THE GOVERNMENT OF THE REPUBLIC
OF THE GAMBIA**

Preamble

The Republic of Malta and the Republic of the Gambia (hereinafter referred to as the "Contracting Parties").

DESIRING to improve cooperation between the Contracting Parties on migration and related matters;

REAFFIRMING their common concern to effectively combat irregular migration in each other's country;

WILLING to facilitate the repatriation of citizens of Contracting Party irregularly residing in the territory of the other Contracting Party as well as their rehabilitation and reintegration and to treat such persons in a manner which is dignified and guarantees their human rights;

REFERRING to the principles of the United Nations Convention on the Status of Refugees of 28 July 1951 as amended by the Protocol Relating to the Status of Refugees of 31 January 1967;

RECOGNISING their obligation to readmit their nationals under various international and regional agreements including the Chicago Convention on Civil Aviation 1944, the first and second Protocols to the UN Convention on Transnational Organised Crime, and Article 13 of the Cotonou Agreement between the European Union and the African, Caribbean and Pacific States;

HAVE AGREED AS FOLLOWS:

Article 1

General

1. The Contracting Parties shall be guided by the provisions of this MOU in the way and manner in which they deal with migration matters in their territories.
2. The Contracting Parties shall accord each other mutual assistance on migration matters on the terms set out in this MOU.

Article II

National Immigration Laws

The Contracting Parties shall in the implementation of the provisions of this MOU deal with all migration matters under their national laws and regulations.

Article IIbis
Executing Authorities

- (1) The implementation of this MOU and all communication relating to the repatriation procedure pursuant to this MOU shall take place in the English language, directly between the designated executing authorities of the Contracting Parties, save where otherwise stipulated in this MOU.
- (2) For the Gambia executing authority shall be:
 - The Gambia Police Force
 - The Gambia Immigration Department
 - The Gambia Embassy accredited to the Republic of Malta
- (3) For the Republic of Malta, the executing authority shall be:
 - Police Headquarters
 - Special Branch
 - Immigration Section
- (4) The Contracting Parties shall have the right to designate at anytime any other appropriate authority in place of the ones designated in paragraphs (2) and (3). Any changes relating to the executing authority shall immediately be notified in writing to the other Contracting Party through diplomatic channels.

Article III

Conditions for Return

The repatriation of irregular migrants under this MOU shall be subject to the following conditions:

- a) confirmation that the irregular migrant is a bona fide citizen of the requested Contracting Party;
- b) identification checks should be carried out on the irregular migrant before departure from the State of the requesting Contracting Party in the presence of the consular authorities of the Embassy or a representative of the requested Contracting Party, in accordance with the provisions of this MOU.

Article IV

Admission of Persons

1. Each Contracting Party shall admit to its own territory at the request of the other Contracting Party through its executing authority, any person who is not or who is no longer eligible to enter or to reside in the territory of the requesting Contracting Party,

when it has been shown in accordance with Article V, or is shown through the identification procedure outlined in Articles VI and VII, that the person concerned is a national of the requested Contracting Party.

2. The reason for the request shall be stated in a letter of request transmitted via diplomatic channels

Article V

Repatriation Procedures

1. The repatriation procedures shall be followed without the issue of a travel document if the person concerned is in possession of a currently valid national passport of any kind or an internationally recognised and currently valid travel document.
2. For the purpose of paragraph 1 of this Article, the Contracting Parties shall exchange a list of such documents together with specimens of the same.
3. Cases of repatriation of persons not covered by paragraph 1 of this Article shall be coordinated by the executing authority of the requesting Contracting Party in conjunction with the executing authority of the requested Contracting Party.
4. The executing authority of the requesting Contracting Party shall provide the flight details and particulars of the persons to be repatriated under paragraph 3 of this Article at least ~~five (5)~~ ^{ten (10)} working days before the date of repatriation. *
5. Subject to national legal requirements, the executing authorities of the Contracting Parties shall exchange copies of administrative decisions or court orders made in relation to the deportation or repatriation of the persons concerned.

