Pursuing migrant justice in EU sponsored states

Comparing accountability strategies by legal and advocacy practitioners in Morocco and Libya

Author: Sascha Pimentel
Student Number: 1048674
Supervisor: dr. JJL Candel
Second Reader: prof. dr. ir. CJAM Termeer
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MSc International Development Studies
Public Administration and Policy Group
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This master's thesis is the result of six months research into strategies to obtain accountability for migrants rights violations pursued in Morocco and Libya. Having to conduct this research from behind my desk in the Netherlands during a pandemic was challenging, but also taught me that a lot is possible through online means and not giving up too easily does pay off.

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To say that I am happy with the results of this research feels uncomfortable, as they reflect that the struggle for accountability for the distressing circumstances that migrants are subject to at the EU borders will continue for a long time to come. This study made me even more motivated to continue in the field of migrant protection, hopefully conducting more research that could support practice or contribute to policy changes in favour of a more humane treatment of people on the move.

Abstract

Scholars have shown that holding the EU accountable for migrants rights violations in neighbouring countries as result of the EUs external migration policy is often unachievable, as jurisdiction cannot be established. Moving beyond a focus on EU liability, this study explores whether empirical accountability options exist within these neighbouring countries and how legal and advocacy practitioners strategize to pursue these. To investigate this, a conceptual framework for accountability strategizing was developed, drawing upon and synthesizing concepts from accountability theory and literature on strategic behaviour. A comparative, qualitative casestudy design was used to study how accountability strategies were affected by different socio-political and legal contexts. Country cases Morocco and Libya were selected based on their difference in state legitimacy, rule of law and political stability, but similarity in their relations to the EU on migration. A twofold research strategy was employed, consisting of a document analysis and semi-structured interviews with 14 legal and advocacy practitioners from Morocco and Libya. Results showed that accountability strategies highly differ between both contexts. While Moroccan practitioners combine a variety of accountability strategies at the domestic level, Libyan practitioners are constrained by contextual factors and largely reorient towards international levels for accountability. Findings suggest that an inquiry into the strategizing process prior to the establishment of accountability relationships allows for a better understanding of constraints and opportunities. Further, it is shown that accountability strategies are highly contextualized and further research is needed to gain broader understanding of what contextual factors constrain and enable strategies and how. Finally, it is suggested that alternative strategies to seek remedies for migrants that do not tick all boxes of accountability as defined within literature, deserve more attention to increase effectiveness of migrant support.

Keywords: accountability, strategizing, migrant protection, EU, migration policy, neigbouring country, externalization, Libya, Morocco, context

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List of Abbreviations

Abbreviation	Explanation
AA	Association Agreement
BRA	*Bureau des Réfugiés et Apatrides*
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punisment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child and its Optional Protocol
CSPD	Common Security and Defence Policy
EC	European Commission
ENI	European Neighbourhood Instrument
ENP	European Neighbourhood Policy
EU	European Union
EUBAM	European Union Border Assistance Mission
EURA	EU-wide Readmission Agreement
EUTF	EU Trust Fund
FSI	Fragile State Index
GAMM	Global Approach to Migration and Mobility
GNA	Government of National Accord
HLWG	High Level Working Group
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMPD	International Centre for Migration Policy Development
MoU	Memorandum of Understanding
MP	Mobility Partnership
WGI	Worldwide Governance Indicators

1: Introduction

1.1 Problem statement

In 1991, the European Commission (EC) proposed to take up migration as a foreign policy issue for the first time (Boswell, 2003). Spijkerboer (2018) suggests that the framing of migration as a security threat to the region's stability led to the development of a more proactive, externally-oriented EU approach. Policies became increasingly "aimed at creating effects outside as well as inside the territorial borders of Europe" (Spijkerboer, 2018, p. 2) and EU Council conclusions emphasized cooperation with neighbouring countries on migration control as priority. EU institutions and member states started to enlist neighbouring states into cooperation through external policy initiatives to restrict migrant access to the Union. A series of interlinked instruments were targeted at countries at the EU-Africa, EU-Balkans and EU-Turkey frontiers to facilitate their cooperation in the enforcement of the EU border control system, shifting migration governance responsibilities towards non-EU territories. Oliveira Martins & Strange (2019) describe how countries like Turkey, Morocco and Libya scaled up border surveillance and management, implemented anti-trafficking measures and policies to combat irregular migration and entered into readmission agreements with EU member states to gain access to EU funding and capacity-building.

