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Access to Protection is a Human Right

St. Julian's, Malta. The People for Change Foundation today launched the results of its project: 'Access to Protection: A Human Right'. It argued that legal principles arising from international law, and the rulings of the European Court of Human rights clearly place an obligation on Malta to proactively prevent the return of people to countries in which their human rights are at risk.

The report argues that the international law principle of non-refoulement, also enshrined in Maltese law, prevents the return of individuals to countries like Libya irrespective of whether the intervention of the State is one of interception or rescue, and irrespective of whether the activity is carried out by an official vessel or by the State giving instructions to a private rescuing vessel to return migrants to Libya. The principle, as explained by the European Court, entails a series of positive obligations on States, which cannot realistically be met without allowing disembarkation in a safe port. Safety is about more than physical safety. A place of safety is one where one's human rights are protected as well as one's physical well-being.

These issues all resound loudly with incidents involving Malta over the summer of 2013. However these were not the only instances where refoulement was an issue for Malta. Other cases include the return of Eritreans in 2002 and a return of 6 individuals to Libya in 2004. In 2010, a group of rescued migrants were arbitrarily split between Malta and Libya, with half being returned to Libya.

'Sending people back to Libya, directly or indirectly, is in breach of Malta's international legal obligations' said Jean-Pierre Gauci, director of The People for Change Foundation. 'We hope that the analysis undertaken in this report and project can help promote an informed discussion on these issues'.

The Foundation called on Malta to ensure that it abides by its international legal obligations whilst it also called on the European Union to establish real and effective solidarity in dealing with rescued persons. The report recommends making human rights a key feature in any migration-related discussions with Libya. Libya is not a safe place, and individuals should not be returned there, directly or indirectly until such time as their human rights can be adequately secured.

The report published today is a result of an 18-month project by the People for Change Foundation, a human rights' thinktank, which included desk research, in-depth legal analysis and a roundtable with various stakeholders. The project was funded by the European Programme on Integration and Migration and included similar research in 6 European countries. The report is available online at: www.pfcmalta.org.