Article VI

Proof of Nationality

1. In cases other than those referred to in Article V, paragraph 1, the executing authority of the requesting Contracting Party shall show proof that the person concerned is a national of the requested Contracting Party.
2. Where internationally recognised travel documents are not presented, the person to be repatriated shall be identified and issued with a travel document as a national of either of the Contracting Parties on presentation of one of the documents or other evidence referred to in paragraphs 3 and 4 of this Article.
3. Proof of nationality pursuant to this MOU can be furnished through:
 - a) citizenship certificates which can clearly be allotted to a person;
 - b) expired national passports or any internationally recognised travel documents;
 - c) identity cards including temporary and provisional ones;
 - d) official documents indicating the citizenship of the person concerned;

* Furthermore, the number of persons to be repatriated at any one time, should not exceed ten (10).

- e) seamen's registration books and skippers service cards;
 - f) unequivocal information provided by the competent authorities of the requested Contracting Party;
 - g) in the case of the Gambia side, a certificate of state of origin or an ECOWAS travel document / certificate issued by the Gambian authorities;
 - h) any other document recognised by the Government of the requested Contracting Party, making it possible to establish the identity of the person concerned.
4. Prima facie evidence regarding nationality can, in particular, be furnished by the following:
- a) certified true copies of the documents listed in paragraph 3 of this same Article;
 - b) driving licences;
 - c) birth certificates;
 - d) verified statement made by the person concerned;
 - e) any other document which may help to establish the nationality of the person concerned.
5. Where prima facie evidence of nationality is furnished and such evidence has been admitted by the executing authority of the requested Contracting Party, the Contracting Parties shall mutually deem the nationality to be established.
- Provided that the executing authority of the requested Contracting Party may require an interview to be held in accordance with Article VII before prima facie evidence is admitted.
6. The travel document, valid for ninety (90) days, shall be issued by the requested Contracting Party within ten (10) working days from the date of receipt of the documents or other evidence referred to in paragraphs 3 and 4 in this Article, unless an interview has been requested in accordance with paragraph 5 of this present Article.
7. Where the travel document is issued by the requested Contracting Party but repatriation cannot be effected during the period of its validity due to legal or practical obstacles, the requested Contracting Party shall, upon application by the requesting Contracting Party, extend the validity of the travel document or issue a replacement travel document, within ten (10) days from the said application.
8. The documents listed in paragraphs 3 and 4 of this Article shall suffice as proof or prima facie evidence of nationality even if their period of validity has lapsed.

Article VII

Special Identification Procedures

1. In cases other than those referred to in Article V and Article VI, with the exception of cases in which an interview is required under Article VI, paragraph 5, where it is not possible to obtain the necessary documents or other evidence to establish the nationality of the person concerned, but evidence exists making it possible to presume

nationality, the executing authority of the requested Contracting Party may request the diplomatic and consular officers of the requested Contracting Party to help ascertain the nationality of the person concerned. The following identification procedure shall operate:

- a) the person shall be interviewed as soon as possible and in any event, not later than ten (10) working days from the date of the receipt of the request;
 - b) the interview shall take place in the territory where the interviewee is located.
 - c) the requesting Contracting Party shall facilitate the carrying out of the interview and the requested Contracting Party shall employ its best endeavours to obtain the cooperation of the person to be interviewed so as to establish his nationality;
 - d) the outcome of the interview shall be conveyed in writing to the executing authority of the requesting Contracting Party as soon as possible but, in any event not later than five (5) working days from the date of the interview;
 - e) on the positive confirmation of the nationality of the person, a travel document valid for ninety (90) days shall be issued by the requested Contracting Party within four (4) working days from the date on which the positive confirmation is conveyed to the executing authority of the requesting Contracting Party in accordance with paragraph (1) d) of this present Article.
2. Travel costs incurred by the representative of the consular authorities within the territory of the requesting Contracting Party for consular meetings shall be paid by the requesting Contracting Party.