As a result, migrants residing in or transiting through neighbouring states become more and more subject to surveillance and are restricted in their movement and opportunities to enter the EU and apply for asylum. Neighbouring countries' more proactive migration governance leads to their apprehension and containment outside of the EU borders. As migration control responsibilities become largely displaced, so are responsibilities for their rights protection. In light of externalization policies, it thus becomes crucial to investigate how migrant rights within neighbouring states are safeguarded.

Human rights organizations have repeatedly expressed concern over structural rights abuse of migrants in EU neighbouring countries, such as mistreatment and abuse during raids and in arbitrary detention in Morocco (Amnesty International, 2015) and sexual violence, beatings, whippings, and the use of electric shocks in detention centers in Libya (Human Rights Watch, 2019). Organizations point out that, due to the absence of effective protection legislation within these states, structural violations have mostly remained unaccounted for. Gammeltoft-Hansen (2008) argues that EU externalization policies can thus be seen as a "hide for attempts to capitalize on foreign territorial jurisdictions and lower national human rights standards to shift and reduce burdens of refugee protection away from Europe" (p. 191). He points to large differences between EU and neighbouring states regarding the implementation of human rights and refugee law, the functioning of the judiciary and access to legal aid and counselling. As such, migrants in neighbouring states are said to be unable to appeal to international human rights frameworks on these territories, such as the 1951 Geneva Convention and the European Convention on Human Rights.

Academic research and journalist reports have pointed to the detrimental effects of EU external migration policy on legal accountability for migrants rights violations, in light of perceived gaps in international human rights and refugee law to hold sponsoring states liable. However, there is still a lack of empirical accounts of the attempts made within neighbouring countries to achieve accountability. While terms such as "accountability gaps," "rightlessness" and "legal blackholes" reverberate within scholarly literature, these suggest a rather narrow geographical focus on EU liability and leave options in neighbouring countries unexplored (Gammeltoft-Hansen & Tan, 2020). EU liability for deliberate externalization of

migration policies is far from straightforward and often unachievable. Thus, it should be studied whether and how accountability is achieved in the neighbouring states that are implementing a more proactive migration policy in response to EU incentives. Empirical studies that inquire into the legal and other accountability options present in these countries and the strategies to explore these, could provide a more pragmatic understanding of accountability and what is needed to improve the situation of migrants on the ground. As Costello & Mann (2020) argue, "the burden is on us not only to show how accountability for these violations is lacking; we also aim to address this problem" (p. 325). What concrete opportunities for accountability exist in neighbouring countries and how are these used by legal and advocacy practitioners on behalf of migrants? A particular question is how contextual differences result in different options on the ground and different strategies pursued. Thus, which contextual factors enable and constrain strategies and in what way?

Legal strategies, such as public interest litigation at domestic courts, are described as promising tools in the protection of rights of vulnerable groups, especially when other formal avenues for accountability are not existent (Gloppen, 2008; Cummings, 2009). To understand how litigation strategies within neighbouring countries to the EU can contribute to justice for structural rights abuses or remedies for individual migrants, factors that influence strategies should be analyzed. Different socio-political and legal contexts of neighbouring countries potentially lead to different legal strategies pursued by legal and advocacy practitioners. Contextual factors such as institutional structure, the functioning of the judiciary and the political environment are put forward in literature as providing possibilities and constraints to legal strategies, but it is still rather unexplored in what ways they do so (Bousquet et al., 2012; Joshi, 2014). Understanding how practitioners navigate legal strategies in neighbouring countries and whether and how differences in context lead to different legal strategies brings us closer to understanding what needs to be done to improve their effectiveness. While legal strategies are considered first when addressing rights violations, they may be strategically used next to other strategies by practitioners to obtain accountability. Rijpma (2017) suggests that apart from legal strategies, practitioners have pursued non-legal strategies in neighbouring countries with lower human rights standards and thus, these also deserve scholarly attention. Understanding how social strategies outside of the legal domain are used by practitioners, instead of or in tandem with legal strategies and how these are constrained or enabled by different or similar contextual factors allows us to gain a more exhaustive picture of accountability within neighbouring countries to the EU.

