



# Beyond borders, beyond boundaries

A Critical Analysis of EU Financial Support  
for Border Control in Tunisia and Libya

Estela Casajuana and Giorgia Jana Pintus



# Testimony

“My name is X. I come from Nigeria. I had to leave my country because I could no longer live there and I had to find a better place to help my family. I arrived in Sfax 3 months ago where I found a difficult situation, with migrants suffering from violations. I tried to escape by crossing the sea, but I was intercepted and sent back to Tunisia.

I left by boat on August 2, from Sfax. The boat was made of iron and was very scary. I was traveling with 31 people, including a girl.

The people came from Nigeria, Sudan and Tunisia.

We left around noon. There were a lot of boats around us.

During the night, the Tunisian coast guard arrived. They started hitting us with a long iron stick. The captain and other travelers were injured. Then the coast guard tied a rope to our boat and forcibly took us to their boat.

When we were on the coast guard boat, we saw two other migrant boats that were intercepted at the same time. In total, there were around 120 people who were intercepted. It was very violent. I saw the Tunisian coast guard hit a boat with Tunisians, using a smaller, fast boat. People fell into the water.

We shouted for someone to help them. We threw them life jackets. There were children, women, boys... there were so many people in the water. 3 boys died after being put on the boat. I tried to give them first aid, but I couldn't save them. One of the children was only 14 years old. The mothers were screaming. Bodies were taken on board. In total, 5 Tunisian boys died.

In the meantime, the Tunisian coast guard called in other military boats. At least 6 came, plus helicopters. We started to protest because we did not want to return to Tunisia and because of what we had witnessed. The coast guard responded by shooting at us and one of the survivors was pushed into the water. He managed to swim back to the boat, but we were very scared.

We were stuck on the big boat for several hours. We were thirsty, we were hungry and we were tired. We hoped that a rescue ship would take us to Italy, but ultimately we were disembarked in Sfax. In the port we received no help. The coast guard noticed that some of us had taken photos and videos of what happened and we were forced to delete all the footage. The Tunisians were sent to prison, while the others were allowed to leave freely.

I can't get rid of the images I saw that night. I see children drowning, their mothers screaming... I can no longer sleep. My priority now is to find a way to escape this country as quickly as possible.

Thank you for being the voice of the voiceless.”

Alarm Phone (2023). "When lives don't count: A survivor's testimony",  
online: <https://rebrand.ly/fxubf2p>



## Colophon

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# About this report

**"Beyond Borders, Beyond Boundaries: A Critical Analysis of EU Financial Support for Border Control in Tunisia and Libya" provides an overview of EU-supported border management initiatives in Tunisia and Libya from 2018 to 2023. It brings to the forefront the distressing prevalence of abuse against migrants, asylum seekers, and refugees, often involving Tunisian and Libyan authorities, who are beneficiaries of EU funding.**

**These findings reveal a stark contrast between the challenging realities on the ground and the EU's stated foreign policy objectives, highlighting how these policies have crossed acceptable boundaries established by international norms and agreements. In response to these findings, this report delves into the normative and policy framework governing human rights compliance within NDICI-Global Europe, the EU's primary financial instrument for external action. Additionally, it conducts a thorough analysis of the NDICI-Global Europe decision-making processes, identifying ten critical accountability issues and proposing actionable recommendations. The study concludes by organizing these issues into five overarching themes, providing policymakers and civil society organizations with a consolidated framework for action. The imperative is clear: a thorough scrutiny and reformulation of European Union funding for the external dimension of migration management is urgently needed to bring this policy back within acceptable limits. The report is commissioned by the Greens/EFA in the European Parliament.**

## Authorship

This report was researched and written by Estela Casajuana with invaluable contributions from Giorgia Jana Pintus from ARCI. Giorgia played a significant role in researching and writing the first and second chapters, as well as in the review of the report. Correct citation of this document: Casajuana, E., Pintus, G.J., (2023, November), Beyond Borders, Beyond Boundaries: A Critical Analysis of EU Financial Support for Border Control in Tunisia and Libya, Amsterdam, The Netherlands: Profundo. Front page cover: AI-generated

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# Why this report

## The reasons

**The European Union's externalization policies on migration looms large, raising concerns and uncertainties across the Mediterranean. In recent years, the European Union (EU) and its Member States (MS) have intensified their efforts to prevent migrants and asylum seekers from reaching their borders. How? A primary strategy has been providing funding for the equipment and training of third countries' coast guards and border police. But far from achieving their purported goals, this has unleashed some of the most severe human rights impacts on migrants, asylum seekers and refugees, and spiked death rates. Regrettably, it also provided these third countries with more leverage to negotiate their own interests.**

When taxpayer euros are spent to bolster the capacities of third countries' coast guards and police in countries like Libya, marked by fragility and conflict, and Tunisia, which has recently experienced an authoritarian drift, it raises a critical question: "What is the human impact of these strategies? The answers are disheartening.

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## 120,000 individuals

**The infamous Italy-Libya Memorandum of 2017 resulted in over 120,000 individuals intercepted and forcibly returned to Libya, plunging them into a relentless cycle of violence and exploitation.**

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- **Severe human rights violations**

The infamous Italy-Libya Memorandum of 2017 resulted in over 120,000 individuals intercepted and forcibly returned to Libya, plunging them into a relentless cycle of violence and exploitation.<sup>1</sup> In Tunisia, following the Tunisian President's hate speech in February 2023, there has been a disconcerting surge of violence against migrants, particularly against sub-Saharan migrants. Disturbingly, as Tunisian forces allegedly left over 1,200 individuals in the desert – with accompanying reports of beatings and sexual assaults and at least 27 deaths<sup>2</sup> – the EU adopted a new EU-Tunisia Memorandum of Understanding, seemingly turning a blind eye to the prevailing human rights abuses.

According to the International Organisation for Migration's (IOM) Missing Migrants Project, 28,195 people died or disappeared along the Central Mediterranean route since 2014.<sup>3</sup> Yet, this staggering figure may only scratch the surface, as many losses go unrecorded. In Tunisia, the first seven months of 2023 brought with it a grim toll of 901 recovered bodies.<sup>4</sup> These numbers speak a sad truth: Behind every number is a human life, with dreams unfulfilled and families left behind. And yet, the interceptions and pullbacks<sup>5</sup> only grow, with increasing reports of violent practices from Libyan and Tunisian authorities who are beneficiaries of EU funding.

- **Lack of transparency**

Taking this into account, EU taxpayers must question: "Is this the foreign policy we stand for?" Far from achieving the EU's aim of reduced departures, the arrivals in Italy have doubled in 2023 since last year.<sup>6</sup> A deeper concern is the veiled manner in which funds are disbursed and used. The opacity in decision-making and lack of transparency hampers the understanding of the EU's fund disbursements and commitments, obstructing the efforts of Members of the European Parliament (MEPs) and Civil Society

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A deeper concern  
is the veiled manner  
in which funds are  
disbursed and used

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Organizations (CSOs) who strive for clarity. Basic information – such as a comprehensive overview of how much the EU spends on border management (throughout its different financial instruments), who the beneficiaries are, and what we are funding, is unavailable. Moreover, information on the implementation and impact of EU-supported border initiatives remains inaccessible, often shielded by claims that such information could compromise public security or the confidentiality of international relations. Furthermore, although there are established rules and tools intended to uphold human rights, the European Commission (EC) appears to be inadequately adhering to these standards. The EU's foreign policy, which should develop and consolidate democracy, the rule of law and respect for human rights and fundamental freedoms appears to be veering off-course. This external migration policy, which is also tainted by conditionality and subversion, gives third countries a powerful card: their borders, which they deploy effectively to secure funds or negotiate on pressing issues. Their tactics are far from subtle. In September 2023, the Italian island of Lampedusa saw the arrival of 7,000 migrants in 48 hours – a stark indication of the dire situation in Tunisia and a clear leveraging tactic by its President.<sup>7</sup>

## The aim

This report seeks to shed light on the EU-supported border management initiatives in Tunisia and Libya, their implications on human rights, the normative frameworks underpinning them, and the decision-making processes at play behind the Neighbourhood, Development and International Cooperation Instrument (NDICI-Global Europe), the EU's primary financial instrument for external action. It is based on extensive desk research and interviews with a myriad of stakeholders (see acknowledgement section for further details). Research took place during June–October 2023.

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It's high time that European foreign policy, particularly on migration, aligns more closely with the values it professes to champion

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The overarching goal is to furnish MEPs and CSOs with robust data and actionable policy recommendations, to collectively work towards an informed, accountable, and rights-focused approach to border control policies. Notably, this research seizes a timely opportunity to influence and shape the reporting, monitoring, and evaluation framework of the Instrument, particularly in anticipation of its upcoming mid-term review. Furthermore, this work aspires to contribute to the ongoing efforts of civil society organizations, NGOs, institutional representatives, media outlets, migrant organizations, and human rights advocates.

The imperative is clear: it's high time that European foreign policy, particularly on migration, aligns more closely with the values it professes to champion.

## Navigating this report

This report is designed to offer a comprehensive understanding of the critical issues surrounding EU financial support for border control in Tunisia and Libya. Here is how to make the most of it:

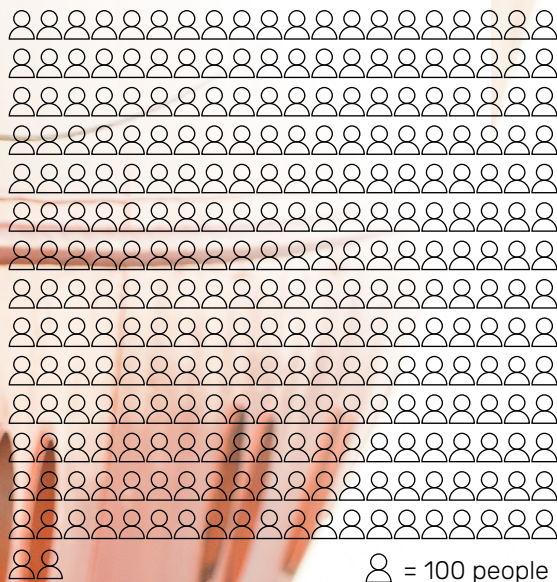
- **Are you interested in the funding overview?** Start with Chapter 1 where we provide an overview of overview of the resources allocated by the EU, initially through the EUTF for Africa and later through the NDICI-Global Europe, for programs aimed at enhancing border control capacities in Libya and Tunisia.
- **Concerned about human rights issues?** Skip ahead to Chapter 2, where we draw attention to the distressing and persistent surge in abuses against migrants, refugees, and asylum seekers in Libya and Tunisia. We provide evidence that these abuses are, in many cases, carried out by Tunisian and Libyan authorities within the framework of border management activities funded by the EU-supported programs.
- **Interested in the policy framework that governs human rights compliance?** Delve into Chapter 3, where we analyse the normative and policy framework that governs human rights compliance within NDICI-Global Europe, exploring the principles and guidelines underpinning EU external action.
- **Curious about the decision-making processes and key stakeholders?** Chapter 4 is your guide to understanding the intricacies of the NDICI-Global Europe decision-making processes and stakeholders. We explore the processes and roles of the European Commission (EC) and the European Parliament (EP) while highlighting ten critical issues. We also offer recommended actions for addressing these challenges.
- **Looking for a summary?** Chapter 5 consolidates the ten key issues highlighted in Chapter 4 into five overarching themes. This restructuring recognizes the interlinked nature of the challenges, offering a concise reference for stakeholders and policymakers, and providing a comprehensive framework for addressing the intricacies of NDICI-Global Europe holistically.





## 28,195 people died

According to the International Organisation for Migration's (IOM) Missing Migrants Project, 28,195 people died or disappeared along the Central Mediterranean route since 2014.



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# Overview of EU-supported border management initiatives in Tunisia and Libya

**This chapter provides an overview of critical EU-supported border management initiatives in Tunisia and Libya from 2018 to 2023. Although it accrues significant insights, researching how funding for the external dimension of migration is spent faces formidable challenges. Details regarding the specific roles and amounts received by the various beneficiaries, the influence of implementing partners, and detailed expenditures continue to be unknown. This lack of information obstructs a clear understanding of the projects, both present and past, and underscores the need for intensified and meticulous scrutiny. Greater transparency will not only foster a better understanding but will also encourage an environment where ongoing strategies can be questioned, reassessed, and recalibrated in favour of more effective and ethical use of public resources, in line with the founding values of the EU.**

## 1.1 Tunisia

From 2018 to 2022, the European Commission (EC) allocated a total of €73 million for border management initiatives in Tunisia, and an additional €105 million is pledged for 2023. The €73 million comprises €38 million under the European Union (EU) Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa (EUTF for Africa) and €35 million under the Neighbourhood, Development, and International Cooperation Instrument – “Global Europe” (NDICI-Global Europe).<sup>8</sup>

From 2018 to 2022, the European Commission (EC) allocated a total of €73 million for border management initiatives in Tunisia, and an additional €105 million is pledged for 2023.<sup>9</sup>

Funding under the EUTF for Africa is scheduled to continue until the close of 2024. Resources from the NDICI-Global Europe in Tunisia are secured until 2027. In July 2023 the EC announced an extra allocation of €105 million to Tunisia. While the specific Union actions that these funds will support are still unknown, it is currently known that resources have been allocated based on priorities. This allocation suggests that migration governance, in particular border management, will remain a primary focus throughout 2023.

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Total border management funding in Tunisia 2018-2022

**€73 million**

€38 million under EUTF | €35 million under NDICI

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These funding programmes and amounts are indicative of a significant, sustained and prioritized commitment to advancing Tunisia’s border management capacities to reduce migration towards Europe. The next subsections will provide additional details about this commitment. Subsection 1.1.1 provides an overview of the funding landscape under the EUTF for Africa, while subsection 1.1.2 focuses on the NDICI-Global Europe.

### 1.1.1 EUTF for Africa Funding Overview for Border Management in Tunisia (2014-2020 MFF)

The EUTF for Africa has been the main mechanism for fostering migration cooperation between the EU and Tunisia since 2015. According to EC figures,<sup>10</sup> out of the €87 million

allocated for migration management to Tunisia under the EUTF for Africa, the majority (44%, €38 million) has been designated for integrated border management. The remaining funds are distributed among various areas, with 23% (€20 million) dedicated to assisted voluntary returns and migration management, 18% (€16 million) to community protection and stabilization, and 15% (€13 million) to labour migration.

The majority of the EUTF for Africa's resources for border management in Tunisia have been dedicated to the **Border Management Programme for the Maghreb Region (BMP Maghreb)**. BMP Maghreb is a multi-country initiative covering Morocco and Tunisia which is co-implemented by the Italian Ministry of Interior and the International Centre for Migration Policy Development (ICMPD),<sup>11</sup> spanning from August 2018 to August 2024 with a total budget of €65 million.<sup>12</sup> The initiative is divided into three distinct phases. The Tunisian component of Phase I (2018-2021) was worth €30 million and aimed at strengthening the border management capacity of the Tunisian Coast Guard (*Garde Nationale Maritime - GNM*) to stem irregular departures towards Europe. This was to be achieved through (1) purchasing

and delivering equipment, including an integrated border surveillance and coastal communication system, (2) training the GNM on the use and maintenance of the equipment, and (3) providing technical assistance in relation to the procured equipment. Under Phase II (2021-2024), a top-up of €10 million for Tunisia was agreed in 2020 following the request from the Ministry of Interior of Tunisia to include operations against people smuggling on land, besides border surveillance at sea.<sup>13</sup> Phase III will be financed under the NDICI-Global Europe – see subsection 1.1.2.

BMP Maghreb builds on a parallel project named “The Support Programme to the Tunisian Government in the field of Integrated Border Management” (IBM Tunisia), an initiative that is also divided into three distinct phases. IBM-Phase I was funded by the European Commission together with funding from the Swiss Confederation and spanned from 2015 to 2019.<sup>14</sup> IBM-Phase I finalized Standard Operating Procedures for border management and installed three operational control rooms. Additionally, the intervention piloted ISMariS, an integrated maritime surveillance system designed to centralize data collected by the GNM.<sup>16</sup> IBM-Phase II<sup>17</sup> and IBM-Phase III<sup>18</sup> continued with financial

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While this report focuses on the EUTF for Africa and NDICI-Global Europe, other EU and Member State tools exist that increase the total funds allocated to Libya and Tunisia for border management.

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contributions from various MSs, and execution overseen by ICMPD. IBM-Phase II, spanning from 2018 to 2019, received financing from Germany, while IBM-Phase III, spanning from 2020 to its planned conclusion in 2023, is financially supported by Austria, Denmark, and Germany. The IBM-Phase II did not include maritime surveillance, as this component was transitioned to BMP Maghreb.<sup>19</sup> Instead, IBM-Phase II and IBM-Phase III continued the contribution to the expansion of operational rooms (regional and local) of the three structures responsible for border management in Tunisia: the General Directorate of Borders and Foreigners (DGFE), the General Directorate of Border Guards (DGGF) and the General Directorate of Customs (DGD), as well as the expansion of the "Smart Gate" system of the Tunisian Customs.

It is important to note that, beyond the EUTF for Africa, the Multi Annual Financial Framework (MFF) 2014-2021 encompassed additional tools that contributed to migration management in Tunisia, such as European Neighbourhood Instrument (ENI) and the Asylum, Migration and Integration Fund (AMIF), as well as support through EU agencies and programmes aimed at bolstering the security sector, including components to counter departures via sea and address smuggling and trafficking. Furthermore, other bilateral and multilateral partnerships with EU Member States, as well as multilateral cooperation, have supported border management in terms of equipment, training, and capacity building.<sup>20</sup> An analysis of these initiatives is out of the scope of this study.

### 1.1.2 NDICI-Global Europe Funding Overview for Border Management in Tunisia (2021-2027 MFF)

NDICI-Global Europe's financial support for border management in Tunisia takes place under the Multi Annual Indicative Programme (MIP) for a Multi Country Migration Programme for the Southern Neighbourhood 2021-2027 (MCMP for the SN or MCMP, hereinafter). **A key objective of the MCMP for the SN budget is to ensure that actions funded under the EUTF for Africa are maintained or extended.**<sup>21</sup>

So far, the policy priorities outlined in the MCMP have been translated into two main initiatives, which were approved via the 2021 and 2022 Annual Work Programmes respectively.