Article VII bis

Escorting Procedures and Conditions

1. Whenever necessary, the person to be repatriated shall be escorted by Police officers of the requesting Contracting Party, until such time as the person concerned is handed over to the authorities of the requested Contracting Party.
2. The escorting police officers shall be responsible for carrying the travel document and other required certificates or personal data of the person subject to repatriation, and for handing over such items to the representative of the requested Contracting Party.
3. For the purpose of repatriation, the escorting police officers shall carry out their mission unarmed and in civilian clothes. Escorting police officers shall carry documents proving that readmission has been approved by the requested Contracting Party, such as a copy of the positive confirmation of nationality given pursuant to Article VII, or any other such evidence pursuant to the provisions of this MOU. They shall also carry their official identification documents. The requested Contracting Party shall provide escorting Police Officers with entry visas, when and if required.
4. The authority of escorting police officers to use force is limited to self-defence. However, in the absence of any officials of the requested Contracting Party who are authorised to support the escorts, such escorts may respond to an immediate and serious threat in a reasonable and proportionate manner to prevent the person concerned from fleeing, injuring himself or third parties or causing damage to property.

5. The executing authorities shall cooperate with one another on all issues related to the admission and stay of escorting police officers in the territory of the requested Contracting Party. The executing authorities of the requested Contracting Party shall also provide the escorts with all the necessary assistance and protection.
6. The requesting Contracting Party shall, when submitting information in accordance with Article V, paragraph 4, also communicate the names, family names, positions and designation of the escorts as well as the type, number and date of issue of passports or any other pertinent documents

Article VIII

Costs

The requesting Contracting Party shall cover the expenses of transportation of persons to be repatriated including their escorts, as far as the airport of the State of the requested Contracting Party.

Article IX

Transport of Accompanying Luggage

The requesting Contracting Party shall allow and facilitate the shipment of all personal belongings of the person who is to be repatriated to the country of destination.

Article X

Readmission of Persons Repatriated

1. If subsequent evidence shows that the repatriated person is not a national of the requested Contracting Party, the requesting Contracting Party shall take the person, back to its territory.
2. The request for the return of the person referred to in paragraph 1 shall be made with a copy of the new evidence within fourteen (14) working days following the repatriation exercise and carried out within twenty-one (21) working days thereafter.

Article XI

Rights

The implementation of the repatriation measures listed in this MOU will not prejudice any previously acquired rights, under the national laws and regulations of the Contracting Parties.

Article XII

Re-entry of Repatriated Persons

Repatriation carried out under this MOU shall not prejudice the right of the individual concerned to re-enter the territory of the requesting Contracting Party upon the completion of the necessary entry requirements under national law and international obligations of the Contracting Parties.

Article XIII

Effect on other International Agreements

No provision of this MOU shall affect any rights or obligations that the Contracting Parties may have undertaken under any international Agreement, Treaty, Convention or Protocol.

Article XIV

Competent Authorities

1. The Government of the Republic of Malta designates the Ministry for Foreign Affairs and the Ministry for Home Affairs and National Security and the Government of the Republic of the Gambia hereby designates the Ministry of Foreign Affairs and Ministry of Interior of the Republic of the Gambia as the respective competent authorities for the purpose of ensuring the implementation of this MOU and any other matter in relation thereto.
2. Contracting Parties shall have the right to designate in writing at any time any other appropriate organization, ministry or department in place of the ones already designated in paragraph 1. of this present Article.

Article XV

Exchange of Information

For the purpose of the implementation of this MOU, the Contracting Parties shall exchange the following documents through diplomatic channels:

- a) list of diplomatic and/or consular personnel authorised by the requested Contracting Party to issue travel documents;
- b) list of international airports which can be used for the repatriation of the persons concerned; and
- c) any other information facilitating communication or the proper implementation of this MOU.