To conclude, more empirical research into accountability options and actions in neighbouring states could allow us to recognize the real-life consequences of EU externalization of migration control for migrant protection and how accountability is contextualized. In-depth inquiry into practitioners' preparation, adaptation and employment of different strategies within neighbouring countries could provide concrete insights on how to move forward in seeking redress for migrants rights violations. This could contribute to a vital understanding of how to challenge the increased tendency to securitize and restrict people on the move (Spijkerboer, 2018).

1.2 Research objectives and questions

1.2.1 Research objectives

The central aim of this research is to provide an empirically grounded understanding of accountability strategies pursued for migrants rights violations in neighbouring countries to the EU and how these strategies are enabled or constrained by their contexts. This centrail aim is approached through three interrelated research objectives:

1. To introduce a conceptual framework that allows for a systematic study of accountability strategizing within country context and complements existing accountability theory.
2. To formulate theoretical expectations based on findings from two country contexts on how practitioners are enabled or constrained by contextual factors in pursuit of accountability strategies, that can be further investigated in larger N-studies.
3. To serve as a practical resource for legal and advocacy practitioners working in migrant protection in neighbouring countries to the EU and parties in their support, on the challenges and best practices in the field.

1.2.2 Research question and sub questions

The three research objectives are to be achieved by answering the below main research question:

"How do legal and advocacy practitioners in neighbouring countries to the EU hold actors accountable for migrants' rights violations?'

This research employs a qualitative, comparative case study design, that allows for a comparison between findings from two EU neighbouring countries, Morocco and Libya. The research question is addressed in two consecutive research steps. First, the policy and legal contexts of Morocco and Libya are set out. The policy context is mapped through identifying the EU incentives, funding instruments and effected migration policy changes in Morocco and Libya. The legal context is set out by mapping Morocco's and Libya's domestic legislations and ratified international conventions on migrant protection. These findings inform the second research step, that is aimed at interpreting how legal and advocacy practitioners pursue legal and non-legal accountability strategies within Morocco and Libya and identifying the contextual factors that constrain or encourage their efforts.

1.3 Societal and scientific relevance

The relevance of this research is both scientific and societal. Its scientific relevance lies in its potential contribution to accountability theory, by integrating conceptual understandings of accountability and strategic behaviour. As this conceptual framework is applied to the experiences of practitioners within non-EU contexts, it's empirical relevance is tested. Based on findings, theoretical expectations can be formulated about how accountability strategizing is constrained or enabled by its context to complement existing academic debates accountability for rights violations. As a comparative case study design is used to obtain

data from different country contexts, specifically, fragile and less fragile contexts, research outcomes can be said to address a larger debate on how to pursue and study accountability within fragile states.

Its societal relevance lies in its potential contribution to the work of legal and advocacy practitioners in the field of migrant protection, by mapping their use of accountability strategies in neighbouring countries to the EU. The comparative case study provides insight into the (in-)effectiveness of current strategies pursued and could serve as resource for practitioners to be able to operate more effectively and gain understanding of promising accountability strategies and how obstacles can potentially be overcome.