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## €35 million euros

**As of August 2022, NDICI-Global Europe contracted commitments for Tunisia amount to €35 million euros and are focused on sea borders.**

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Approved in 2021, the EU Support to Border Management Institutions in Libya and Tunisia<sup>22</sup> is a multi-country initiative for the management of land and sea borders. With an earmarked budget of €45 million euros, this initiative is scheduled to be implemented over a 7-year timeframe. As of August 2022, contracted commitments for Tunisia amount to €35 million euros and are focused on sea borders via three components:

- **Support the Tunisian GNM's training pillar (€13.5 million) with the aim to strengthen their overall capacity on maritime border management and Search and Rescue (SAR)** by providing a physical infrastructure for the Training Academy and developing training curricula. It is implemented via indirect management by ICMPD and the German Federal Police between January 2023-June 2026.
- **Complete the integrated coastal surveillance system (€5 million), with the goal of installing a coastal surveillance system** to be used by the GNM as a first step for the establishment of a Maritime Rescue and Coordination Centre (MRCC). This component represents Phase III of the BMP Maghreb. It is implemented via indirect management by the ICMPD, with the Italian Ministry of Interior as partner.
- **Support the establishment of a MRCC (€16.5 million) aiming at supporting SAR operations in Tunisia through the provision of capacity building and equipment for the GNM and the Tunisian Navy.** It is implemented via indirect management by Civipol.

Approved in 2022, the EU Support to Cross-Border Cooperation and Integrated Border Management in North Africa has the goal of increasing the capacity of northern Africa countries, including Libya and Tunisia, in securing their land borders to prevent the irregular entrance of migrants in the region from southern neighbouring countries. Its budget is €6 million. The implementing partners of the project are unknown and there are no contracted commitments publicly available as of September 2023. The project proposes the pilot management of some identified border areas (to be agreed upon with the countries) as cross-border areas to be managed through an integrated approach and has two phases:

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Border management, will continue to be primary focus in 2023. The specific Union actions that these funds will support are still unknown.

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- The first phase of the program includes mediation work and information exchange with the authorities of the countries in **cooperation of Frontex to promote the integrated border management model**.
- In the second phase, the project will assess the necessary equipment for the constitution of the agreed cross-border points.

In addition to the above, an extra allocation of €105 million has been committed for 2023. This allocation will be part of the 2023 Annual Work Programme (AWP) of the MCMP for the SN.<sup>23</sup> **Unlike the two previous years, the supported measures are not defined, and the action plan remains general.** What is currently known, however, is the allocation of resources by priorities, which indicates that migration governance, in particular border management, will continue to be the primary focus in 2023. Between 60% and 73% of the 2023 AWP, totalling €167.4 to €203.7 million, is designated for this objective. This is intended to increase the border management and search and rescue capacity at sea and land borders of Tunisia and Egypt. According to the 2023 AWP, activities will include a) delivery of equipment, trainings and the development of standard operating procedures for the use of the equipment delivered, and b) development of the necessary policy, legal and regulatory frameworks and support to the relevant coordination mechanism.<sup>24</sup>

### 1.1.3 Notes on Recipient Authorities

The primary recipients of support from the EUTF for Africa and NDICI-Global Europe border management programs in Tunisia are the Tunisian Coast Guard (Garde Nationale Maritime - GNM) and the Tunisian National Guard (Garde Nationale - GN), which constitute an integral department of the Tunisian Ministry of Interior. Additionally, the Tunisian Navy, which is a military body governed by the Ministry of Defence, also benefits from these programs.

The GNM oversees border surveillance at sea, which includes interceptions and rescue operations. While Tunisia doesn't have a formal Maritime Rescue Coordination Centre (MRCC), Search and Rescue (SAR) operations at sea are coordinated through the Operations Centre of the National Coastal Surveillance Service, under the oversight of the Tunisian Navy. In this way, the Tunisian Navy<sup>25</sup> supports the GNM.

Chapter 2 highlights multiple instances where the Tunisian Coast Guard exhibited violent and criminal behaviour toward migrants, asylum seekers, and Tunisian citizens.

**Table 1** Synthesis of main border management initiatives in Tunisia financed under the EUTF for Africa and the NDICI-Global Europe

| Implementing period | Name of the program  | Financial Instrument   | Allocation  | Main beneficiaries  |
|---------------------|--|--|---|---|
| 2018-2024/25        | Border management program for the Maghreb region (BMP). Phase I and II   | EUTF / NDICI-GE<br>Implementing Partners: Italian Ministry of Interior and ICMPD | €38 million of which 5 million under phase 3 are supported via NDICI-GE | Tunisian Coast Guard (Garde Nationale Maritime - GNM) and the Tunisian National Guard (Garde Nationale - GN). |
| 2021-2027           | "Support for Border Management Institutions in Libya and Tunisia. Measure in favour of Libya and Tunisia for 2021" | NDICI-GE<br>Implementing Partners: Italian Ministry of Interior and Civipol      | €35 million Tunisia   | Tunisian Navy (limited to some very specific activities)  |
| 2022-2027           | 'Support to Cross-Border Cooperation and Integrated Border Management in North Africa'                             | NDICI-GE<br>Implementing Partners: unknown                                       | €6 million region wide, country allocations are unknown                 |   |

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These funding programs and amounts underscore the EU's substantial and long-term commitment to advancing Tunisia's and Libya's border management capacities to reduce migration towards Europe.

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Both the Tunisian and the so-called Libyan Coast Guard display violent and criminal behaviour towards migrants, asylum seekers, and refugees, with numerous incidents at sea and on land, indicating a very concerning pattern of disregard for human rights by these authorities. Despite this, they are key recipients of NDICI funding for border management.

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## 1.2 Libya

From 2017 to 2022, the EC allocated a total of €71 million for border management initiatives in Libya. This figure comprises €59 million under the EU EUTF for Africa and €12 million under the NDICI-Global Europe.

Funding under the EUTF for Africa is scheduled to continue until the close of 2024. Resources from the NDICI-Global Europe in Libya are secured until 2025.

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### Total border management funding in Libya 2018-2022

# €71 million

€59 million under EUTF | €12 million under NDICI

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These funding programmes and amounts are indicative of a significant, sustained and prioritized commitment to advancing Libya's border management capacities to stem migration towards Europe. The next subsections will provide additional details about this commitment. Subsection 1.2.1 provides an overview of the funding landscape under the EUTF for Africa, while subsection 1.2.1 focuses on the NDICI-Global Europe.

### 1.2.1 EUTF for Africa Funding Overview for Border Management in Libya (2014-2020 MFF)

The EUTF for Africa has been the main mechanism for fostering migration cooperation between the EU and Libya since 2015, with Libya being the top recipient of its funds. According to EC figures, out of the €455 million allocated for migration management to Libya under the EUTF for Africa, 13% (€59 million) has been designated for integrated border management. The remaining funds are distributed among various areas, with 52% (€237 million) dedicated to protection and 35% (€161 million) to community stabilization.<sup>26</sup>

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The EUTF for Africa has been the main mechanism for fostering migration cooperation between the EU and Libya since 2015, with Libya being the top recipient of its funds

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The majority of the EUTF for Africa's resources for border management in Libya have been dedicated to the programme **Support to Integrated Border and Migration Management in Libya (SIBMMIL)**. SIBMMIL is a country-specific project for Libya which is implemented by the Italian Ministry of Interior, spanning from July 2017 to November 2024 with a total budget of €59 million. The initiative was divided into two distinct phases. **Phase I (initially July 2017-December 2018 but then extended until 2024<sup>27</sup>) was worth €42.2 million, and aimed at aims to strengthen "the capacity of relevant Libyan authorities in the areas of border and migration management, including border control and surveillance, addressing smuggling and trafficking of human beings, search and rescue at sea and in the desert".<sup>28</sup>** This was to be achieved through (1) setting up basic facilities in order to enable the Libyan guards to better organise their SAR, border surveillance and control operations and (2) assisting the concerned Libyan authorities in defining and declaring a Libyan SAR Region with adequate SAR Standard Operation Procedures.

**For Phase II (December 2018-November 2024), an extra €16.8 million was agreed in 2018 to enhance the operational capacity and coordination of the Libyan Coast Guard and Port Security (LCGPS) and the Navy and the General Administration for Coastal Security (GACS) fleets. This funding aimed at (1) providing new SAR vessels, accompanied by a maintenance and training program, and (2) developing a mobile MRCC to support SAR operations and interception activities at sea.<sup>29</sup>**

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## SIBMMIL Targets

**In Phase 1, training targeted 150 GACS staff, 20 DCIM members, 100 LCGPS officers, and 40 LBG officers. At least 3 GACS vessels and 4 LCGPS vessels were rehabilitated. Phase 2 includes plans to deliver 5 new vessels to LCGPS.**

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Fundamentally, the two phases of SIBMMIL were aimed at curbing crossings in the Central Mediterranean by reducing departures, increasing interceptions and enhancing the coordination of LCGPS and GACS. On land, there was an intention to enhance the Libyan authorities' capacity for land border management and SAR in the desert through a pilot, contingent on an initial assessment. According to the action fiche, a condition for funding border control facilities was granting "progressive access of humanitarian actors for protection of migrants in the region".<sup>30</sup>

However, the Programme encountered substantial challenges during its implementation, necessitating significant adjustments to both Phase I and II. According to the revised Action Documents, the escalating situation in Libya from 2019 impeded the realization and fulfilment of Phase I's intended objectives and activities. Consequently, the Italian Ministry of Interior, in collaboration with DG NEAR, opted to modify the ongoing activities of the project's first phase in 2020. The amended Action Document, which was published in March 2023, outlines

as primary activities the maintenance of vessels, training sessions for crew and officials, and the supply of 20 rubber boats and 40 land vehicles. The conditions in Libya, further intensified by the COVID-19 pandemic, also demanded changes to Phase II. Strengthening the maritime border emerged as the sole emphasis, and the Programme's objectives shifted to in the purchasing of vessels, the support to fleet maintenance, the training sessions for crew members and the establishment of a mobile MRCC, as well as establishing a communication network along the coast.

### 1.2.2 NDICI-Global Europe Funding Overview for Border Management in Libya (2021-2027 MFF)

NDICI-Global Europe's financial support for border management in Libya takes place under the MCMP for the SN. A key objective of the MCMP budget is to ensure that actions funded under the EUTF for Africa are maintained or extended.<sup>31</sup> So far, the policy priorities outlined in the MCMP have been translated into two main initiatives, which were approved via the 2021 and 2022 Annual Work Programmes, respectively.

Approved in 2021, the EU Support to Border Management Institutions in Libya and Tunisia<sup>32</sup> is a multi-country initiative for the management of land and sea borders. With an earmarked budget of €45 million euros, this initiative is scheduled to be implemented over a 7-year timeframe. As

of August 2022, commitments for Libya amount to €12 million euros<sup>33</sup> and are focused on sea and land borders via two components:

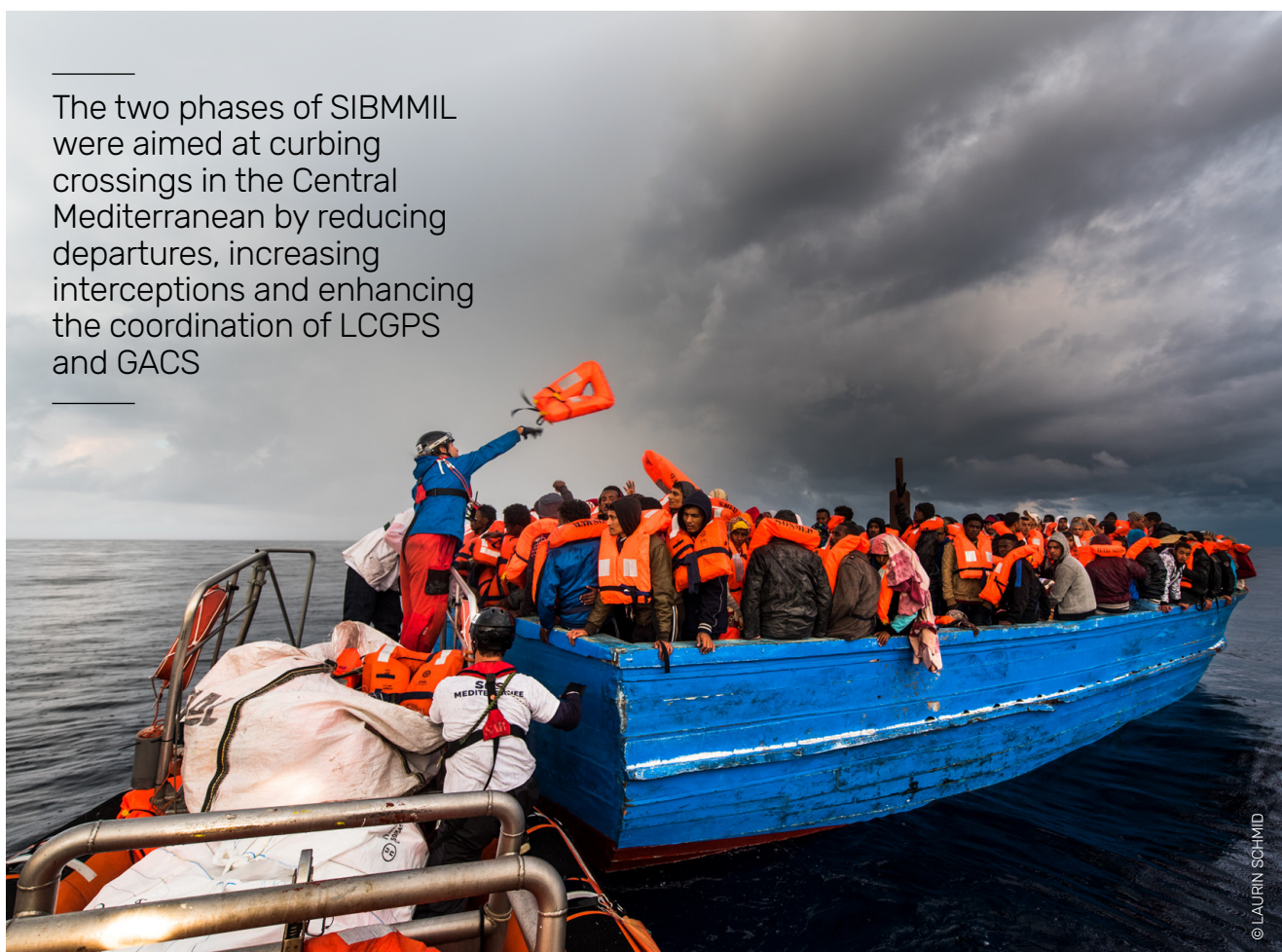
- **Upgrade the Maritime Rescue Coordination Centre (€8 million)**, with the goal of delivering Mobile Centre for the MRCC to be stationed along the coast and connected to Libyan Navy systems.<sup>34</sup> Details regarding the implementing partner and the timeframe remain undisclosed.
- **Establish a Border Guard Training Academy (€5 million)** with the aim of strengthening Libya's capacity on border management and SAR through the development of a training curriculum and provision of technical support for equipment supplied under the SIBMMIL. The Action Document describes the intention "to develop an intensive coaching programme to build upon the additional assets" provided to LCGPS and GACS.<sup>35</sup> It is implemented via indirect management by ICMPD between January 2023-December 2026.<sup>36</sup>

In essence, the Libyan component seeks to realize what was initially envisaged but not accomplished with SIBMMIL Programmed Phases I and II. This includes (1) capacity-building and technical support via a training academy for border guards and (2) the deployment of an operational mobile MRCC.

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The two phases of SIBMMIL were aimed at curbing crossings in the Central Mediterranean by reducing departures, increasing interceptions and enhancing the coordination of LCGPS and GACS

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# SIBBMIL Programmed Phases I and II

In essence, the Libyan component seeks to realize what was initially envisaged but not accomplished with SIBBMIL Programmed Phases I and II. This includes (1) capacity-building and technical support via a training academy for border guards and (2) the deployment of an operational mobile MRCC.

Approved in 2022, the EU Support to Cross-Border Cooperation and Integrated Border Management in North Africa has the goal of increasing the capacity of northern Africa countries, including Libya and Tunisia, in securing their land borders to prevent the irregular entrance of migrants in the region from southern neighbouring countries. Its budget is €6 million. The implementing partners of the project are unknown and there are no contracted commitments publicly available as of September 2023. The project proposes the pilot management of some identified border areas (to be agreed with the countries) as

cross-border areas to be managed through an integrated approach and has two phases:

- The first phase of the program includes mediation work and information exchange with the authorities of the countries in cooperation with Frontex to promote the integrated border management model.
- In a second phase, the project will assess the necessary equipment for the constitution of the agreed cross-border points, which may include the following: Ben Gardane-Ras Jedir (Tunisia-Libya); Debdeb-Ghadamès (Algeria, Tunisia, Libya); Ghat-Djanet (Libya-Algeria) and Mousaid – Sollum (Libya – Egypt).<sup>37</sup>

In addition to the above, the Commission adopted an Annual Action Plan 2023 for the MCMP amounting to €267 million.<sup>38</sup> The document highlights that migration management activities funded either under the EUTF for Africa or under NDICI-Global Europe in Libya have come to an end or will do so by the end of the year, which requires alternative funding to be put in place. **However, the specific Union actions that these funds will support are still unknown.**

**Tabel 2** Synthesis of main border management initiatives in Libya financed under the EUTF for Africa and the NDICI-Global Europe

| Implementing period | Name of the program  | Financial Instrument  | Allocation  | Main beneficiaries  |
|---------------------|--|---|---|---|
| 2017 - 2024         | Support to integrated border and migration management in Libya (SIBMMIL) - Phase 1   | EUTF<br>Implementing partners:<br>Italian Ministry of Interior                  | €42.2 million   | General Administration for Coastal Security (GACS); the General Administration for the Security of Border Crossing Points (GASBCP); the General Directorate for Combating Illegal Immigration (DCIM). Under the Ministry of Defence, the Land Border Guards (LBG) and the Libyan Coast Guard and Port Security (LCGPS); |
| 2018 - 2024         | support to integrated border and migration management in Libya (SIBMMIL) - Phase 2   | EUTF<br>Implementing partners:<br>Italian Ministry of Interior                  | €16.8 million   |   |
| 2021-2027           | Support to Border Management Institutions in Libya and Tunisia                       | NDICI -GE<br>Implementing Partners:<br>Italian Ministry of Interior and CiviPol | €12 million   |   |
| 2022-               | Support to Cross-Border Cooperation and Integrated Border Management in North Africa | NDICI -GE<br>Implementing Partners:<br>unknown                                  | €6 million region-wide, country allocations are unknown |   |



### 1.2.3 Notes on Recipient Authorities

The main beneficiaries of support from the EUTFA for Africa and NDICI-Global Europe border management programs in Libya are the General Administration for Coastal Security (GACS) and the Libyan Coast Guard and Port Security (LCGPS), which are the authorities responsible for maritime control. In addition, the General Administration for the Security of Border Crossing Points (GASBCP), the General Directorate for Combating Illegal Immigration (DCIM) and the Land Border Guards (LBG), also appear as beneficiaries of supported projects, even though their involvement and influence on the programs is unknown.