Article XVI

Protection of Personal Data

1. In so far as personal data have to be communicated by the executing authorities of the Contracting Parties in order to implement this MOU, such information may concern only the following:
 - a) the particulars of the person to be transferred and, where necessary, of the members of the person's family (surname, forename, any previous names, nicknames or pseudonyms, aliases, date and place of birth, sex, current and any previous nationality);
 - b) passport, identity card and other identity and travel documents and laissez-passer (number, period of validity, date of issue, issuing authority, place of issue, etc);
 - c) other details needed to identify the persons to be repatriated;
 - d) evidence from which possession of nationality may be established or validly assumed;
 - e) any other information at the request of the executing authority of one of the Contracting Parties which is required for the purposes of examining the readmission request pursuant to this MOU;
 - f) stopping places and itineraries, including transit places;
 - g) residence permits or visas issued by one of the Contracting Parties.
2. The information referred to in paragraph 1, as well as any other data transmitted under this MOU shall be exchanged in accordance with the national law of each of the Contracting Parties.
3. Personal data may only be communicated to the executing authorities of each Contracting Party. The executing authorities of each Contracting Party shall ensure the protection of all information received under this MOU, in accordance with their national law.
4. In particular, each Contracting Party undertakes to:
 - a) use any information received under this MOU only for the purpose for which it was requested;
 - b) keep confidential any such information forwarded to the requested Contracting Party and not disclose it to a third party unless that disclosure is authorised by the requesting Contracting Party;
 - c) protect such information against accidental loss, unauthorised access, alteration or disclosure;
 - d) destroy such information in accordance with any conditions laid down by the requesting Contracting Party and, if there are no such conditions laid down, as soon as the information is no longer required for the purposes for which it was forwarded.

Article XVII

Technical Assistance

1. The Republic of Malta hereby undertakes to cooperate within the limits of its capabilities and resources in the following:
 - the fight against migrant smuggling and trafficking in human beings;
 - border control issues;
 - assistance in the reintegration of migrants; and,
 - the fight against transnational organised crime.
2. The competent bodies and authorities of the Government of the Republic of Malta and the Government of the Republic of the Gambia should meet after the signing of the MOU, in order to discuss and establish the technical assistance to be provided at short, medium and long term by the Republic of Malta.
 - a) The agreed programmes will form an integral part of this MOU.

Article XVIII

Implementation of the Memorandum of Understanding

In order to implement provisions and aspects of this MOU expressed herein, particularly in relation to identification of programmes and actions including technical assistance, a coordinating committee shall be set up comprising the representatives of the Contracting Parties. The Committee shall meet as required by the Contracting Parties.

Article XIX

Human Rights Guarantees

1. Nationals of one Contracting Party shall not be subjected to inhuman or degrading treatment in the other Contracting Party, nor shall undue force, torture, cruel, inhuman or degrading treatment used in the arrest or repatriation of persons under this MOU.
2. Each Contracting Party undertakes:
 - a) to notify immediately the Embassy or the representative office of the other Contracting Party of the arrest of its national for a breach of its immigration rules and/or regulations;
 - b) to allow the officials of the Embassy of the other Contracting Party unrestrained access to visit and discuss privately with their nationals in its custody;
 - c) in repatriating the irregular migrants to allow the accredited personnel of the competent authorities of the requested Contracting Party adequate opportunity to verify and ascertain the identity of the person and that he/she is duly informed before effecting the repatriation.

Article XX

Resolution of Disputes

Any disputes arising from the interpretation or implementation of this MOU will be resolved through diplomatic channels.

Article XXI

Amendments

Any amendment or revision of this MOU will be made in writing and will come into force on the written approval of both Contracting Parties, or otherwise as the Contracting Parties may agree in any case.

Article XXII

Entry into Force

This MOU shall enter into force upon signature by authorised representatives of the Contracting Parties and subject to approval under the respective national laws.

Article XXIII


Termination

1. This MOU may be terminated by either Contracting Party giving six (6) months notice in writing to the other party.
2. At the termination of this MOU, its provisions and the provisions of any separate Protocols, Accords or Complementary Agreements made in that respect shall continue to govern any unexpired and existing obligations assumed or connected there under, and any such obligation shall be carried on to completion.

IN WITNESS THEREOF the undersigned representatives being duly authorised by their respective Governments, have signed this MOU.

DONE IN ²³.....on the ^{New York}.....in two original copies, each in the English language.


For the Government of the
Republic of Malta


For the Government of the
Republic of the Gambia