2: Theoretical Framework

In this chapter, a synthesis of the literature on EU external migration policy is provided, that gave rise to this thesis' main research question. As I consider current conceptualizations on the topic, I argue that these cannot be used to thoroughly address its accountability outcomes. Tan & Gammeltoft-Hansen's (2020) *topographical approach* is presented as alternative framework to study accountability for external migration policy. Their approach serves as the starting point for studying accountability strategies pursued within neighbouring countries sponsored by the EU. Following this, I conceptualize *accountability strategizing* as analytical lense to study practitioners' efforts to obtain justice for migrants' rights violations in Morocco and Libya.

2.1 Accountability for EU externalized migration policy

Within literature it is described how EU external migration policy developed since the turn of the century. Economic integration and Schengen agreements in 1985 and 1990 resulted in the removal of the EUs internal borders and prompted a common approach to migration control (Kosmina, 2016). From the 1990s onwards, migration became perceived as a threat to welfare and security in individual member states, as socioeconomic problems were blamed on migrant workers and cultural concerns were raised with their integration into society (Boswell, 2003; Van Kersbergen & Krouwel, 2008). The growing anti-immigration discourse at the member state level moved up to the EU level and migration became predominantly dealt with as a security issue in common policy-making (Pallister-Wilkins, 2011). In the Tampere conclusions of 1999, the external dimension of EU migration and asylum was formally laid down for the first time, as cooperation with countries of origin and transit was specified as one of four common policy objectives. The conclusions provided an impetus for the development of EU policy frameworks for external migration cooperation.

Many interlinked definitions of EU externalization and conceptualizations of its modalities can be found in the literature. Gammeltoft-Hansen (2011) defines externalization as a state's tendency "to extend the reach of migration control to destinations outside its territory and to employ agents other than the state's own authorities" (p. 2). The types of migration policies that are externalized by the EU are conceptualized by Boswell (2003), as she distinguishes between "classical migration control instruments" (p. 622) and "preventive" measures that aim to address individuals' incentives to migrate. In the first case, cooperation with neighbouring countries is sought in the areas of border control, combatting illegal migration and human trafficking, return readmission and reception of irregular migrants and capacity-building is provided to non-EU ountries' asylum systems and institutional frameworks. In the second case, the EU aims to tackle the "root causes" of migration in countries of origin through development aid, foreign direct investment and other instruments (Boswell, 2003; Geddes & Balch, 2011). Balzacq (2009) rather depicts externalization as a continuum of policies through which one state gains control, directly or indirectly, over border management of another state. Conceptualizing how EU policies are transferred to neighbouring countries, Lavenex & Uçarer (2004) offer a typology of four modalities: adaptation by unilateral emulation, adaptation because of externalities, purposeful export of policies through bilateral agreements and finally, institutionalized extension of EU policies to third countries. The third and fourth modalities presume intentional action on the part of the EU. Schimmelfennig & Sedelmeier (2004) note that conditionality is used by the EU to encourage

neighbouring countries' political alignment with EU agendas on migration issues. Lavenex and Uçarer (2004) further suggest that the form of institutional affiliation, the degree of fit or misfit between EU migration policies and domestic arrangements, exchange of interests and the cost of non-adaptation to EU policies lead to diverging impacts of EU intentional policy transfer in to different countries.

2.2 A topographical approach to accountability

While the above definitions and conceptualizations of EU external migration policy offer a common terminology, they give an incomplete image of a more complex, non-linear reality, as they disregard how non-EU countries respond to and actively take part in shaping EU external relations. Lemberg-Pedersen (2017) argues that countries "respond differently to EU pressure and issue linkages during negotiations due to varying political-economic contexts, interests and postcolonial trajectories" (p. 39). In the case of Morocco and other southern Mediterranean countries, Tittel-Mosser (2018) shows that these have mobilized domestic agendas and did not passively adopt the policies that the EU sought to convey, aware of their strategic positions. Terms such as policy transfer thus inadequately captures a more ambiguous process.