The General Administration for Coastal Security (GACS) and the Libyan Coast Guard and Port Security (LCGPS) oversee border surveillance at sea, which includes interceptions and rescue operations. GACS is a law enforcement entity which operates within a zone extending up to 12 nautical miles from the coast - within territorial waters - focusing on maintaining coastal security, including irregular migration and trafficking. The LCGPS duties include surveillance of the national waters and patrolling of the wider “Libyan SAR zone” that was declared in 2018. Its duties are multifaceted, including contrast to any illegal activity such as smuggling efforts, irregular migration, pollution, fishing, SAR operations and cooperation with other national and international agencies. In late 2020, the GACS stepped up its SAR interventions following the receipt of renovated SAR vessels funded both by the EU and Italy.<sup>39</sup>

Chapter 2 underscores a critical correlation between EU-funded border management programs and numerous instances of violence, implicating these authorities in activities that contravene human rights standards. In particular:

- Beneficiaries implicated in actions amounting to crimes against humanity;
- Officials demonstrating violent and criminal behaviour during the implementation of program-specific tasks, notably sea interceptions.
- The direct provision or maintenance of assets used by these authorities in violent attacks during border management activities.

In this report, we will hereinafter refer to the Libyan Coast Guard as the ‘so-called Libyan Coast Guard’. Chapter 2 provides detailed information regarding their involvement in both human smuggling and human trafficking, as well as violations amounting to crimes against humanity. Additionally, their credibility as a partner in maritime rescue operations has been questioned in various official reports. This underscores the necessity for meticulous evaluation and qualification of the term ‘Libyan Coast Guard’.”

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# Human rights context in Tunisia and Libya

The financial commitments outlined in Chapter 1 (p. 10) take place within a profoundly intricate and challenging human rights landscape. This complexity has been underscored by civil society and the European Parliament since the EU initiated its collaboration with Libya and Tunisia. Nevertheless, despite the concerns raised, there continues to be a distressing surge in abuse against migrants, refugees and asylum seekers, with evidence that these abuses are, in many cases, carried out by the official and unofficial forces that they encounter during their perilous journeys. What is more, many of the assets of these forces – especially the patrols and vessels used by coastguards – were furnished or sustained with EU and EU Member States' funding.

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The findings presented in this chapter expose the stark dissonance between the distressing on-ground situation and the EU's stated foreign policy objectives

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In this context, subsections 2.1 and 2.2 focus on the most recent reports providing compelling evidence of human rights abuses in Tunisia and Libya, with particular attention paid to migrants, refugees and asylum seekers, especially individuals coming from sub-Saharan Africa. Furthermore, subsection 2.3 delves into specific incidents that reveal a chilling array of hostilities, ranging from outright violence and intimidation to harrowing testimonials from survivors of abuse, discrimination, and extortion.

The findings presented in this chapter expose the stark dissonance between the distressing on-ground situation and the EU's stated foreign policy objectives. This disparity is deeply concerning and underscores an urgent need for comprehensive scrutiny and reformulation of European Union funding intended for managing the external aspects of migration.

## 2.1 Tunisia

The human rights context in Tunisia has been increasingly worrisome in 2023, with mounting evidence from journalists, NGOs, and local and international observers highlighting a rapid deteriorating situation for foreigners, especially sub-Saharan migrants, refugees and asylum seekers. In July 2023, a Joint Communication from UN Special Procedures recalled that "reports highlight a consistent and widespread pattern of abuses and violence perpetrated by governmental authorities, namely the Tunisian Police, National Guard and Coast Guard. Sub-Saharan African migrants, refugees and asylum seekers are reportedly subject to increased risk of arbitrary detention, arbitrary displacement, and collective expulsion with no due process and individual assessment measures in place. Additionally, there are concerns that the Tunisian authorities are not in a position to assess protection claims and assist migrants, refugees and asylum seekers in situations of vulnerability and/or with specific needs, such as women, children, elderly, disabled, sick and victims of contemporary forms of slavery and trafficking in persons. Tunisian authorities are reportedly conducting expulsions at the Libyan border at night".<sup>40</sup>

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# It is within this context that the EU is increasing its financial support for border management in Tunisia

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This concerning trend is occurring against the backdrop of a worsening economic crisis and growing repression, which has raised alarm bells about the erosion of democratic principles, good governance, and human rights.<sup>41</sup> Particularly concerning is the shift towards an authoritarian approach by the country's President, which has further exacerbated the challenges faced by vulnerable populations, including migrants, refugees and asylum seekers.<sup>42</sup> Reports also highlight the suppression of freedom of expression and civil liberties, the erosion of judicial independence, and the sustained crackdown on political opponents through arbitrary arrests and legal persecution.<sup>43</sup>

It is within this context that the EU is increasing its financial support for border management in Tunisia (check Chapter 1 for further elaboration). As highlighted by the UN Special Procedures, this report shares their concerns "that eventual cooperation would contribute to the pervasive and consistent patterns of human rights violations against these groups of persons in Tunisia. In particular, we are concerned that strengthening activities and projects that would increase the interception of migrants at sea and their unlawful return to Tunisia and unsafe third countries, where they are at risk of persecution and being subjected to violations of their right to life, torture and other ill-treatment, trafficking in persons, and disappearances would constitute a violation of the principle of non-refoulement".<sup>44</sup>

The following paragraphs further explore certain issues that underscore the high-risk nature of supporting border management projects in Tunisia, incorporating personal stories to emphasize the human element within firsthand experiences.

## • Hate campaign and use of violence

[February 2023] *"The night before I was attacked, the president called to the population through a public speech on TV and radio against black Africans. "That's when everything changed!" Boniface says. Fatima\*, a 32-year-old woman, adds: "Before the president spoke, Tunisia was already bad. When he spoke saying that the blacks had to go back, then everything got worse."*<sup>45</sup>

The President's racist hate speech<sup>46</sup> during the National Security Council Meeting on 21 February 2023 has led to a rise in violence against Sub-Saharan migrants in Sfax, as documented by Human Rights Watch (HRW). Reports indicate that the Tunisian Police, National Guard and Military – including the Navy – have committed serious abuses, including "beatings, use of excessive force, some cases of torture, arbitrary arrests and detention, collective expulsions, dangerous actions at sea, forced evictions, and theft of money and belongings".<sup>47</sup> This campaign has not only fostered an atmosphere of hostility but has also triggered efforts to criminalize civil society actors who offer assistance to migrants, refugees and asylum seekers. In turn, this hostility also resulted in assaults and abuses against Sub-Saharan Africans by local population.<sup>48</sup>

In an attempt to counter accusations of racism, the President has introduced certain measures intended to "facilitate procedures for foreign residents and protect various communities." However, these measures have raised concerns within the United Nations, as they have not been effectively implemented or upheld as intended.<sup>49</sup>

## • Arbitrary detention and inhumane and degrading treatment

[April 2023] *"In the police van, one [officer] started choking me to force me to open my phone. ... They took me to the police station in Lac 1. They separated three of us, me and a Sierra Leonean [asylum seeker] and the [injured] Liberian ...*

*[The police] put us in a private room, where they tortured us. [Two uniformed officers] used ... a wooden stick ... hitting us on our heads, ankles, places where your bones are ... Two [other uniformed officers] gave us shocks with electronic devices like tasers ... One [man in civilian clothes] ... said to me in English, "You are ... saying Tunisia is not safe ... You fucking immigrants and refugees, you want to spoil our image." ... The other police were insulting us in Arabic ... They tortured us ... for around 45 minutes'.<sup>50</sup>*

Arbitrary detention and inhumane treatment of migrants have become recurrent issues, with reports pointing to a campaign of arrests that resulted in the detention of over 850 individuals within a short span (February–March 2023).<sup>51</sup> This wave of arrests targeted individuals regardless of their legal status, including even registered refugees and students. In many cases, these detainees were subjected to inhumane and degrading conditions during their detention. There are testimonies gathered in the July 2023 HRW report that testify the behaviour of the Tunisian officials in the detention centre that could account for torture.<sup>52</sup>

Tunisian law criminalizes unauthorized entries and stays within the territory. Consequently, migrants found to be in an irregular situation are often subjected to arbitrary administrative detention. Despite repeated reminders and rulings by the Tunisian administrative court over the years, the detention centre under the oversight of the National Guard and the Direction Générale des Frontières et des étrangers within the Ministry of the Interior continues to operate.



- **Collective expulsions and deportations to the borders of Libya and Algeria, including children and people with medical conditions**

[July 2023] *‘A number of survivors described violent expulsions to the border countries of Libya and Algeria. “In Sfax, they pick up black people, with or without papers, and send them to the Algerian border”, said Fatima. Another survivor recounted how he and others had been sent into the desert. “The Tunisian police don’t want to see any more black people. They hate us. When they took us to Algeria, we walked for almost a week in the desert.”’*<sup>53</sup>

[In September 2023 deportations continued to happen] *“The officers dropped their group in the mountains near the Tunisia-Algeria border”, they said. The Guinean boy said that one officer had threatened, “If you return again [to Tunisia], we will kill you.” One of the Senegalese children said an officer had pointed his gun at the group”.*<sup>54</sup>

According to HRW, the Tunisian National Guard and Army arrested and arbitrarily deported 1,200 black African migrants, including children and people in vulnerable and medical conditions, to the borders with Algeria and Libya in July 2023. 600-700 people were driven south to the Libya border near the town of Ben Guerdane and to the Algerian border near Tozeur, Gafsa, and Kasserine governorates. Reports of violence, beatings, theft, and threats against migrants during these expulsions are deeply concerning and further underscore the dire human rights situation.<sup>55</sup>

The Algerian and Libyan authorities pushed back to Tunisia the main part of the groups that remained in a limited access zone without water and food for days, and Tunisian authorities denied access to humanitarian organizations. A group that was at the border with Libya in the Ben Guerdane area was denied entry and subjected to threats and violence by the Libyan authorities. The Tunisian authorities failed to remedy it. At least 27 individuals tragically lost their lives due to thirst and heat in these desert zones, including a woman and her 6-year-old daughter.<sup>56</sup>

NGOs and observers have documented collective expulsions conducted by the National Guard and military officers for several years.<sup>57</sup> Especially, collective expulsions to border zones based on racial discrimination have been occurring frequently in recent months, a concern that was raised in July 2023 by UN Experts in front of the Tunisian Government.<sup>58</sup> In September 2023, HRW denounced that the Tunisian National Guard collectively expelled over 100 migrants, including children and potential asylum seekers to the Algerian border. These individuals had previously been intercepted at sea and brought back to Tunisia by the Tunisian Coast Guard. This marks a notable departure from Tunisia’s previous policy, where intercepted individuals were typically released rather than detained or expelled.<sup>59</sup>



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## Violent treatment

In December 2022, more than fifty associations raised concerns about the violence perpetrated by the Tunisian Coast Guard, citing several instances involving their violent treatment of intercepted migrants.

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- **Violent treatment of intercepted migrants at sea**

[August 2023] *“During the night, the Tunisian coast guard came. The coast guard started to hit us with a long iron stick. The captain and some other travellers got wounded. Then, the coast guard tied a rope to our boat and took us on their boat by force.*

*(...) It was very violent. I saw the Tunisian coast guard hitting a boat with Tunisians, using a speed boat. People fell into the water. (...) In total, five Tunisian boys died.”*<sup>60</sup>

In December 2022, more than fifty associations raised concerns about the violence perpetrated by the Tunisian Coast Guard, citing several instances involving their violent treatment of intercepted migrants. These include beating people after the interception, damaging boats and then abandoning the group on board.<sup>61</sup> The frequency of such incidents and the increasing number of interceptions raise further concerns about the safety and well-being of migrants attempting to cross the Mediterranean from Tunisia.

In 2023, the number of interceptions had already reached 39,568 by August.<sup>62</sup> Yet, despite these concerns, the Tunisian Coast Guard is the primary beneficiary of the projects documented in Chapter 1.

Tunisia's status as a safe country for disembarkation had already been under scrutiny in previous years, and the risk faced by those attempting to leave the country after being intercepted and disembarked has become increasingly prevalent. This risk includes the potential for detention, chain refoulement, collective expulsion, violence, or being left in situations of destitution, homelessness, and discrimination.

On numerous occasions, civil society organizations have directed their concerns toward the competent institutions of the EU and Member States, urging the Commission to ensure transparency and to conduct prior human rights impact assessments for all forms of financial support.<sup>63</sup> Additionally, several Members and Groups of the European Parliament have taken a stance against the signing of the new MoU.<sup>64</sup> Furthermore, considering the mounting evidence and the rapid deteriorating situation since February 2023, especially concerning black Africans, several observers and SAR NGOs are expressing concerns about the "safety" of Tunisia as a disembarkation destination for both its citizens and third-country nationals.<sup>65</sup>

### **Box 1: Violence by Tunisian GNM & Declaration of SAR zone**

**Evidence collected by SAR NGOs and observers indicates several violent tactics by Tunisian CNM during interceptions, and an increase of this behaviour in the recent months. Abuses consist predominantly of:**

- **Physical Violence:** Reports of coastguards using iron or wooden batons or tear gas against migrants.
- **Firearms Use:** Shots are often fired into the air or at boat engines, causing panic and potential shipwrecks. Engine shots can lead to severe diesel burns.
- **Engine Removal:** Engines are frequently removed from migrant boats, leaving them stranded. This action can lead to shipwrecks.
- **Boat Collisions:** Coastguards, using their boat's powerful engines, collide with migrant boats, often causing them to sink.<sup>66</sup>

Tunisia has not yet formally established a Search and Rescue (SAR) zone, a process that requires demonstrating the presence of a fully operational Maritime Rescue Coordination Center (MRCC) and the ability to conduct rescue operations beyond its territorial waters. While these are the objectives of border management-supported projects in Tunisia – as it was done for Libya – (refer to Chapter 1 for further information on these projects), the available evidence suggests that the current surge in interceptions and the return of individuals<sup>67</sup> place them at a heightened risk of encountering violence.



## **39,568 Interceptions**

**In 2023, the number of interceptions had already reached 39,568 by August. Yet, despite these concerns, the Tunisian Coast Guard is the primary beneficiary of the projects documented in Chapter 1.**

### **2.2 Libya**

Over recent years, evidence has revealed the unreliability of Libyan authorities, specifically the General Directorate for Combating Illegal Immigration (DCIM) and the Libyan Coast Guard and Port Security (LCGPS), which are both direct beneficiaries of the IBM programs funded under EUTFA and under the NDICI.

The UN Independent Fact-Finding Mission on Libya, in its final report published on 27 March 2023, concluded that "the Mission has found reasonable grounds to believe that since 2016 crimes against humanity have been committed against Libyans and migrants throughout Libya in the context of deprivation of liberty. Notably, the Mission documented and made findings on numerous cases of, inter alia, arbitrary detention, murder, torture, rape, enslavement and enforced disappearance, confirming their widespread practice in Libya. In its assessment of evidence on the treatment of migrants, the Mission concluded that there were reasonable grounds to believe that sexual slavery, as an additional underlying act of crime against humanity, was committed against migrants". The Mission also concluded that the support to so-called Libyan Coast Guard with the declared objective to increase interceptions, results in the violation of the non-refoulement principle, as Libya cannot be considered in any way a safe place for migrants and refugees to be.<sup>68</sup>

The report also emphasizes that as the Mission's mandate nears its end, the human rights situation in Libya continues to decline. Not only do gross human rights violations remain widespread, but they are also accompanied by widespread impunity. Political volatility and institutional frailty persist, further compounded by a deteriorating economic situation exacerbated by the Covid-19 pandemic in a country with one of the highest levels of corruption.<sup>69</sup> Rising authoritarian tendencies and growing insecurity mark the current atmosphere, evidenced by the shrinking civic space and restrictions on freedoms – including assembly, expression, and speech. Alarming, the risks for human rights advocates have heightened, with penalties ranging up to the death penalty. The conflict continues, the nation remains divided, and parallel state authorities are emerging,

while vital reforms in the legislative, executive, and security sectors and for the reinforcement of the rule of law are lagging.<sup>70 71</sup> In addition to the above, the paragraph below further elaborates on the high-risk nature of supporting border management projects in Libya, incorporating personal stories to emphasize the human element within firsthand experiences.