Moreover, by centralizing EU agency, externalization literature only offers a narrow focus for studying accountability outcomes of the EU's external migration policy. Up until now, scholars have exclusively assessed whether international human rights law can be applied to hold the EU liable for migrants' rights violations on non-EU territories as a result of externalization, by determining if jurisdiction is established. In his book *Access to Asylum*, Gammeltoft-Hansen (2011) asks: "Is there such a thing as extraterritorial legal responsibility in cases of offshore migration control and, if so, how far does it extend?" (p. 3). His, and others' work describe a rift between *universalist* and *territorialist* interpretations of human rights law, the first suggesting that states have a responsibility for human rights wherever they act, although indirectly, while the latter suggests that state responsibility is demarcated by national borders. To address this rift, scholars have emphasized that jurisdiction, whether exercised within national territory or abroad, determines state actor's accountability in case of rights' violations (Gammeltoft-Hansen, 2011; Moreno-Lax, 2020). Gammeltoft-Hansen defines jurisdiction as describing a state's "limits of its legal competence or regulatory authority" (p. 104). Moreno-Lax (2020) adds to this that this authority amounts to "more than mere coercion, including a normative dimension that demands compliance" (p. 397). Besson (2012) suggests that this normative dimension is *legitimately* exercised by the state actor vis-à-vis the individual, establishing a human rights obligation of the state power towards this individual.

While within national territory, attributing jurisdiction is a straightforward matter, it is difficult to attribute jurisdiction to an EU entity supporting action abroad. Full jurisdiction requires the exercise of full *physical* control over the individual to whom rights obligations are owed. This is rarely the case, as EU entities predominantly encourage migration control policies abroad through funding and capacity-building. Cooperation with neighbouring countries takes place through either "flexible," non-legally binding instruments such as compacts, joint declarations and common agendas, or through formalized bilateral or multilateral treaties (Carrera et al. 2019). Other than *soft law* instruments (Carrera, 2016) being difficult to scrutinize, formalized agreements are unlikely to contain clauses that specifically indicate jurisdiction and ultimate legal accountability of one of the acting states (Gammeltoft-Hansen, 2011).

Thus far, externalization literature has shown that EU external migration policy has, in most cases, not led to EU accountability as jurisdiction is unlikely to be established (Rijpma, 2017; Moreno-Lax, 2020;

López-Sala, 2020). But, as I argue, accountability outcomes of EU externalization can be studied much broader than that. The literature's sole focus on EU liability, relying on the depiction of external migration policy as a one-way street, discourages inquiry into other options that exist to achieve accountability for rights violations. Tan & Gammeltoft-Hansen (2020) suggest that terms like "externalization" have the effect of not attributing responsibility to neighbouring countries for migration control tasks that they are increasingly taking up. They suggest that the narrow geographical focus on EU responsibility leads to disregarding accountability fora that can be pursued on neighbouring territories. This, in effect, "risks coming at the expense of migrants and refugees, for whom the international justice element is likely to be a secondary concern to the human rights violations endured" (p. 350).

As a critique, Tan & Gammeltoft-Hansen (2020) offer a *topographical approach* to accountability, that "requires refugee lawyers to apply a broader frame to accountability both in terms of the legal regimes they engage with and the geographical outlook applied" (p. 513). This broader frame includes the responsibility of sponsored, neighbouring countries and non-state actors for EU external migration policies. With the topographical approach, the site of rights violation is perceived "from a bird's-eye view" (p. 337) to shed light on less explored legal mechanisms present in neighbouring countries. With their argument, Tan & Gammeltoft-Hansen (2020) suggest a practice-oriented, opportunist approach to accountability for externalized migration control. This includes that, in absence of legal frameworks on migrants and refugee protection in neighbouring countries, other legal frameworks can be strategically employed at different levels of law. Gammeltoft-Hansen & Tan (2021) mention constitutional law, private law and alternative international legal regimes to the 1951 Convention as promising legal frameworks that can be used to litigate at domestic, regional and international courts. As Abass & Ippolito (2014) note, the role of domestic courts in responding to rights claims on behalf of migrants remains underestimated. While Tan & Gammeltoft-Hansen's (2020) argument is limited to a broader scope in exploring legal options, this research also includes non-legal, social accountability options in neighbouring countries that could provide alternative ways to seek remedies for migrants.

The topographical approach urges both scholars and practitioners to broaden the scope of accountability options that could be considered for filing claims on behalf of migrants, with a particular emphasis on including options within sponsored, neighbouring countries. This research departs from the topographical approach to study accountability strategies employed by legal and advocacy practitioners to pursue these options, in the legal demain and social domains. To systematically analyze these strategies, I conceptualize accountability and its legal and social types in the next section.

2.3 Accountability: definitions and types

The concept accountability is used in two ways in political discourse and scholarship (Bovens et al., 2014). Either accountability is applied as normative concept, implying a virtue or set of virtues that individuals or organizations possess, such as transparency, fairness, responsiveness and compliance, or it reflects a relational concept: The act of an actor *being held* to account by a forum for its conduct. For the purpose of this research, I refer to accountability as relational mechanism, as I aim to gain insight into how accountability is forged through practitioners' strategic choices and actions in the EU external migration policy domain.

I depart from Bovens' (2007) definition of accountability as "a relationship between an *actor* and a *forum*, in which the actor has an obligation to explain and to justify his or her *conduct*, the forum can pose *questions* and pass *judgement*, and the actor may face *consequences*" (p. 450). Bovens' definition corresponds to earlier work from Schedler (1999) and Keohane (2003), who argue *answereability* and *enforcement* are crucial for any accountability relationship. Keohane (2003) suggests that "to be accountable means to have to answer for one's action or inaction, and depending on the answer, to be exposed to potential sanctions, both positive and negative" (p. 1124). Mashaw (2006) distinguishes six components of an accountability relationship: *who* is accountable to *whom*, *what* they are called to account for, *through what process* they are being held to account, *by what standards* they are being be judged, and *what the effects are* when these standards are breached (p. 118). The inclusion of the possibility of consequences, sanctions or effects is crucial, as it differentiates between voluntary transparency over conduct, and the ability to enforce transparency and hold to account.

In Bovens' (2007) definition, an accountability forum represents an entity, such as a court, a parliament or a media platform through which an accountability relationship is established. Bovens (2007) distinguishes between political, legal, administrative, professional- and social types of accountability based on the different natures of fora. Through different accountability fora, different criteria are applied to judge conduct, sometimes simultaneaously, resulting in the *problem of many eyes*, as an actor's conduct could be justified based on one fora's standards, but be sanctioned based on another's. Legal accountability and social accountability types are considered for this thesis research.

Legal accountability is the most unambiguous form of accountability (Bovens, 2007) as the passing of judgement over conduct of actors is carried out through courts as legal fora, such as penal, civil, administrative courts, either at the domestic, regional or international level, based on agreed upon standards that are laid down in legal codes. Legal standards for migrant treatment are included in international human rights and refugee law and national legislations of different countries. Practitioners may make use of different legal codes and direct action such as litigation at various courts to hold actors to account for rights violations. These courts may impose sanctions on the actors based on claims made.

Social accountability is included as second, more ambiguous type of accountability, defined by Bovens (2007) as self-organized fora through which interest groups, citizens and civil societies render account of public agencies (Bovens, 2007). According to Malena et al. (2004), social accountability refers to "the broad range of actions and mechanisms (beyond voting) that citizens, communities, civil society organizations and independent media can use to hold public officials and servants accountable." These mechanisms initiated by citizens and civil society organizations rely upon creating public pressure about state conduct. Thus, in case of social accountability, mechanisms through which the general public is mobilized are considered accountability fora. Malena et al. (2004) add that these mechanisms are, as opposed to formalized accountability types, often demand-driven and initiated from the bottom-up. Practitioners may engage in reporting, advocacy, naming and shaming, or other accountability action through these mechanisms, using legal but also non-legal standards to hold actors to account. News and social media are included as important social fora used by practitioners for accountability strategizing, as they can be used to spark, complement or report on more formal accountability strategies, or as accountability fora in their own right by mobilizing the public on migrant issues (Jacob & Schillemans, 2016). While media lack the means

to pass formal sanctions over the misconduct of state actors, their coverage could have damaging effects on the public reputation of state actors.