- **Forced detention and widespread violence**

[March 2020] *22-year-old "Nabil", a refugee, among those forcibly disappeared following his disembarkation in Libya said to Amnesty International: "They [armed men in control of the site] were isolating people, they weren't letting the organizations access us. [Inside], they beat you, they torture you, they don't treat you like you're human."*<sup>72</sup>

*"Please send me to a hospital, because I don't think I'll be here tomorrow if you don't." A person in detention centre in Misrata told to an MSF nurse.*<sup>73</sup>

*A 25-year-old Cameroonian woman that was rescued by SOS Humanity in December 2022: "I was kidnapped the first time in Benghazi when I was 20 years. I stayed in prison for 1 month, there was no food, no water and no light, I think it was some kind of parking lot. They beat me every day. They*

*asked for 5,000 Libyan dinar, but I didn't have money. One day the kidnapper came and – bang bang bang bang – started shooting everyone around. I was lucky they didn't kill me. I ran and escaped. The girls that stayed were sold for prostitution."*<sup>74</sup>

Libyan Law No. 6 of 1987 criminalises irregular entry, stay and exit in the country – without exceptions for applicants to international protection – which is penalized by imprisonment or a fine. Hence, upon entering Libya, migrants most often find themselves forcibly detained in detention facilities located across the country, which are either under the DCIM and/or run by local militias. In these facilities, they are subjected to various forms of abuse and violence, and the militias and authorities profit from ransom as a pretext to end torture. Moreover, access for humanitarian organizations to these centres is restricted, and migrants find themselves caught in a cycle of exploitation, forced labour, sexual slavery and widespread violence, all of which according to the UN Fact-finding mission qualify as crimes against humanity.<sup>75</sup>

Furthermore, while the SIBMMIL program intended to negotiate alternatives to detention, evidence gathered by the UN FFM and several NGOs, shows that the human rights situation at those centres is still dramatic. For example, in February 2023, 120 migrants and refugees were allegedly



Crimes against humanity have been committed against Libyans and migrants throughout Libya

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released by the DCIM from a warehouse where they were captive by the traffickers, and then reportedly taken to an undisclosed location, in circumstances that might meet the threshold of enforced disappearance and without access to lawyers, assistance or protection, subjected to the risk of re-trafficking, forced expulsion, and arbitrary detention.<sup>76</sup>

### **Box 2: Alleged Collusion Between DCIM, the So-Called Libyan Coast Guard and Militias**

According to the report of the UN Fact Finding Mission in Libya (UN FFM), the DCIM (General Directorate for Combating Illegal Immigration) oversees detention centres where crimes against humanity have been committed, with the involvement of DCIM staff.<sup>77</sup> In addition, the UN FFM report indicates ties between high-level DCIM officials and militias.<sup>78</sup> Notably, in December 2021, a militia leader accused of trafficking and smuggling and owner of the Tarik Al-Sikka detention centre - Mohammed Al-Khoja -, was made head of the DCIM.<sup>79</sup>

In addition, the DCIM is reportedly colluded, together with the so-called Libyan Coast Guard, with militias and traffickers in the context of interception and deprivation of liberty of migrants, enslavement, forced labour, imprisonment, extortion and smuggling, which according to the UN FFM report “generate significant revenue for individuals, groups and State institutions”.<sup>80</sup>

### **• Interceptions at sea and violations at land borders**

*An Ivory Coast woman with her daughter talks with SOS Humanity: “We had no money to pay the ransom, so we stayed in prison for one year. After that we tried to leave by boat. But some Arabic people came and caught us in the water. We were sent to prison again, no food, no water. We were just beaten every day.”<sup>81</sup>*

Upon leaving Libya by sea, people are at high risk of violent interception by the Libyan border authorities. Not only are these individuals deprived of the option to challenge or refuse this interception, but they also often face aggressive behaviour from the so-called Libyan coast guards. Observers in the Mediterranean have reported multiple incidents where the members of the so-called Libyan Coast Guard, equipped with assets funded by the EUTF for Africa Border Management Programme, has fired upon nearby SAR NGOs or directly at the migrant boats or performed dangerous manoeuvres during interception activities.<sup>82 83</sup>

Once brought ashore, the ordeal doesn't end. Migrants are forcibly transferred from the disembarkation points,<sup>84</sup> sometimes even facing violence and death,<sup>85</sup> to either formal

or informal detention centres. The Fact-finding mission found that these sea interceptions and pullbacks constitute imprisonment or other severe deprivation of physical liberty, qualifying as crimes against humanity. This is because they form part of a widespread and systematic attack on migrants and refugees trying to depart from Libya.<sup>86</sup>

Several reports, including those from the UN, emphasize that Libyan authorities, such as the Libyan Coast Guard and the DCIM, have colluded with traffickers and smugglers, especially in the context of intercepting, returning and detaining migrants. Evidence of this collusion dates back to the origin of EU cooperation with Libya.

Regarding the southern regions, efforts to establish land border management are hindered by prevailing lawlessness. Traffickers' networks either dominate this area or collaborate closely with armed groups controlling territories, and migrants are at a heightened risk of abduction and violence. In the past years, numerous incidents of collective expulsions and pushbacks have been reported, involving at least 7,500 migrants in 2019 and 2020, carried out from unofficial detention centres operated by Libyan authorities, militias or non-state actors affiliated with the Government of National Unit.<sup>87</sup>

### **• Gender-based violence and children's rights violations**

*“At the Libyan border, during the night, the people who were guiding us raped us. We were also shot at, we scattered, we got lost and we found ourselves with two children who did not speak French, without their mothers, who had disappeared... We spent three days looking for their mothers before leaving the children on their own. Who can take care of unknown children? The trauma of Libya began as soon as we entered the country.” Christelle, 36 years old, from Cameroon to MSF crew<sup>88</sup>*

**Observers in the Mediterranean have reported multiple incidents where the members of the so-called Libyan Coast Guard, equipped with assets funded by the EUTF for Africa Border Management Programme, has fired upon nearby SAR NGOs or directly at the migrant boats or performed dangerous manoeuvres during interception activities**

Violence against women and girls is widespread and systematic in both official and unofficial detention centres by members of the DCIM and guards.<sup>89</sup> Migrant women and children, in particular, face discriminatory and dehumanizing treatment encompassing sexual violence, sexual slavery, forced labour, abduction for ransom, and detention.<sup>90</sup> Children are at risk of being forcibly drawn into armed clashes and may be held in arbitrary detention alongside other adults who are not their parents in overcrowded conditions, creating situations of promiscuity. Moreover, the lack of adequate medical services and support for vulnerable persons endure their prolonged physical and psychological abuse.

## • Impunity

*One victim told the Independent Fact-Finding Mission on Libya “I want dignity for my children, my life, and myself”. Another shared their hope to see justice, telling the Mission “I hope from the bottom of my heart that one day justice will take its place and those who committed those atrocities will be tried.” Another explained: “I want those criminals to be tried and I want to see them behind bars. Justice should prevail.”<sup>91</sup>*

The widespread context of impunity prevents migrants from demanding effective remedies for the harm suffered or challenging detention and the criminalization of their status. According to the UN Report, actors responsible for human rights violations are far from being held accountable and “there is little evidence that meaningful steps are being taken to reverse this troubling trajectory and bring recourse to victim”.<sup>92</sup>

### **Box 3: Violence by so-called Libyan Coast Guard & EU equipment and training**

As evidenced in section 2.3, the so-called Libyan Coast Guard often mishandles sea interceptions, leading to casualties and shipwrecks, with their methods consistently contravening international standards and the protection of people in distress at sea.<sup>93</sup> Shockingly, this occurs while using equipment sustained through EU funding and despite the training provided under EU programs. Indeed, it is important to note that the assets of the so-called Libyan Coast Guard have, for the most part, originated from donations or maintenance efforts facilitated by Italy and the EU<sup>94</sup> within the framework of bilateral cooperation between Italy and Libya, as well as through the implementation of the SIBMMIL project, which, as elucidated in Chapter 1, included the provision of new assets, refurbishment of previously donated vessels, and the comprehensive training of the GAGS and LCGPS personnel.

In particular, as stated in the program’s Action Document of the SIBMIL program, during Phase I of the programme, Italy reconditioned and returned of four Bigliani-class patrol vessels to the so-called Libyan Coast Guard.<sup>95</sup> According to a report from the EEAS, the Bigliani-class

vessels now at the disposal of the so-called Libyan Coast Guard and the Navy (LCG&N), are named Zuwarah, Zawiyah, Sabratha, and Ras Al Jadar.<sup>96</sup> At least one of these vessels, namely the Ras Al Jadar have been observed engaging in violent conduct during interception operations, directed both at migrants and NGOs vessels.<sup>97</sup> While this report cannot independently verify, as it falls outside the scope of our investigation, there is a possibility of other vessels being sustained with EU funding implicated in violent incidents. This assumption arises from the recurring pattern of violence associated with the so-called Libyan Coast Guard and Navy.

## **2.3 Timeline of violent incidents involving Libyan and Tunisian authorities responsible for border management**

The narratives encapsulated in the following pages bear witness to a spectrum of hostilities that many people have faced, from explicit acts of violence and intimidation to the silent cries echoed in the testimonials of abuse, discrimination, and extortion survivors.

The years 2020 to 2023 marked an uptick in documented incidents, which coincided with specific operational shifts and complex geopolitical factors. Between 2017 and 2019, there was a stark reduction in NGO rescue activities, largely due to the criminalization of SAR NGOs, consisting mainly of administrative barriers, the denial of docking permissions, the seizure of vessels and legal proceedings. This led to ships often being blocked at ports, unable to perform SAR operations, rendering the situation almost invisible as countless incidents eluded documentation.

Simultaneously, there was a temporary decrease in arrivals from the Central Mediterranean Route between 2018 and 2020, driven by stricter border control and constant pullbacks, diplomatic pressure, and Libya’s internal landscape. Contrarily, this reduction did not translate to diminished perils; it amplified them. People on the move, confronted with stringent policing, increasingly turned to smugglers or riskier routes, escalating the likelihood of violence and human rights abuses, fatalities associated with their journeys.

Shifting focus to Tunisia, it is also important to explain why fewer incidents are recorded there. On the one hand, Tunisia didn’t emerge as a key departure point for the Central Mediterranean route until 2020. This change was prompted by tighter controls in Libya and the unbearable situation in the country for migrants, refugees and asylum seekers, as well as by heightened political and economic struggles in Tunisia (refer to Sections 2.1 and 2.2 for a more in-depth analysis). In addition, monitoring departures has been a significant challenge. CSOs have encountered increased restrictions, limiting their ability to report and, consequently, leaving many incidents unrecorded. This lack of visibility is particularly concerning as it implies that a multitude of potentially harmful encounters remain largely unknown. As we move forward, we aim to shed more light on these realities.

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"During the night, the Tunisian coast guard came. The coast guard started to hit us with a long iron stick. The captain and some other travellers got wounded. Then, the coast guard tied a rope to our boat and took us on their boat by force."

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# 2023

**29.09.2023, LY:** A video of the so-called Libyan Coast Guard ramming into a migrant boat in the Mediterranean Sea caused dozens of people to fall into the water. The Libyan authorities took the survivors back to Libya, where they faced further violence and abuse.<sup>98</sup>

**20.09.2023, TN:** Human Rights Watch reported that between September 18 and 20, 2023, the Tunisian National Guard collectively expelled over 100 migrants, including children and potential asylum seekers to the Algerian border. These individuals had previously been intercepted at sea and brought back to Tunisia by the Tunisian Coast Guard.<sup>99</sup>

**15.09.2023, TN:** A survivor aboard the Geo Barents accounts, "They came with machetes; they started breaking the doors beating, raiding homes... we left with nothing". Stories were told of growing discrimination, violent attacks, arbitrary arrests, thefts, and collective expulsions of sub-Saharan Africans from Tunisian authorities.<sup>100</sup>

**26.08.2023, LY:** The so-called Libyan coast guard demonstrated alarmingly violent behaviour during an illegal pullback operation. They not only attempted to capsize a migrant boat but also rammed it while its engines were running, presenting a direct threat to the lives onboard.<sup>101</sup>

**18.08.2023, LY:** a boat carrying 110 people, including 40 children, issued a distress call as it was being chased and shot at by a Libyan-flagged boat after reaching the SAR zone of Malta. One person had already been injured by the gunfire, and one of the engines had broken down after being hit (...) Relatives of the people on board later informed Alarm Phone that the people had probably been taken to Libya and detained in Benghazi.<sup>102</sup>

**17.08.2023, LY:** Despite threats from the so-called Libyan Coast Guard, MSF boat Geo Barents, rescued 55 people, including 43 unaccompanied minors and two women, and disembarked them in Bari (Italy).<sup>103</sup>

**05.08.2023, TN:** A Nigerian survivor witnessed a brutal attack by the Tunisian Coast Guard on migrant boats in the Mediterranean Sea. The survivor describes how a Tunisian official beat, shot, and pushed migrants into the water, killing at least five Tunisian boys and injuring many others.<sup>104</sup>

**19.07.2023, TN:** Human Rights Watch asserted that the "Tunisia Coast Guard has committed serious abuses against Black African migrants, refugees, and asylum seekers, including beatings, theft, leaving a boat adrift without a motor, overturning a boat, and insulting and spitting on survivors".<sup>105</sup>

**07.07.2023, LY:** The so-called Libyan Coast Guard fired several shots "in close range" at the Ocean Viking's fast rescue boats. The Libyan patrol boat endangered the lives of the crew and 11 survivors.<sup>106</sup>

**04.07.2023, TN:** Since the beginning of July, and for the whole month of July, at least 1,200 Sub-Saharan African migrants and refugees have been collectively expelled to the Tunisian-Libyan and Tunisian-Algerian borders by Tunisian security forces.<sup>107</sup>

**22.06.2023, TN:** According to a survivor of a shipwreck, the Tunisian Coast Guard circled around a boat carrying about 90 migrants, making waves; then the guards threw tear gas into the boat. Panic exploded on board, and the boat overturned. According to survivors, around twenty people were rescued by Tunisian forces, and at least 70 people died.<sup>108</sup>

**22.06.2023, LY:** Alarm Phone was alerted from a boat in distress off Benghazi, adrift near the Libyan coast. The so-called Libyan Coast Guard refused to search for them.<sup>109</sup>

**24.04.2023, TN:** The Tunisian Coast Guard is accused of stealing the engines of migrant boats in international waters, leaving them adrift and endangering their lives.<sup>110</sup>

**25.03.2023, LY:** The so-called Libyan Coast Guard fired gunshots at a humanitarian vessel and people in distress. Due to their dangerous manoeuvres and the gunshots, people fell overboard. Around 80 people were intercepted and forcibly returned to Libya by these forces.<sup>111</sup>

**09.03.2023, TN:** The Tunisian Coast Guard attacked five boats trying to escape from Tunisia and stole their engines. 200 people were left adrift with the coastguard watching.<sup>112</sup>

**22.02.2023, TN:** Following the Tunisia President's speech, survivors of the Geo Barents reported an increase in violence by Tunisian security forces, including arbitrary arrests, robberies, detention, and an increase in collective expulsions to the borders with Algeria and Libya.<sup>113</sup>

**18.02.2023, TN:** Media sources reported 2,500 people were blocked and intercepted by the Tunisian Coast Guard.<sup>114</sup>

# 2022

**19.12.2022, TN:** More than 50 associations denounced the notorious violence of the Tunisian Coast Guards that were said to beat people with sticks, fire shots in the air in the direction of the engine, knife attacks, dangerous manoeuvres to attempt to sink boats, and demanding money in exchange of rescue.<sup>115</sup>

**19.12.2022, LY:** A report by Alarm Phone exposes that the number of shipwrecks and disappearances of boats of people on the move trying to reach Italy happening close to the Tunisian coast has been increasing in the past two years.<sup>116</sup>

**10.11.2022, TN:** a patrol boat of the Tunisian National Guard rammed a boat with migrants on board, causing some of them to fall overboard. Three children drowned. The others were forcibly returned to Tunisia.<sup>117</sup>



**26.10.2022, LY:** The so-called Libyan Coast Guard threatened to use SAM missiles against an NGO aircraft. The distressed individuals on board were intercepted and forcibly returned to Libya.<sup>118</sup>

**n.d.09.2022, TN:** A testimony from Geo Barents survivor stating that after arriving in Tunisia, armed men kidnapped and tortured them for 12 days. Videos were sent to their family for ransom.<sup>119</sup>

**20.02.2022, LY:** a violent and dangerous interception in the Maltese SAR zone from the so-called Libyan Coast Guard, as witnessed by the NGO Pilotes Volontaries.<sup>120</sup>

**18.02.2022, LY:** The so-called Libyan Coast Guard fired on a boat with around 80 migrants. One migrant was killed, and three others were injured.<sup>121</sup>

**20.01.2022, LY:** The so-called Libyan Coast Guard intercepted a boat and shot at a person who had jumped into the water, as witnessed by the Louise Michel crew.<sup>122</sup>

## 2021

**08.10.2021, LY:** Hundreds of detainees escaped from Al-Mabani DC where they were brought following the raids. IOM reports at least six people were killed and 24 others injured during an escape attempt.<sup>123</sup>

**01.10.2021, LY:** In the first days of October, at least 5000 migrants and refugees were rounded up across Tripoli by government security forces, many of whom were subjected to severe physical violence, including sexual violence.<sup>124</sup>

**24.11.2021, LY:** The so-called Libyan Coast Guard chased and fired at a boat in distress. The people were subsequently intercepted and forcibly returned to Libya.<sup>125</sup>

**27.09.2021, TN:** Tunisian authorities intercepted seven boats and forcibly returned them back. After the disembarkation, Tunisian people were released while the passengers from Sub-Saharan African countries, around 100 people, were brought to the Libyan border, being deprived of food and assistance for five days. Subsequently, one group of migrants was kidnapped in Libya and held in private houses, and another group was arrested by Libyan authorities.<sup>126</sup>

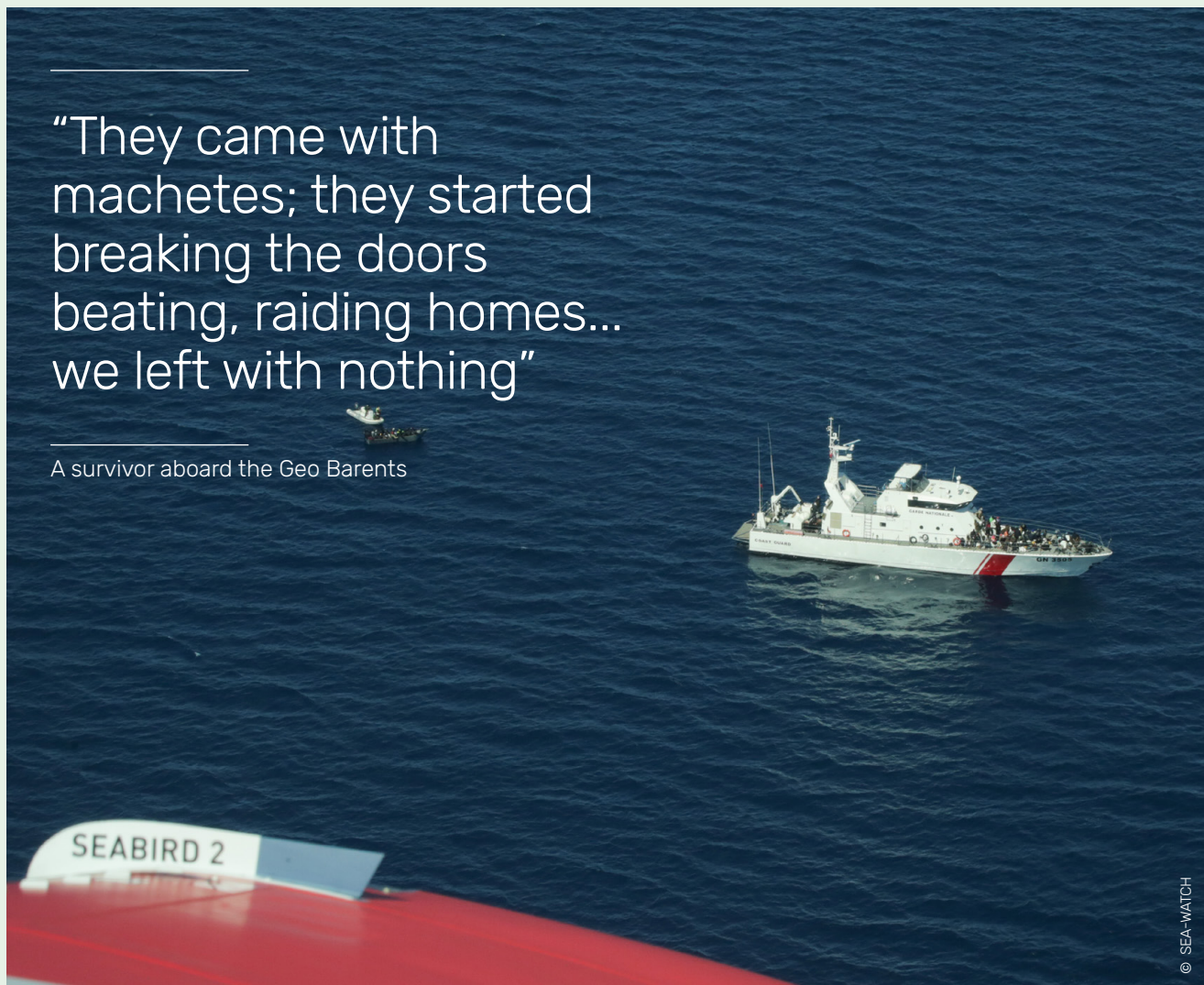
**15.09.2021, LY:** A report by the EEAS indicates an “excessive use of physical force by LCG&N against migrants” and that the behaviour of the crew indicates that “the training received during the operation Sophia is still visible but no longer fully followed”. The report also mentions the case of an interception carried out on September 15th, 2021, where the Coast Guard used tactics “never observed before and not in compliance with training ... as well as international regulation”.<sup>127</sup>

SAR NGOs have reported cases in which Tunisian and Libyan officials, using vessels facilitated by Italy and the EU, directly engaged in acts of violence against people in distress.



“They came with machetes; they started breaking the doors beating, raiding homes... we left with nothing”

A survivor aboard the Geo Barents



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**30.06.2021, LY:** Seabird witnesses a dangerous interception by the so-called Libyan Coast Guard in the Maltese SAR. Shots were fired into the water.<sup>128</sup>

**30.04.2021, LY:** SeaWatch4 witnessed an official of the so-called Libyan Coast Guard beating people in a rubber boat during an interception. People were forcibly returned to Libya.<sup>129</sup>

**19.01.2021, LY:** The so-called Libyan Coast Guard fired gunshots at individuals who had jumped into the water, aiming to evade the pushback. It remains unclear if there were any casualties.<sup>130</sup>

2020

**25.09.2020, LY:** A merchant vessel and a rescue boat witnessed the so-called Libyan Coast Guard intercepting a boat with migrants and leaving behind a dead body and two other corpses. The Libyan authorities ordered the merchant vessel to leave the scene and pulled back the survivors to Libya. 15 people drowned during the interception.<sup>131</sup>

**23.07.2020, LY:** Three people died and 2 more were injured while trying to escape the so-called Libyan Coast Guard after being intercepted at sea.<sup>132</sup>

**25.06.2020, LY:** The so-called Libyan Coast Guard engaged in dangerous manoeuvres – navigating between persons in water who were not wearing life vests and other persons who were in distress attempting to escape. A survivor also shared with Alarm Phone that four people fell overboard when the Libyan authorities hit their rubber boat. Only 2 of them were recovered from the sea.<sup>133</sup>

**29.06.2020, LY:** On several occasions during June and July, three bodies were spotted, likely not retrieved during interceptions in the Libyan SAR.<sup>134</sup>

**10.01.2020, LY:** A call received by Alarm Phone stated that some 65 people were refusing to disembark in Tripoli, and a so-called Libyan Coast Guard shot a migrant and threw the body into the sea.<sup>135</sup>

## 2019

**26.10.2019, LY:** Libyan-flagged speedboats endangered the rescue operation by Alan Kurdi, even firing warning shots near people in the water. Despite these threats, Alan Kurdi's crew successfully rescued 90 individuals.<sup>136</sup>

**19.09.2019, LY:** A Sudanese migrant was shot and killed by armed men after being returned to Libya by the so-called Libyan Coast Guard. He was among 103 migrants who resisted being sent to detention centres. He died despite receiving medical aid from IOM staff.<sup>137</sup>

**03.08.2019, TN:** Tunisian authorities arrested and expelled at the Libyan-Tunisian border a group of 36 Ivorian migrants: men, women - including one pregnant - and three babies.<sup>138</sup>

**24.06.2019, LY:** A survivor who escaped Libyan torture prisons says that the EU has deprived them of their basic human rights for 12 days now, especially being unable to leave their boats.<sup>139</sup>

## 2018

**08.05.2018, LY:** 17 survivors and relatives of the victims of an incident of 6 November 2017, where more than 20 people lost their lives, supported by 4 NGOs, filed an application against Italy for coordinating interceptions of the so-called Libyan Coast Guard that led to abuse and the death of migrants, in front of the European Court of Human rights. According to the reconstruction, two of the survivors intercepted and returned by the so-called Libyan Coast Guard, were subsequently 'sold' and tortured with electrocution.<sup>140</sup>

**17.07.2018, LY:** The so-called Libyan Coast Guard left a boat adrift after two women and a boy of about four declined to board their patrol vessel. A humanitarian rescue boat saved the second woman.<sup>141</sup>

**15.03.2018, LY:** After coming to the rescue of a boat on the high seas, the Open Arms rescue boats were blocked by the Libyans, who threatened to use force if the migrants were not handed over to patrol boats in Tripoli. Some Libyan coastguards boarded the Open Arms rescue boats. The Libyan patrol boat 648 Ras Jadir, donated by Italy, blocked the NGO's vessel, preventing the rescue lances, which were distributing life jackets, from continuing the rescue. Many migrants threw themselves into the sea because they did not want to be captured by the Libyans. The tense situation lasted for two hours until the Libyans withdrew. After this event, the boat was seized, and the NGO was accused of facilitation of irregular immigration.<sup>142</sup>

## 2017

**6.11.2017, LY:** The so-called Libyan Coast Guard caused the death of at least 20 people through a violent intervention against a boat in distress carrying about 130 people. 47 people were forcibly returned to Libya while Sea-Watch rescued 59 survivors and a dead 2 two-year-old boy on board.<sup>143</sup>

**27.09.2017, LY:** officers of the so-called Libyan Coast Guard boarded without permission the ship of the German NGO 'Mission Lifeline' - which had just carried out a rescue operation - firing shots and trying to force the crew to hand over the rescued people to be taken back to Libya.<sup>144</sup>

**15.08.2017, LY:** The so-called Libyan Coast Guard seized the NGO Open Arms ship for two hours while it was in international waters.<sup>145</sup>

**07.08.2017, LY:** The so-called Libyan Coast Guard fired warning shots at an Open Arms boat while the NGOs was conducting a rescue training in international waters.<sup>146</sup>

**23.05.2017, LY:** The Aquarius vessel, a humanitarian ship of MSF, was rescuing migrants from several boats in distress when the so-called Libyan Coast Guard intervened and fired shots. The so-called Libyan Coast Guard robbed and threatened the migrants, causing many to jump into the water. The Aquarius vessel rescued some of them, while others were taken back to Libya.<sup>147</sup>

## 2016

**24.04.2016, LY:** A group of armed men, alleged to be the Libyan coast guard, attacked the MSF rescue vessel Bourbon Argos off the Libyan coast while it was conducting search and rescue operations. The MSF team moved to a safe area inside the vessel and no rescued people were onboard. The armed men fired shots and boarded the vessel but left after about 50 minutes without taking anything. The damage to the ship was minimal, with signs of at least 13 bullets shot.<sup>148</sup>

**21.10.2016, LY:** The so-called Libyan Coast Guard violently interfered with a humanitarian rescue mission. They boarded a fully occupied rubber boat, hitting migrants with sticks and keeping the Sea-Watch's crew from distributing life jackets and continuing the process of support. This caused a mass panic, and 150 passengers fell into the water with two-digit numbers drowned. Only 4 dead people were salvaged by the Sea-Watch crew. This marked one of at least five incidents in 2016 where the Libyan Coast Guard targeted civilian rescue operations.<sup>149</sup>

3



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# Ensuring Human Rights Compliance within NDICI-Global Europe Interventions: Normative and Policy Considerations

In light of these disturbing findings and implications provided earlier in this report, this chapter will pivot to examine the normative and policy framework that forms the basis for ensuring human rights compliance within the NDICI-Global Europe. Section 3.1 elaborates on the human rights provisions embedded in the NDICI-Global Europe Regulation. Section 3.2 elucidates the policy framework supporting a human rights-based approach to NDICI-Global Europe interventions, explaining how this framework is intended to function in safeguarding the rights and dignities of individuals affected by these public policies.

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As enshrined in Articles 2, 3(5) and 21 of the Treaty on the European Union, human rights and equality are core values of the EU and its relations with partner countries.

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## 3.1 Human rights provisions in the NDICI-Global Europe Regulation

As enshrined in Articles 2, 3(5) and 21 of the Treaty on the European Union, human rights and equality are core values of the EU and its relations with partner countries. So, the EU Charter of Fundamental Rights and the European Convention on Human Rights are expected to guide all EU policies.

The NDICI-Global Europe Regulation itself lays a robust foundation for the commitment to human rights principles, prominently detailed in Articles 3, 8, and 29. Article 3 underlines the promotion of human rights, democracy, the rule of law, and good governance as fundamental objectives of the Instrument, emphasizing respect for human rights as a cornerstone of the European Neighbourhood Policy.<sup>150</sup> Article 8 echoes a rights-based approach encompassing all human rights as a fundamental principle of the instrument (Article 8(2)), with an emphasis on full compliance with the Union's commitment to promoting, protecting, and fulfilling all human rights (Article 8(4)). Concerning migration, the Regulation explicitly references actions to be conducted in strict adherence to international law, including international human rights and refugee law, Union and national competencies (Article 8(10)). Furthermore, Article 29(1) specifies that Union funding under the Instrument shall not support actions or measures that could lead to human rights violations in partner countries.

This is in contrast with the EU Trust Fund for Africa. The Constitutive Agreement establishing the predecessor to the NDICI-Global Europe initiative did not include any human rights conditionality clause within its provisions concerning the assessment and monitoring of human rights impact.<sup>151</sup>

Strikingly, even with this change, the same projects continue to receive support. The crucial question is whether these new provisions are effectively put into action.

### 3.2 Operationalizing the commitments: A rights-based approach to NDICI-Global Europe interventions

To implement the legal obligations outlined in the previous subsection, in 2014 the EC adopted a Toolbox titled “A rights-based approach, encompassing all human rights for EU development cooperation” (hereinafter, the HRBA Toolbox) which provides a working methodology to incorporate a rights-based approach into EU development cooperation. The significance of the Toolbox has been underscored in various political documents, including but not limited to its endorsement by the Council Conclusions on a rights-based approach to development cooperation, encompassing all human rights (2014),<sup>152</sup> the European Consensus on Development “Our World, Our Dignity, Our Future” (2017),<sup>153</sup> and the Joint Communication and the EU Action Plan on Human Rights and Democracy for 2020-2024,<sup>154</sup> which also emphasized the need to update the guidelines.<sup>155</sup>

With the adoption of the NDICI-Global Europe Regulation, the EC updated the HRBA Toolbox. The updated HRBA Toolbox recalls that the Regulation establishing the NDICI-Global Europe “calls for applying the rights-based approach encompassing all human rights as a compulsory requirement in the programming and implementation across external policies, including neighbourhood and international cooperation” in line with article 8(2) of the NDICI- Global Europe Regulation.<sup>156</sup> **The aim of the HRBA Toolbox is to translate the HRBA into practice at “all levels of interventions, starting from programming, through design, to implementation, including monitoring and evaluation”.**<sup>157</sup> It is primarily aimed at staff working in EU External Action, practitioners in Member States and the EU’s development and implementing partners. The working methodology is specifically expected to guide all interventions under the NDICI-Global Europe, including migration management.

As stated in the Toolbox, the HRBA “identifies states and their institutions as accountable duty-bearers, with the responsibility to respect, protect and fulfill human rights. The HRBA focuses on reinforcing the capacities of all individuals, as rights-holders, to be aware of and empowered to claim and enjoy their human rights. Its objective is therefore strengthening the capacities of both duty-bearers and rights-holders towards the realisation of rights. The HRBA places equal importance on the processes of how interventions are programmed, designed and implemented. Programming shall be rights-based; individuals and their human rights must be at the centre of all actions.”<sup>158</sup>

#### **When adhering to HRBA, it is crucial to follow five core working principles:**

- **Applying All Human Rights for All:** This principle emphasizes understanding the interconnectedness of human rights rather than concentrating on all human rights.
- **Meaningful and Inclusive Participation and Access to Decision-Making:** This involves engaging both stakeholders with expertise in human rights and right-holders, often represented by Civil Society Organizations (CSOs), to ensure comprehensive input in decision-making processes.
- **Non-Discrimination and Equality:** This requires evaluating and addressing patterns of inequality and discrimination within development actions.
- **Accountability and Rule of Law for All:** This principle necessitates establishing mechanisms that empower individuals to assert their rights, seek justice, and obtain remedies.
- **Transparency and Access to Information Supported by Disaggregated Data:** This pertains to making policies and interventions clear and accessible to all stakeholders. This could involve practices like transparent budgeting, open policy formulation procedures, and public oversight through various bodies, including parliament, independent human rights organizations, gender equality entities, civil society, and media.

#### **In practice, the HRBA methodology requires to conduct:**

- An assessment of the human rights situation in a given country and sector which should identify the main key human rights issues related to the sector, and the most important challenges and causes of human rights violations and discrimination.
- A policy analysis that assesses partner countries’ legal and policy commitments and implementation at the international, regional and national level. It should offer a framework for accountability and sets the boundaries within which the action should take place.<sup>159</sup>
- A stakeholder analysis that identifies the duty-bearers and rights-holders and their representatives, in particular civil society organizations, and assesses the capacity of duty-bearers to respect, protect and fulfill human rights and the capacity of rights-holders to know, exercise and claim their rights. The stakeholder analysis should also identify the people or groups who are most at risk of being left behind, focusing on groups living in vulnerable situations.

This methodology is expected to precede and inform the design of each intervention. As mentioned in the Toolbox, “priorities can only be set, when the challenges and capacity gaps have been identified and understood; relevant policy and strategic frameworks are considered; stakeholders identified and consulted.”<sup>160</sup>

Once priorities are set, interventions should undergo a risk analysis that assesses the risk of the actions to endanger or cause harm to people or groups, and design specific mitigation measures, and access to redress mechanisms. According to the Toolbox, “if a risk is identified, it does not mean that the intervention has to be avoided, but mitigation measures should be foreseen, unless the risk is so high, that it makes mitigation impossible. Moreover, the mitigation measures should be coherent with the level of risk (high, medium or low). For example, if the risk is high, awareness raising might not be enough to mitigate it and other measures should be taken to address the unintended negative impacts on human rights or on gender equality. These risks should be continuously monitored throughout the intervention and mitigation measures can be adapted to respond to changing circumstances.”<sup>161</sup>

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The HRBA Toolbox is expected to precede and inform the design of each intervention under the NDICI-Global Europe.

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4



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# Analysis of the decision making processes for implementing the NDICI-GE work in practice

**This chapter examines the decision-making processes and the stakeholders involved in the NDICI-Global Europe at three distinct levels: programming, implementation, and monitoring and reporting, with a particular focus on the countries and key initiatives highlighted in Chapter 1. Section 4.1 delves into programming, Section 4.2 explores implementation and Section 4.3 focuses on monitoring and reporting. Each section not only analyses the processes and the role of the EP but also highlights key issues - ten in total - summarizing the core problems and proposing recommended actions.**

## 4.1 Programming

### 4.1.1. Programming process

With the exception of rapid response actions, which are specifically designed to address unforeseen and urgent situations or crises, programming is one of the cornerstones of EU cooperation and assistance with non-EU partners under the NDICI-Global Europe Regulation.<sup>162</sup> The legal basis of programming is laid down in Articles 10-22 of the NDICI- Global Europe Regulation. Moreover, the *Guidelines for programming the Neighbourhood, Development, and International Cooperation Instrument (NDICI) for the period 2021-2027* provide the EC and the EEAS with instructions for the programming process.<sup>163</sup>

The programming process revolves around the creation and adoption of multi-annual indicative programmes for 2021-2027 (MIPs):

- Bilateral cooperation and assistance should take place via country indicative programmes.

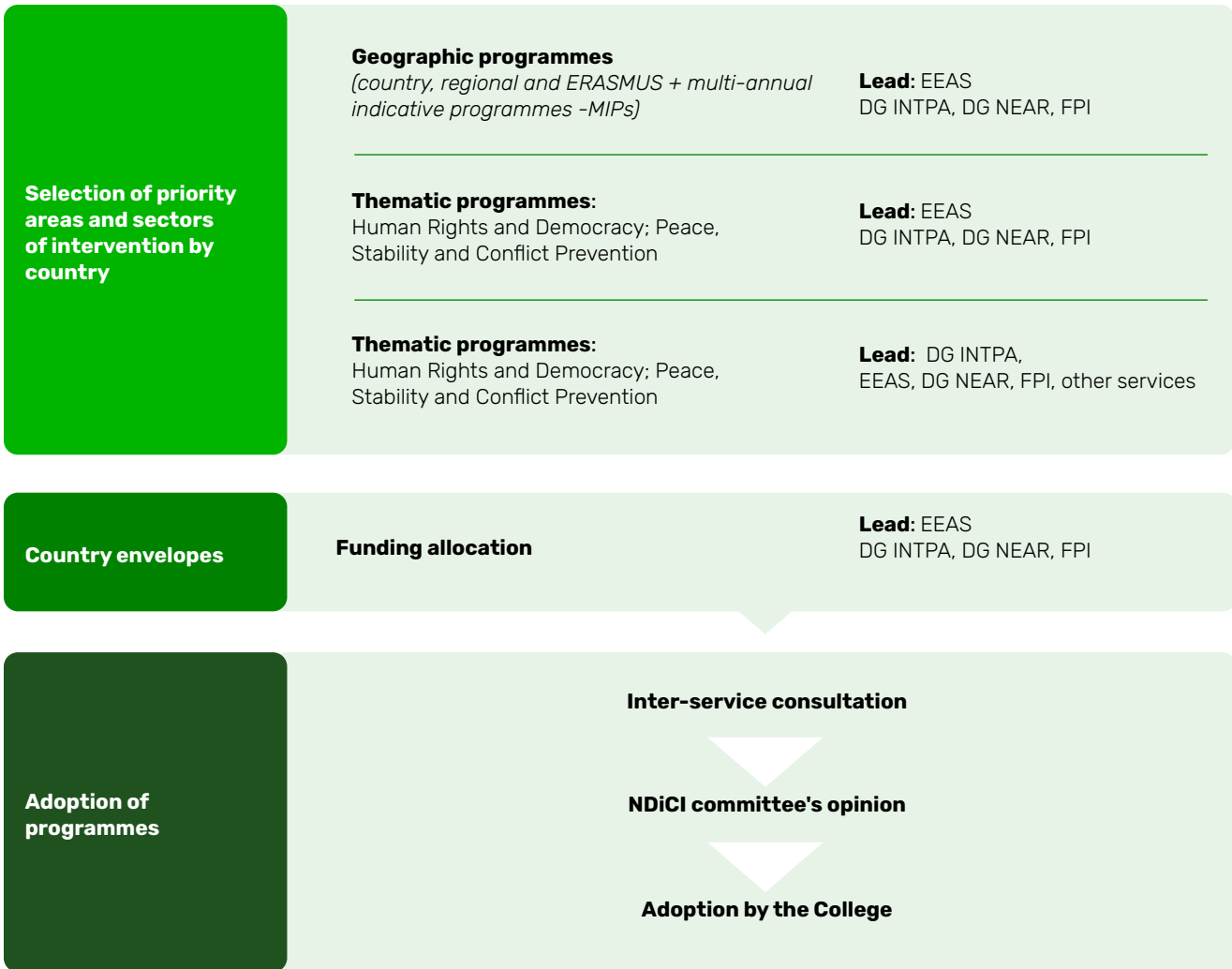
- Multilateral cooperation should take place via multi-country, regional and trans-regional indicative programmes, which are developed to address challenges common to all or a number of partner countries.
- In addition, thematic programmes may cover all countries.

EU delegations play a primary role in drafting country-specific MIPs, whereas the headquarters of EEAS assumes a leading role in designing multi-country and regional MIPs.<sup>164</sup> The EEAS collaborates with the EC, particularly involving DG INTPA, DG NEAR, and the European Commission's Service for Foreign Policy Instruments (FPI), in developing the drafts MIPs. Member States express their opinions on the draft MIPs in the NDICI-Global Europe Committee, and the ultimate decision lies with the Commission's College of Commissioners. Figure 1 illustrates the distribution of responsibilities.

### 4.1.2 The role of the European Parliament in programming process

The NDICI-Global Europe Regulation recognizes the EP as a pivotal actor in the democratic oversight of EU's external action and development cooperation. While the NDICI-Global Europe Regulation doesn't mandate a compulsory consultation with the EP during its programming phase, it does enshrine an obligation for the EC to brief both the EP and the Council on the outcomes of the consultations between the Union and the Member States and on the outcomes of the multi-stakeholder dialogue which should take place as part of the programming (and which should include representatives of civil society).<sup>165</sup> Moreover, the *Guidelines for programming the NDICI* state that "EU MS, as well as the European Parliament and the Council, will

**Figure 3** Responsibilities in the programming process



Source: European Court of Auditors, (2023), "Special Report. Programming the Neighbourhood, Development and International Cooperation Instrument – Global Europe: Comprehensive programmes with deficiencies in the methods for allocating funds and impact monitoring", online: <http://rb.gy/y5gv8>, p. 11.

be duly consulted and associated to the programming exercise".<sup>166</sup> This consultative framework underscores the commitment to democratic scrutiny, fostering an environment for transparent and inclusive decision-making.

In addition, in outlining the policy framework that guides the implementation of the NDICI-Global Europe, the Regulation includes EP Resolutions.<sup>167</sup> These are placed in tandem with European Council Conclusions, Summit Declarations, and other outcomes from high-level meetings with partner countries. The explicit acknowledgement of EP Resolutions in the NDICI-Global Europe Regulation emphasizes the EP's role in determining the strategic direction and setting the operational priorities of the Instrument.

Further recognizing the EP's role, in the 2021 Declaration on a Geopolitical Dialogue, the EC expressed a clear commitment to engage in a substantive dialogue with the EP on the implementation of the NDICI-Global Europe. This political dialogue, which will occur at least biannually, is designed to address overarching directions for the NDICI's implementation – including the programming

phase – tackling emerging challenges, and scrutinizing allocations, especially in those instances where a partner country continually overlooks democratic principles, human rights, and governance norms. The dialogue's structure includes (1) a high-level dialogue between the High Representative/Vice President and the Commissioners in charge of International Partnerships and of Neighbourhood and Enlargement and the European Parliament; and (2) A high-level dialogue between the High Representative/Vice President and the Commissioners in charge of International Partnerships and of Neighbourhood and Enlargement and the European Parliament and (3) permanent dialogue at senior officials' level with AFET and DEVE working groups to ensure adequate preparation and follow-up to the high-level dialogue.<sup>168</sup>

In sum, the NDICI-Global Europe Regulation and other relevant commitments and guidance documents are clear about the EP's influential role in shaping, scrutinizing, and overseeing the EU's external action, demonstrating the EU's strong commitment to democratic values, transparency, and inclusive policymaking.

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# EP's Crucial Role in EU External Action

**In sum, the NDICI-Global Europe Regulation and other relevant commitments and guidance documents are clear about the EP's influential role in shaping, scrutinizing, and overseeing the EU's external action, demonstrating the EU's strong commitment to democratic values, transparency, and inclusive policymaking.**

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## 4.1.3 Insufficient Human Rights Incorporation in the MIP for the MCMP

Given that no country-specific MIPs for Tunisia and Libya have been adopted yet, the pertinent NDICI-Global Europe programming relevant to this research is centred at the regional level. Within this framework, DG NEAR uses the Multi Country Migration Programme for the Southern Neighbourhood (MCMP for the SN) to support border management initiatives in the region.<sup>169</sup> The estimated annual funding requirement for the programme stands at €208 million per year.<sup>170</sup> The MCMP for the SN aligns with the priorities outlined in the proposed Pact on Migration and Asylum, as reflected in the Joint Communication on a Renewed Partnership with the Southern Neighbourhood. These priorities encompass the protection of forcibly displaced persons and migrants in vulnerable situations, as well as host communities; migration and asylum governance and management; fostering return, readmission and sustainable reintegration; and legal migration and mobility. **The allocation of 49.6% to the topic of migration management emphasizes that it is the main priority of the MCMP for the SN, as other priorities receive a smaller percentage of resources.**<sup>171</sup>

While the NDICI-Global Europe includes a pronounced commitment to promoting a rights-based approach, especially through its HRBA Toolbox, the MCMP for the SN demonstrates significant gaps in this regard:

- **Absence of an assessment of the human rights situation and context:** Despite the comprehensive methodology provided by the NDICI-Global Europe Toolbox, which recognized the importance of a thorough assessment of the human rights situation, the MCMP's analysis of migration and forced displacement in North Africa falls notably short. Specifically, the section on "Justification and context" section neglects to mention human rights abuses and violence. While a myriad of factors such as growing inequalities, political instability, poor governance, conflicts, poverty, urbanisation, demographic growth, climate change alongside environmental degradation are highlighted as factors influencing migration and forced displacement, human rights abuses and violence are glaringly absent.

- **Sporadic and limited references to human rights:**

The MCMP for the SN contains only two brief mentions of human rights under the sections on "Providing Assistance and Protection" and "Strengthening Migration and Asylum Governance and Management." While these references acknowledge the vulnerability of migrants to human rights violations and the need for rights-based migration policies, they seem more like superficial acknowledgements than integral elements of the programme. Such passing mentions lack depth and detail, raising questions about the MCMP's commitment to genuinely protecting and promoting human rights. For instance, does the MCMP have a clear and detailed strategy to address specific human rights violations faced by migrants, or are these mentions merely tokenistic? Furthermore, without comprehensive guidelines or action points in the MCMP, how will the programme ensure that on-the-ground interventions are consistently aligned with human rights standards?"

- **Limited stakeholder engagement:** The Toolbox underscores the criticality of inclusive participation, with a special emphasis on rights-holders often represented by CSOs. However, the MCMP's narrative on civil society involvement is rather general, stating that the strategy has been crafted in consultation with various stakeholders, without providing detailed insights into the nature or depth of this collaboration.<sup>172</sup> The absence of details about the engagement with rights-holders and organizations representing their interests raises concerns about the genuine inclusivity of the MCMP's formulation process. For example, consultations with Brussels-based NGOs did not occur during the approval of the MCMP for the SN. Only two years later, in the context of the mid-term review, have some organizations been approached for their input. However, the belated outreach from DG NEAR compromised the depth and efficacy of their participation. Illustrative of this is the fact that invitations were dispatched a mere two days in advance, a narrow window that inevitably constrained both preparation and the potential for substantive input.<sup>173</sup>

In essence, the infrequent mention of human rights in the MCMP and its lack of elaboration is not just a quantitative shortcoming but hints at a problematic qualitative gap in the program's approach to migration management. A truly rights-based program would weave human rights considerations into its core, ensuring they are not just tick-box inclusions but central to its design and function, as put forward by the holistic approach of the HRBA Toolbox.

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**While the NDICI-Global Europe includes a pronounced commitment to promoting a rights-based approach, especially through its HRBA Toolbox, the MCMP for the SN demonstrates significant gaps in this regard**

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#### 4.1.4 Recommended actions on programming

##### Issue 1: Ensuring Transparent Programming

**Description of the Problem:** The absence of Multi Annual Indicative Programmes (MIPs) for Libya and Tunisia raises concerns about the seriousness, transparency and accountability of the NDICI-Global Europe programming process. While the DG NEAR’s webpage indicates that the MIP for Tunisia is “yet to be adopted”<sup>174</sup>, a recent report from the European Court of Auditors (ECA) states that the lack of a joint basis for programming is leading to delays in the finalization of the MIP.<sup>175</sup> In the case of Libya, the unstable political situation has led to cooperation through yearly “Special Measures,” with no anticipated MIP adoption.<sup>176</sup>

Given that programming is a fundamental principle of the NDICI-Global Europe, it is crucial for the EC to report publicly and inform the EP about the reasons behind the absence of MIPs for Tunisia and Libya, and the bases for implementing projects without MIPs.

**Recommended Actions:** The EC (specifically DG NEAR) should publicly report in the 2023 Annual Report on Progress, and inform directly the EP through the political dialogue, the reasons for not adopting MIPs in these countries. Additionally, it should share the bases on which projects are implemented in Libya and Tunisia, and how the views of relevant stakeholders, including civil society, are taken into account.

##### Issue 2: Inclusive Consultations and Stakeholder Engagement

**Description of the Problem:** The lack of meaningful consultation with leading CSOs working on migration is a concern. This omission raises questions about the inclusivity and representation of stakeholders in the decision-making process and is against the NDICI-Global Europe’s normative and policy frameworks, which clearly require the EC to encourage a regular multi-stakeholder and inclusive dialogue, among others, with representatives of civil society, in order to facilitate their respective contributions, as appropriate, and to ensure they play a meaningful role in the programming process.

**Recommended Actions:** The EC (specifically DG NEAR) should prioritize and institutionalize meaningful consultations with CSOs for migration-related interventions. See section 5.1.2 for further details.

##### Issue 3: Lack of Duly informing the EP about the outcomes of consultations

**Description of the Problem:** While the NDICI-Global Europe Regulation does not include an obligation to consult the EP in the programming phase, it does include an obligation for the EC to inform the European Parliament and the Council about the outcome of the consultations between the Union and the Member States and on the outcomes multi-stakeholder dialogue. By doing so, the NDICI-Global Europe Regulation acknowledges the EP’s role as a crucial actor in the democratic oversight of EU external action and development cooperation. In addition, the Programming Guidelines also specify that EU MS, as well as the EP and the Council, should be duly consulted and associated with the programming exercise.<sup>177</sup>

This acknowledgement of the EP’s role as a key player in EU external action and development cooperation underscores the importance of transparency and accountability. The inclusion of EU Member States, EP, and the Council in the programming exercise ensures a constructive dialogue, promoting democratic scrutiny and inclusive decision-making.

**Recommended Actions:** The EC (specifically DG NEAR) should proactively involve the EP in the programming process of the NDICI-Global Europe, as required by the Programming Guidelines. This will strengthen transparency and democratic oversight, allowing the EP to contribute its views and recommendations on the programming exercise. Regular and meaningful communication with the EP will enhance democratic scrutiny and ensure a more inclusive decision-making process.

## Issue 4: Incorporating EP Resolutions into the NDICI-Global Europe Programming

**Description of the Problem:** To Profundo's current understanding, the EC appears not to have incorporated the considerations of EP Resolutions, even though the NDICI-Global Europe Regulation envisages that the EC shall consider EP resolutions during the development of programmes.

Consideration of EP resolutions and political dialogue within the EU institutions is essential to shape the cooperation and interventions under the NDICI. EP resolutions can act as advocacy tools to highlight critical issues and influence the policy-making process. By taking into account multiple perspectives and addressing concerns raised in resolutions, the EC can ensure a more comprehensive and inclusive approach to external action and development cooperation.

**Recommended Actions:** The EC (specifically DG NEAR) should actively consider and incorporate EP resolutions on Tunisia and Libya during the development and review of programmes to reflect the concerns and priorities expressed by the European Parliament. Incorporating the EP's positions and recommendations will reinforce democratic input and ensure alignment with the EP's priorities, fostering a more comprehensive and inclusive approach to external action and development cooperation.

## 4.2 Implementation

### 4.2.1 Implementation process

The execution of the MIPs takes place via annual or multi-annual action plans (AAPs or MAAPs) or measures, which the European Commission approves on a yearly basis (Articles 23 to 25 of the NDICI-Global Europe Regulation). The AAPs or MAAPs list the action(s) that will be supported, which are further developed via more specific "Action documents." Action documents, which are usually published as annexes to the APP or MAAPs, "shall specify for each action the objectives pursued, the expected results and main activities, the methods of implementation, monitoring and evaluation as well as the budget and any associated support expenditures" (article 23.1). According to the NDICI-Global Europe Regulation, "Action plans shall be prepared in an inclusive, transparent and timely manner" (Article 23.2).

The process for approving the 2021 and 2022 AAP and Action Documents of the MCMP included the following stages:

- **Drafting of Action Documents:** The primary responsibility of drafting the NDICI-GE AAP and action documents assessed lied with the Migration Unit of DG NEAR, which formulates the content, objectives, and specific measures of the proposed actions, in consultation with EU Delegations and MS.<sup>178</sup>
- **Internal Assessment:** The Migration Unit of DG NEAR liaises with the Geographic and Thematic desks to ensure that the action documents align with the strategic objectives and policy framework of the NDICI.
- **Quality Review:** The action documents undergo a quality review process, in which the associated partners, which are the EEAS and other relevant DGs – including DG HOME and DG INTPA – provide input and feedback on the proposed actions. According to interviewees, "quality reviews play a crucial role in achieving satisfactory inter-service consultations and are the main opportunity for other services to bring up substantial issues".<sup>179</sup> The EEAS, in particular, brings its expertise in foreign policy, human rights, and diplomatic relations to ensure that the proposed actions reflect the EU's strategic interests and priorities in the respective partner countries and regions.<sup>180</sup>
- **Presentation in the NDICI coordination group:** DG NEAR presents the proposals to the NDICI coordination group, which brings together two focal persons per MS from the Ministry of Interior and the Ministry of Foreign Affairs.<sup>181</sup> The objective of the presentation is to explain whether the action plans meet the criteria for classification as migration actions within the 10% policy marker for migration – which was the founding reason of the coordination group – as well as to receive additional information from the MS on the actions – if any.

- **Inter-Service Consultations:** Once the draft text is finalised, the AAP and action documents are submitted for inter-service consultation to obtain the formal opinion of other Directorates-General (DGs) which may be affected. According to interviews, normally any significant change is addressed prior to this stage.<sup>182</sup>

- **Adoption by the NDICI Committee:** representatives from all EU countries (often representatives from their Ministries of Foreign Affairs), provide a formal opinion, usually in the form of a vote, on the Commission's proposed measures. Proposals are often approved with unanimity.

The 2023 AAP and Action Document followed a different process and was approved through an expedited and succinct process, which entailed the endorsement of a broad action document encompassing the entirety of the financing Decision, amounting to €279 million for the year 2023, instead of breaking it down into individual actions. According to DG NEAR representatives, this simplified process was intended to expedite the approval of the financial decision following the political pressure of the

European Council to come up with additional measures with additional funds for Migration for North Africa and in a relatively short period of time.<sup>183</sup> This issue is further elaborated in section 4.2.4.

#### 4.2.2 The role of the European Parliament in the implementation process

The NDICI-Global Europe Regulation, while tasking the European Commission with the primary implementation responsibility, endows the European Parliament with specific oversight and consultative roles. Articles 8(12) and 25 of the NDICI Regulation delineate the Parliament's oversight functions. According to article 8(12), the Parliament retains the right to engage in dialogue with the Commission as part of the high-level political dialogues, a point already elaborated upon in section 4.1. Moreover, pursuant to Article 25 (2), action plans and measures adopted through Commission's implementing acts after receiving approval from the NDICI Committee are relayed to both the EP and Member States within a month of their approval - in practice, draft implementing acts are sent to the EP on average every two weeks. This is part of the EP's right of scrutiny for implementing acts, intended to ensure that the EC does not exceed the implementing powers provided for in the basic act. While this mechanism guarantees that the EP regularly obtains information about specific programmes under the NDICI-Global Europe, its focus on individual actions makes it very challenging to gain a holistic view of all the MIPs, the AAP and the action documents that have been instituted, which diminishes the Parliament's scrutiny capability. Coupled with this, the existing time and capacity limitations of the EP further hinder a comprehensive oversight of the NDICI-Global Europe Implementation.

Often, NDICI-Global Europe programming and actions documents on the external dimension of migration that are shared with the EP are part of broader Action Plans drafted together with the European Council's Operational Coordination Mechanism for the External Dimension of Migration (MOCADDEM). These documents contain crucial information about the EU's strategy in specific countries, encompassing a comprehensive list of actions and the funding instruments that will support those actions, lead actors, timelines, and budgets. Yet, these MOCADDEM Action Plans remain confidential and are not shared with the EP. Another example is the confidentiality of findings from third-party human rights monitoring for EU-supported actions involving the Libyan Coast Guard. Despite the submission of a parliamentary question on June 6, 2023 and four reminders to the EC, the EP has yet to receive a response. It remains unknown why the EC is taking such an extended amount of time to address these questions, significantly exceeding the deadline.

**This situation presents a considerable obstacle to the EP in fulfilling its responsibilities as mandated by the Treaties, which require it to assess whether the EU budget aligns with the EU acquis.**

Furthermore, Article 25(3) mandates that the EC should notify the EP and the Council before the adoption, extension, or notable modification of exceptional assistance measures, particularly when they exceed a budget of €20,000,000. This advanced notification protocol offers the EP a chance to assess the congruency of these measures with the overarching vision of the EU's external action, thereby strengthening its consistency and coherence. No exceptional assistance measure has been adopted so far for Tunisia and Libya.



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### 4.2.3 Insufficient Human Rights Incorporation in the Action Documents Implementing the MCMP

The NDICI–Global Europe Regulation is explicit about the integration of a HRBA into NDICI-supported actions. It even operationalized these commitments with a dedicated HRBA Toolbox (see Chapter 3 for a more comprehensive explanation). However, a closer look at the action documents adopted under the MCMP for the Southern Neighbourhood reveals a glaring omission: they scarcely, if at all, incorporate this HRBA methodology. This oversight calls for a critical analysis.

- **Disparity with HRBA Toolbox:** The MCMP’s action documents fail to capture the breadth and depth of the HRBA Toolbox (see Chapter 3 for further information). A comprehensive evaluation of human rights situations is absent from any of the action documents supporting border management initiatives in Tunisia and Libya. This cannot but lead to a detrimental gap between the aspirational policy framework and its tangible execution. In addition, terminological shortcomings reveal a worrisome deviation from a rights-based approach. For example, the MCMP categorizes affected people as “beneficiaries” rather than “rights holders,” which subtly undermines their entitlement to rights.<sup>184</sup>

- **Concerns about Adequate Monitoring and Redress:** A consistent weaving of human rights principles is not just a proactive requisite but is also indispensable for efficient monitoring and potential grievance redress. The patchy human rights references within the action documents risk cascading into an insufficient framework. For example, the 2023 Annual Action Plan brings this concern to the forefront. The document acknowledges risks of human rights abuses, especially evident in the SAR interceptions by the Tunisian and Libyan coast guards. However, its mitigation strategy is totally ineffective, relegated to just “monitoring the action”,<sup>185</sup> instead of implementing concrete measures and safeguards to prevent and address the situation. In addition, the proposed “oversight framework” also falls short in terms of transparency and accessibility. While it promises independent third-party monitoring assessments to ensure, among others, compliance with the do-no-harm and human rights,<sup>186</sup> its implementation is nebulous. Civil Society Organizations (CSOs) and MEPs have often found themselves hitting a wall while seeking transparency and accountability from these third-party monitors regarding EUTF for Africa supported Programmes in Libya.<sup>187</sup>

- **Incorrect Nature of Human Rights References:** Compliance with fundamental rights is not a foundational requirement for border management cooperation in the action documents. While some programs paint human rights compliance as an objective or cross-cutting theme, others diminish its importance by categorizing the inability of authorities to uphold migrants’ rights as merely a “reputational risk” for the EU.<sup>188</sup> Such a stance not only belittles the gravity of rights violations but also jeopardizes the EU’s commitment to human rights.

- **Overreliance on Human Rights Training:** The action documents place a significant emphasis on human rights training for border authorities.<sup>189, 190, 191</sup> Yet, they overlook a pivotal truth: training alone does not guarantee adherence. In Libya, for instance, despite these trainings, the final report of the UN Independent Fact-Finding Mission on Libya has reported consistent violations and pleaded to “cease all direct and indirect support to Libyan actors involved in crimes against humanity and gross human rights violations against migrants, such as the Directorate for Combating Illegal Migration, the Stability Support Apparatus and the Libyan Coast Guard” and the EU to reconsider its cooperation.<sup>192, 193</sup> Similarly, a report from the EEAS highlights an “excessive use of physical force by the Libyan Coast Guard and Navy (LCG&N) against migrants”. It observes that, while the training provided during Operation Sophia is still evident, it is no longer being fully followed. The report also details an incident on September 15th, 2021, where the Coast Guard employed tactics “never observed before and not in compliance with training ... as well as international regulation”.<sup>194</sup>

### 4.2.4 Recommended actions on implementation

#### Issue 5: Ensuring that action plans and action documents are prepared in an inclusive, transparent and timely manner

**Description of the Problem:** The approval process for the 2023 Annual Action Plan (AAP) for the Southern Neighbourhood (SN) deviated from the principles outlined in Article 23.2. Instead of a comprehensive approach, a swift and concise procedure was employed. This process involved approving a general action document for the overall implementation decision, totalling €279 million for 2023 alone, without specific allocations to distinct actions. Contrasting with prior approaches, this practice compromises both the principle of inclusiveness and transparency. This departure is particularly problematic in terms of inclusiveness since it allows DG NEAR to formulate the actions and allocate EU funds without incorporating input from other pertinent stakeholders. The omission of the common practice of the quality review further exacerbates this issue, as the perspectives of other relevant Commission services are excluded from the decision-making process. Moreover, the departure from established practices erodes transparency, as not only renders the decision-making process less transparent, but it also withholds critical information on how EU funding is allocated from other Commission services, the European Parliament, and the general public. Overall, this opacity raises concerns about the accountability of the decision and makes it even more difficult to gauge how the allocated funds will be distributed and utilized.

**Recommended Actions:** To address the further erosion of transparency and inclusiveness witnessed in the 2023 AAP approval process, the EC (specifically DG NEAR) should return to the preceding procedures observed in 2021 and 2022, in which individual action documents are drafted and approved at the same time of the Implementing Decisions, following the stage of the quality review. These earlier processes offered stronger accountability, providing explicit allocations to specific actions within the AAP and a discussion of the specific action documents. They also ensured relevant input and oversight from other services of the EC, as well as the EEAS.

### Issue 6: Implementing a Human Rights-Based Approach (HRBA) to NDICI-Supported Actions on Migration Management

**Description of the Problem:** Despite the NDICI regulation stipulating the necessity of implementing a HRBA to NDICI-supported actions on migration management, and the existence of a HRBA Toolbox operationalising these commitments, the action documents approved so far under the MCMP for the Southern Neighbourhood lack any integration of the methodology. For instance, in the 2021 Action Document for the Southern Neighbourhood, no attention was given to evaluating the human rights situation in Tunisia and Libya concerning migration. Similarly, the execution of risk analyses is inadequate, and the monitoring and evaluation frameworks are poorly designed (see sub-section 4.2.3 for additional details).

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In the 2021 Action Document, no attention was given to evaluating the human rights situation in Tunisia and Libya.

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**Recommended Actions:** In light of the methodology outlined by the HRBA Toolbox, it is imperative that the EC (specifically DG NEAR) promptly undertakes a specific human rights assessment for Tunisia and Libya concerning migration management. This assessment should precede the drafting of action documents that allocate the EU-promised €105 million to Tunisia in 2023 as part of the new EU-Tunisia Memorandum of Understanding.<sup>195</sup> Such an assessment should also be conducted in preparation for the forthcoming MCMP for the SN's action documents in 2024. The assessment should include a comprehensive policy and stakeholder analyses, aligning with the five core working principles of the methodology. Subsequently, DG NEAR should elucidate how this information aligns with any forthcoming interventions and adapt ongoing projects in consideration of these findings.

### Issue 7: Ensuring that the EP Obtains Comprehensive Information to Effectively Perform its Scrutinizing Role of the EU Budget

**Description of the Problem:** The absence of access to comprehensive information on the EU's external dimension of migration hampers the EP's ability to perform its scrutinizing role effectively. While NDICI-Global Europe programming and actions documents are shared with the EP, they are often part of broader Action Plans drafted together with the European Council's Operational Coordination Mechanism for the External Dimension of Migration (MOCADDEM). These documents contain crucial information about the EU's strategy in specific countries, encompassing a comprehensive list of actions and the funding instruments that will support those actions, lead actors, timelines, and budgets. Yet, these MOCADDEM Action Plans remain confidential and are not shared with the EP. Another example is the confidentiality of findings from third-party human rights monitoring for EU-supported actions involving the Libyan Coast Guard. This situation presents a considerable obstacle to the EP in fulfilling its responsibilities as mandated by the Treaties, which require it to assess whether the EU budget aligns with the EU acquis.

**Recommended Actions:** The EC (specifically DG NEAR) should develop and implement a structured mechanism for sharing comprehensive information with the EP on the EU's external dimension of migration. Besides NDICI-Global Europe programming and action documents, this should, at the minimum, include Action Plans drafted and shared with MOCADDEM, and third-party monitoring reports.



## 4.3 Monitoring and Reporting

### 4.3.1 The Reporting and Monitoring Process

This section delves into the main mechanisms and tools associated with the reporting and monitoring process under the NDICI-Global Europe framework, which are the following: the Annual Report, a yearly obligation of the EC to relay progress; the Global Europe Results Framework (GERF), a foundational tool underpinning this reporting; and the Commission's commitment to provide public information via a comprehensive website.

Starting with 2022, the EC has been under an obligation to submit an Annual Report on the Progress made in implementing the NDICI-Global Europe to the European Parliament and to the Council by 30 November each year. The annual report shall explain "the progress towards the achievement of the objectives of the Instrument by means of indicators, including, but not limited to, those set in Annex VI, reporting on the ongoing activities, results delivered and the effectiveness of the Regulation".<sup>196</sup> It is important to highlight that the NDICI-Global Europe Regulation also stipulates that the annual report is intended to evaluate the progress made in mainstreaming issues referred to in Article 8(8). These include a range of topics, including human rights, democracy, and gender equality, all of which hold significance in the context of migration-related interventions.

The Global Europe Results Framework (GERF) is the main tool for monitoring and reporting results of NDICI-Global Europe, which was adopted by a Staff Working Document in 2022.<sup>197</sup> The GERF centres around the six strategic priorities of external action, one of which is migration, and comprises three level of indicators:

- Level 3 indicators aim to track progress of policy mainstreaming by budgetary commitments directed towards specific priorities. In the case of the strategic priority of migration, the indicator is the "amount and share of EU-funded external assistance directed towards migration and forced displacement-related interventions, which is indicatively 10%".
- Level 2 indicators aim to track progress of the outcomes and outputs to which EU funded interventions have contributed. There are 3 indicators for the strategic priority of migration:
  - "Number of migrants, refugees, and internally displaced people or individuals from host communities protected or assisted with EU support;"
  - "Number of migration management or forced displacement strategies or policies (a) developed/ revised, or (b) under implementation with EU support;" and
  - "Number of EU-funded interventions reporting improvement of compliance of Border and Security Systems with EU /Schengen Acquis."



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- Level 1 indicators aim to track progress looking at the medium/long term impact of international cooperation and development with partner governments, donors and other international cooperation and development actors including the private sector and civil society. There are two Level 1 indicators strategic priority of migration:
  - “Proportion of the population who are refugees, by country of origin;” and
  - “Number of countries with migration policies that facilitate orderly, safe, regular and responsible migration and mobility of people.”

According to the Framework, ideally, Level 1 indicators aim to represent the next logical link in the results chain, but in some cases Level 1 indicators remained at the same level of the results chain as the Level 2 but provided a broader measurement, like in the case of migration. For example, Level 2 measures the number of people while Level 1 measures the proportion of the population.

Lastly, an essential aspect of transparency is the Commission’s provision for public access to funded actions. As stipulated by the NDICI-Global Europe Regulation, the Commission is obligated to provide public information about actions funded under the Instrument, as appropriate, through a comprehensive single website (Article 46(4)).

Currently, the EU Aid Explorer serves as the principal database encompassing EU and Member States’ official development assistance expenditures. Managed by DG INTPA, the EU Aid Explorer exhibits several commendable attributes. It ensures that data is consistently updated and is presented in an open, machine-readable format that facilitates sorting, searching, extraction, and comparison based on variables such as year, recipient country or region, donor and sector.

Having said that, important limitations within the current scope of the EU Aid Explore hinder the tool from delivering a comprehensive perspective on migration-related expenditures. For example, the sectoral breakdown relevant to migration is confined to ‘Facilitation of orderly, safe and regular migration,’ a category which fails to encompass a broader spectrum of activities like migration management and border-related initiatives. Additionally, clarity is lacking on whether the tool accommodates (or should accommodate) projects that fall outside the scope of Official Development Assistance (ODA) eligibility, as exemplified by projects related to border management. It is notable to mention that none of the border management projects highlighted in Chapter 1 of this study are currently integrated into the dataset. Finally, a more comprehensive tool should ideally incorporate data not only from the NDICI-Global Europe, but also from the EU Trust Funds and other relevant funding instruments such as the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund – Borders and Visa (BMVI).

## Missing Accountability in 2022 Annual Report

**Despite the obligations stated in Article 8(8) of the NDICI-Global Europe Regulation, the chapter addressing migration in the 2022 Annual Report provides no elaboration or discussion on progress against human rights, democracy, and gender equality.**

### 4.3.2 Insufficient Human Rights Incorporation in the 2022 Annual Report on Progress and the NDICI-Global Europe is the Global Europe Results Framework (GERF)

Despite the obligations stated in Article 8(8) of the NDICI-Global Europe Regulation, the chapter addressing migration in the 2022 Annual Report provides no elaboration or discussion on progress against human rights, democracy, and gender equality.

More generally, EC representatives have stressed during interviews that it was premature to report extensively on the outcomes and efficacy of the Regulation in 2022 due to the delayed adoption and subsequent adoption of programmes.<sup>198</sup> Indeed, the *2022 Annual Report on the implementation of the European Union’s External Action Instruments in 2021* provides limited information in this regard and maintains a descriptive and general approach. For instance, in the thematic overview chapter, specifically under the migration section, the title “main achievements” actually presents a summary of the status of the programming as well as the main supported measures. The report states: “To cover needs in North Africa previously funded under EUTF Africa, a new multi-country programme on migration is under preparation. For 2021, individual measures amounting to €165 million were approved under NDICI-Global Europe”.<sup>199</sup> Similarly, the geographic overview chapter begins by outlining the significant policy developments and flagship initiatives for each country.

### 4.3.3 Recommended actions on monitoring and reporting

#### Issue 8: Lack of assessing progress against human rights, democracy, and gender equality for migration-related interventions in the NDICI Annual Report

**Description of the Problem:** Despite the requirement for the EC to submit an annual report on progress that includes pivotal aspects such as human rights, democracy, and gender equality, as required by article 42 in relation to article 8(8) of the NDICI-GE Regulation, the 2022 Annual Report’s migration chapter notably lacks any elaboration or discussion on these essential components.

**Recommended Actions:** It is essential for the EC (specifically DG NEAR) to ensure that the 2023 Annual Report and its subsequent editions thoroughly address the integration of concerns stipulated in Article 8(8) of the NDICI-Global Europe Regulation, particularly in the context of migration management-related interventions. This involves providing comprehensive details and analysis of the process, progress, and challenges encountered in integrating human rights, democracy, gender equality, and related issues.

### **Issue 9: Lack of a robust framework to adequately measure the human rights impacts of migration-related interventions**

**Description of the Problem:** The inclusion of Level 2 and 1 indicators for migration within the GERF provides some insights on the progress and execution of NDICI-supported interventions regarding migration. However, these indicators, while offering a glimpse into immediate outcomes like beneficiary numbers and strategy implementation, fall short of comprehensively assessing the extensive impact of these interventions. Their scope does not extend to capturing crucial facets as mandated by article 42 in relation to article 8(8) of the NDICI Regulation, such as human rights, democracy, and gender equality. Consequently, the ultimate purpose of these indicators should not be centred solely on reporting high-level numerical figures, but rather on elucidating the profound implications of those figures.

**Recommended Actions:** Given the multifaceted nature of migration-related interventions and the imperative to uphold human rights, democracy, and gender equality, a fundamental step would involve a thorough review and enhancement of the Global Europe Results Framework (GERF). This review should focus on refining the existing Level 1 and Level 2 indicators for migration, making them more comprehensive and aligned with the broader objectives (and EU obligations) on human rights of the NDICI-Global Europe Regulation. This review should also consider other international frameworks, such as indicator 10.7.3 - the number of people who died or disappeared during the migration process to reach international destinations - in alignment with the goals and targets of the 2030 Agenda for Sustainable Development.<sup>200</sup> It is crucial to integrate indicators that not only capture immediate outputs but also measure the transformative impact of these interventions. This might entail incorporating Level 1 indicators that assess the alignment of migration strategies and policies with international human rights standards, as well as measuring the empowerment of vulnerable groups and the enhancement of social cohesion in host communities.

To give an example, a potential Level 2 Indicator could be: "Number of EU-funded interventions reporting improvement of compliance of Border and Security Systems with EU/Schengen Acquis, including respect for human rights. A level 1 Indicator could be "Number of countries with migration policies that facilitate orderly, safe, regular, responsible and human rights-based migration and mobility of people". In this way, the indicator would highlight the broader impact of EU interventions on promoting rights-based approaches to migration management. And, in consequence, steer interventions.

### **Issue 10: Information on actions financed is scattered, difficult to find and analyse**

**Description of the Problem:** At present, information pertaining to actions supported via the NDICI-Global Europe is dispersed across multiple sources, resulting in a challenging process of data aggregation and analysis. This requires navigating through various websites to ascertain the Directorate-General (DG) responsible for the pertinent budget, e.g., whether it falls under DG NEAR, INTPA, or FPI. Subsequently, users need to delve into the EC websites to locate implementing acts and action fiches, without visibility on the implementing partners. This intricate and resource-intensive approach falls short of ensuring effective oversight, transparency, and accountability in the allocation and utilization of public funds, thus hindering the effectiveness of development initiatives. Concerns regarding this issue have been raised by stakeholders, including MEPs, calling for a more streamlined approach.

**Recommended Actions:** To tackle this issue, the establishment of a comprehensive website is essential. One effective way to implement these recommendations could be through the review and adaptation of the EU Aid Explorer. At the very least, the website should enable data sorting based on parameters such as funding instrument, responsible commission service, budget line, and policy markers, including migration. Furthermore, the website should offer access to specific project details, such as Annual Reports and monitoring and evaluation reports, along with information about implementing partners. The website should incorporate aggregated data accessible through an intuitive dashboard, facilitating swift access and analysis of crucial information. Additionally, the platform's design should enable users to download data in a format conducive to easy reutilization, thereby promoting transparency and bolstering the efficiency of analytical endeavours.

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# Conclusions and recommendations

After a deep exploration of the decision-making processes, the roles of the EP, and the intricacies of the NDICI-Global Europe at distinct operational levels in Chapter 4, it is now important to synthesize these insights and understand them within broader thematic areas. In light of this, Chapter 5 reorganizes the ten key accountability issues into five overarching themes. This restructuring recognizes that challenges are interconnected, demonstrating that some issues have implications across multiple levels of decision-making. Moreover, it facilitates a rapid overview of the main conclusions of the study for those pressed for time as well as equips stakeholders, especially policymakers and CSOs, with a consolidated framework, making it easier to conceptualize and address the complexities of the NDICI instrument holistically.

## 5.1 Thematic Recommendations

The five priority themes are:

- Comprehensive Human Rights Assessments
- Meaningful Engagement with CSOs
- Enhanced Transparency measures
- Increased Parliamentary Oversight and Participation
- Strengthened Monitoring Mechanisms

By approaching the NDICI's challenges through this thematic lens, we aim to provide stakeholders, policymakers, and readers with a holistic, clear, and actionable view, ensuring that the recommendations from Chapter 4 are not only understood but can be effectively acted upon.

### Area 1: Comprehensive Human Rights Assessments

**Objective:** Ensure the implementation of a Human Rights-Based Approach (HRBA) to NDICI-Supported Actions on Migration

**Description of the Problem:** Ensuring that human rights remain at the forefront of NDICI-supported actions on migration is paramount. Despite the NDICI-Global Europe Regulation's explicit mandate to integrate an HRBA into migration-related actions, and the existence of a HRBA Toolbox that operationalizes this commitment, current action documents, particularly under the MCMP for the SN, show a glaring omission of this methodology.

This omission is evident, for example, in the 2021 Action Document for the Southern Neighbourhood, which overlooks the human rights situation in Tunisia and Libya concerning migration. Moreover, the risk analyses are insufficient, and the frameworks for monitoring and evaluation have significant flaws (as expanded upon in sub-section 4.2.3).

Besides, as Chapter 2 already highlights, there are alarming records of abuse towards migrants and asylum seekers in both Tunisia and Libya. Furthermore, there is a critical correlation between EU-funded border management programs and numerous incidents of violence, implicating Libyan and Tunisian authorities – beneficiaries of EU funds – in actions that contravene human rights standards.

## Recommended Actions:

### a. To the European Commission (specifically DG NEAR):

- Urgently commission country-specific human rights assessments concerning migration management for Tunisia and Libya in alignment with the EU HRBA Toolbox for external action. This assessment should incorporate detailed policy and stakeholder analyses, ensuring alignment with the methodology's five core working principles.
- Develop and implement a clear action plan that demonstrates the integration of the EU HRBA Toolbox into upcoming and ongoing NDICI-supported actions. In particular, the action plan should:
  - Ensure this assessment is a prerequisite before approving new actions, especially with regard to allocating the proposed €105 million to Tunisia in 2023 under the new EU-Tunisia Memorandum of Understanding.
  - Use the findings from this assessment to shape the upcoming AAP and action documents under the MCMP for the SN in 2024 and any subsequent NDICI interventions on migration.
  - Foresee the modification of ongoing projects based on these assessments' conclusions.
  - Include the suspension of ongoing programs when it becomes impossible to guarantee human rights compliance by the recipient authorities, as well as in response to violations committed against those entitled to these within the ambit of the programs' operations.

Inform the European Parliament, specifically:

- Share the results of the country-specific human rights assessments with the EP, including a summary of the findings and the actionable conclusions drawn from these findings.
- Share the action plan that demonstrates the integration of the EU HRBA Toolbox into upcoming and ongoing NDICI-supported actions.
- Commit to periodic meaningful reporting, ensuring the European Parliament is regularly updated on the progress, adaptations, and measures taken in response to the assessment findings.

### b. To the European Parliament:

- Vigilantly oversee and advocate for the consistent

integration of HRBA Toolbox into NDICI-supported actions on migration and the realization of comprehensive country-specific human rights assessments for Tunisia and Libya, holding the European Commission accountable for any lapses.

## Indicators of Success:

- Clear evidence of human rights assessments being conducted and consistently integrated into policy decisions and funding allocations for Tunisia and Libya.
- Clear evidence of proactive communication between the EC and the EP, showcasing the results and integration of human rights assessments and action plans.
- Demonstrable changes made to ongoing projects or planned interventions, aligned with the conclusions of these assessments.
- Appropriate incorporation of human rights considerations into the planning, implementation, and evaluation of border management projects, with a focus on preventing and mitigating potential abuses.
- Positive feedback from a diverse array of stakeholders, including CSOs and other Commission Services, confirming heightened human rights considerations in NDICI-supported actions on migration management.

## Area 2: Meaningful Engagement with CSOs

**Objective:** Ensure robust and inclusive consultations with CSOs during the decision-making processes associated with NDICI-supported actions, particularly in migration-related activities.

**Description of the Problem:** The NDICI-Global Europe Regulation endorses a multi-stakeholder dialogue encompassing representatives from civil society. The NDICI Programming Guidelines emphasize and provide detailed elaboration on the necessity for consultations to occur at various levels, including the international, European, and national levels. However, despite these clear instructions, there is a glaring omission in meaningful consultations with key CSOs working on migration within the MCMP for the SN (insights can be found in sub-section 4.1.3). This oversight undermines the spirit of the Regulation.

In addition, the Programming Guidelines provide a description of what genuine stakeholder engagement

entails. For instance, engagement might span from “granting improved access to information to CSOs, to consulting CSOs on specific policies or programmes, ensuring their active participation and involvement in policy dialogue and/or implementation, or strengthening CSOs’ capacities through support interventions”.<sup>201</sup> The Guidelines further mention that the suitability and practicality of the chosen engagement modality should be assessed against both “the political context and the capacities of local CSOs to conduct evidence-based advocacy and dialogue”.<sup>202</sup> As highlighted in Chapter 2, CSOs can offer invaluable on-the-ground insights. Their knowledge can be very valuable in ensuring that critical information is relayed to policymakers in Brussels and critical in denouncing that EU-supported border management initiatives risks to (inadvertently) becoming complicit in rights violations.

### Recommended Actions:

#### a. To the European Commission (specifically DG NEAR):

- Prioritize and institutionalize meaningful consultations with CSOs for migration-related interventions. In particular:
  - Promptly review the MCMP for the SN to describe how civil society engagement and participation will be ensured for each of the priority areas, whether indicators on civil society participation should be included and include a consultation summary and lists of consulted CSOs in the reviewed MCMP for the SN.
  - As part of the mid-term review of the instrument, involve leading CSOs in targeted consultations on migration-related MIPs and action documents, ensuring that they are provided with transparent, timely, and comprehensive access to relevant information to be able to contribute meaningfully.
- Create and maintain a summary of engagement and consultations with CSOs.
- Commit resources to fortify the capabilities of CSOs, particularly in areas of research, evidence-based advocacy, and policy dialogue. This could encompass training programs, workshops, or collaborative projects tailored to the needs of the CSOs.

#### b. To the European Parliament:

- Maintain vigilance in oversight, ensuring DG NEAR upholds the NDICI-Global Europe Regulation’s spirit, particularly regarding CSO engagement.
- Advocate for timely, meaningful, and transparent consultations with CSOs, emphasizing their critical role in the decision-making process.

### Indicators of Success:

- Regular inclusion of comprehensive consultation summaries and lists of consulted CSOs in reviewed MIPs.
- Clear evidence of modifications in DG NEAR’s and other migration-related MIPs and interventions, directly influenced by CSO feedback and recommendations.
- Notable improvement in feedback from CSOs regarding the quality, relevance, and impact of their engagement in migration-related MIPs and action documents.
- Establishment of structured and periodic consultations between DG NEAR and CSOs, ensuring meaningful discourse and collaboration across pivotal areas.

## Area 3: Enhanced Transparency Measures

**Objective:** Strengthen transparency and accessibility regarding the allocation and utilization of NDICI-Global Europe funds to ensure accountability and bolster public trust in the Commission’s activities.

**Description of the Problem:** Despite the explicit requirement of the NDICI-Global Europe Regulation, which mandates the EC to provide public access to information about funded actions via a comprehensive website, current dissemination practices remain fragmented and complex. Information about funded actions is very scarce and difficult to find and analyse, forcing stakeholders to navigate a labyrinth of websites to gather data. This disordered system necessitates manual data extraction and analysis, yet even with such intensive efforts, crucial specifics about beneficiaries, implementing partners, and detailed expenditures remain in many cases unknown (see sections 1.1 and 4.3.1 for further details). This lack of clarity not only impedes a holistic understanding of how public funding is used and which projects are supported but also compromises the principles of oversight, transparency, and accountability in the deployment of public funds. The pressing need for a more centralized and user-friendly approach has been highlighted by various stakeholders, including MEPs.

### **Recommended Actions:**

#### **a. To the European Commission (specifically DG NEAR):**

- Expedite the development and launch of a comprehensive, centralized website dedicated to NDICI-Global Europe. An updated version of the existing EU Aid Explorer could be a starting point. In particular, the website should:
  - Present a streamlined overview of all the MIPs, detailing their respective budgets, associated actions, and the financial allocations they are backing, organized both by country and by themes.
  - Enable direct access to detailed project information, including project descriptions, contractual commitments with implementing partners, budgets for each beneficiary, and monitoring and evaluation reports. If certain data is sensitive from a public perspective, provide clear indications and explanations for why it is not published.
  - Introduce an intuitive dashboard on the website with aggregated data that can be easily accessed and analysed, providing filters and sorting features based on funding instrument, commission service, budget line, and policy markers.
  - Design the platform to allow data downloads in formats conducive to easy reutilization and analysis.
- Commit NDICI-Global Europe resources to emphasize and maintain transparency measures, in line with the core principles of a Human Rights-Based Approach (HRBA). This includes championing transparent budgeting, fostering open policy development, and endorsing public scrutiny through autonomous entities, the broader civil society, and the media.

#### **b. To the European Parliament:**

- Maintain rigorous oversight to ensure the European Commission adheres to the NDICI-Global Europe Regulation's transparency mandates.
- Champion the importance of a centralized, user-friendly system for disseminating information on funded actions.
- Encourage the regular updating and maintenance of the centralized platform to ensure continuous and timely access to relevant data.

### **Indicators of Success:**

- Successful establishment and regular maintenance of a comprehensive website dedicated to NDICI-Global Europe funded actions.
- Demonstrable ease in data access and analysis by stakeholders, including MEPs, CSOs, and other relevant bodies.
- Positive feedback on the quality of information included on the website, reflecting its alignment with users' needs and expectations.

## **Area 4: Increased Parliamentary Oversight and Participation**

**Objective:** Strengthen the EP involvement in the NDICI-Global Europe to ensure democratic oversight, inclusivity, transparency, and more effective collaboration between the EC, the EEAS, and the EP.

**Description of the Problem:** The analysis of the NDICI-Global Europe decision-making processes has highlighted a series of areas where the involvement of the European Parliament, as a key democratic institution, has been less than optimal (see sections 1.1.2, 4.2.1 and 4.2.2 for further details). The challenges can be categorized under the following five main issues:

#### **a. Ensuring Transparent Programming:**

The programming process for Tunisia and Libya under the NDICI-Global Europe raises concerns. For Tunisia, even though DG NEAR's webpage states a pending adoption, the European Court of Auditors (ECA) provides differing accounts, pointing to the lack of a joint basis for programming. Libya, amidst its turbulent political environment, has seen its cooperation reduced to annual "Special Measures," with no MIP in sight.

#### **b. Incorporation of EP Resolutions:**

Despite explicit provisions in the NDICI-Global Europe Regulation, there is an apparent oversight by the EC in the integration of EP Resolutions into its programming, as happens with the MCMP for the SN. EP resolutions can act as advocacy tools to highlight critical issues and influence the policy-making process. By taking into account the multiple perspectives and addressing concerns raised in resolutions, the NDICI can ensure a more comprehensive and inclusive approach to external action and development cooperation.



### **c. Duly Informing the EP of Consultation Outcomes:**

While direct EP consultation during the programming phase is not mandated, the NDICI-Global Europe Regulation underscores the EC's duty to inform both the EP and the Council of consultation results between the Union and the Member States and on the outcomes multi-stakeholder dialogue. The Programming Guidelines take a broader approach and specify that EU MS, as well as the EP and the Council, should be duly consulted and associated with the programming exercise. Such engagement highlights the EP's role in overseeing the EU's external action.

### **d. Preparation of Action Plans in an Inclusive and Transparent Manner:**

Contrary to the principles outlined in the NDICI-Global Europe Regulation, the approval process for the 2023 Annual Action Plan (AAP) under the MCMP for the SN was hastened and abbreviated. This process bypassed inclusivity by sidestepping meaningful input from other commission services and the EEAS, and compromised transparency by veiling the fund allocations to specific actions.

### **e. Lack of Comprehensive Information**

The absence of access to comprehensive information on the EU's external dimension of migration hampers the EP's ability to perform its scrutinizing role effectively. While NDICI-Global Europe programming and actions documents are shared with the EP, they are often part of broader Action Plans drafted together with the European Council's Operational Coordination Mechanism for the External Dimension of Migration (MOCADDEM). These documents contain crucial information about the EU's strategy in specific countries, encompassing a comprehensive list of actions and the funding instruments that will support those actions, lead actors, timelines, and budgets. Yet, these MOCADDEM Action Plans remain confidential and are not shared with the EP. Another example is the confidentiality of findings from third-party human rights monitoring for EU-supported actions involving the Libyan Coast Guard. This situation presents a considerable obstacle to the EP in fulfilling its responsibilities as mandated by the Treaties, which require it to assess whether the EU budget aligns with the EU acquis.

### **Recommended Actions:**

#### **a. To the European Commission (specifically DG NEAR):**

- In the 2023 Annual Report on Progress, provide a clear public explanation for the absence of MIPs for Libya and the delays for Tunisia, and detail the foundations for implementing programmes in their absence.
- During the mid-term revision of the MCMP for the SN, proactively integrate EP resolutions concerning Tunisia and Libya.
- Regularly update the EP and the Council on consultation results between the Union and the Member States, as well as the outcomes from multi-stakeholder dialogues.
- Return to the preceding procedures observed in 2021 and 2022, where individual action documents were drafted and approved concurrently with the Implementing Decisions endorsing the AAP.
- Develop and implement a structured mechanism for sharing comprehensive information with the EP on the EU's external dimension of migration. Besides NDICI-Global Europe programming and action documents, this should, at the minimum, include Action Plans drafted and shared with MOCADDEM, and third-party monitoring reports.

#### **b. To the European Parliament:**

- Mandate DG NEAR to include in the 2023 Annual Report on Progress the reasons for the absence of MIPs for Libya and the delays for Tunisia, ensuring that the explanations are comprehensive and transparent.
- Compile and share with DG NEAR an up-to-date list of EP resolutions related to Tunisia and Libya.
- Regularly review and assess updates provided by the EC on consultation results. Should gaps or issues arise, initiate discussions or inquiries to guarantee comprehensive stakeholder engagement.
- Advocate for transparency and due process by urging DG NEAR to return to the 2021 and 2022 procedures for drafting and approving action documents.
- Advocate for accountability by urging DG NEAR to develop and implement a structured mechanism for sharing comprehensive information with the EP on the EU's external dimension of migration.

## Area 5: Strengthened Monitoring Mechanisms

**Objective:** Strengthen the monitoring and reporting mechanisms of the NDICI-Global Europe to ensure that human rights, especially in migration-related interventions, are comprehensively addressed and prioritized.

**Description of the Problem:** The NDICI-Global Europe framework integrates two primary monitoring instruments: the Annual Report and the Global Europe Results Framework (GERF). While these mechanisms are essential, two glaring issues stand out:

### a. Inadequate Reporting on Human Rights in NDICI-Global Europe Annual Reports on Progress

The EC is obligated to produce an NDICI-Global Europe Annual Report on Progress. However, the 2022 edition significantly missed providing in-depth details on pivotal elements like human rights, democracy, and gender equality in the realm of migration interventions. This is particularly concerning given the stipulations of Article 42, which in relation to Article 8(8), emphasize the importance of detailing the advancement and challenges in integrating these components. Despite this, the report's content remains largely superficial. For instance, the "main achievements" segment seems to just outline the ongoing status without showcasing actual progress or outcomes.

### b. Insufficient Framework for Evaluating Human Rights Impacts of Migration Interventions:

The GERF is a structured tool designed to measure the performance of initiatives under the NDICI-Global Europe, incorporating specific indicators for monitoring migration-related actions. Although the framework mandates a comprehensive assessment, current migration indicators focus narrowly on immediate outcomes, such as beneficiary numbers and strategy implementation. They inadequately address the

broader impacts of interventions, especially in areas underscored by Article 42 in connection with Article 8(8) of the NDICI Regulation, like human rights, democracy, and gender equality. As a result, these indicators should not merely tally high-level statistics but should also elucidate the profound implications of those figures (see subsection 4.3.3 for further details and examples).

### Recommended Actions:

#### a. To the European Commission (specifically DG NEAR):

- Ensure the 2023 Annual Report on Progress and subsequent editions comprehensively addresses Article 42 in relation to Article 8(8), of the NDICI-Global Europe Regulation, especially focusing on migration-related interventions. This entails a deeper exploration into how human rights, democracy, and gender equality are integrated and the challenges in doing so.
- Undertake a thorough review of the Global Europe Results Framework (GERF), refining both Level 1 and Level 2 indicators related to migration. These indicators should holistically capture both immediate results and the broader impacts of initiatives, emphasizing human rights compliance (see subsection 4.3.3 for further details and examples).

#### b. To the European Parliament:

- Actively oversee and review the Commission's progress in incorporating human rights, democracy, and gender equality within the Annual Report on Progress and the GERF.

### Indicators of Success:

- Comprehensive inclusion of human rights, democracy, and gender equality within the 2023 Annual Progress Report and subsequent editions.
- A reviewed GERF with refined indicators that holistically measure both immediate and transformative impacts of migration interventions.

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