2.4 Accountability strategizing

While Bovens' and others' concepts clarify and distinguish different types of accountability relationships as established, this study seeks to also conceptualize the process prior to establishment, to study how legal and advocacy practitioners *use* different fora to *initiate* accountability relationships. This process, that includes practitioners' decision-making based on context prior to accountability action, is what I conceptualize as *accountability strategizing*. The conceptual framework is developed in three steps.

As a first step, I define legal and advocacy practitioners as actors that independenty use legal and social fora to initiate accountability relationships. For this purpose, I include Hirschmann's (2020) notion of pluralist accountability into the conceptual framework. Hirschmann (2020) uses *pluralist* accountability as linked to the way *pluralism* is used in legal scholarship: "This term reflects best the fragmented and nonhierarchical character of accountability relationships. Pluralist accountability holders may be transnational, national, nonstate, or judicial actors who—individually or together—engage in standard setting, monitoring, or sanctioning." Practitioners act independently of chains of delegation between principals and agents whereby conduct is assigned and accountability is rendered the other way around. The concept pluralist accountability is thus included in the theoretical framework to grasp the efforts to achieve accountability of "third parties outside of a given delegation relationship" (p. 9). Keohane (2003) argues that is not to be assumed that third parties know what information to ask for when pursuing accountability, nor that the actor provides the desired information or will change its conduct after being exposed to sanctions. Also, even if a third party is able to impose or engender the imposition of sanctions, this does not mean that it will mobilize its resources to do so. Additionally, there is a general consensus within accountability scholarship that third party sanctioning vis-à-vis complex global governance arrangements remains limited in its ability to change the behaviour of global actors involved (Bovens, 2007; Hirschmann, 2020).

As a second step, I conceptualize how legal and advocacy practitioners strategize accountability action in their context. Green (2017) suggests that strategizing should be studied as a dynamic process in action, instead of depicting a strategy as static variable. Based on literature on the strategic behaviour of judicial- and policy actors, I conceptualize practitioners accountability strategizing along two dimensions: i) choice of fora and ii) choice of approach. Strategic choices can be reconsidered based on accountability results yielded.

First, I consider practitioners strategic *choice of forum* in the conceptual framework. I argue that practitioners may opt for some fora over others that they deem more promising for establishing an effective accountability relationship. In legal theory, *forum shopping* is described as the practice where litigants strategically pick a court for their case to be heard, based on the court's likeliness to pass the most favorable judgement. In a situation where different international and domestic legal systems co-exist and overlap, litigators can strategically "resort to law to advance particular agendas" (Tamanaha, 2011, p. 16). Von-Benda Beckmann et al. (2009) similarly points to the way different social actors navigate legal orders to deal with their problems. Forum shopping as concept also applies in political theory, referring to policy-makers' and advocacy groups' use of decision-making arenas to advance political agendas. In this study, I include forum shopping as actors strategic resort to legal and social accountability fora. I argue that legal fora are not

always the most effective when legal standards to not apply to a certain situation, compelling actors compelled to turn to other, non-legal fora. Rijpma (2017) suggests that, in the case of accountability for EU external migration policy, legal practitioners' "turn to non-judicial accountability mechanisms" is the "response to the unclear division of responsibilities between different actors" (p. 595). Additionally, as been demonstrated in the earlier section, legal fora in neighbouring countries may not always uphold or implement international human rights standards to a similar extent. Therefore, it depends on the situation which forum is the most effective for establishing an accountability relationship.

Second, I include practitioners strategic *choice of approach* in the conceptual framework. *Issue-framing* and *standard setting* are considered as two elements that make up the approach. Depending on whether the issue framed as emblematic of a larger societal problem or it is framed as a singular rights' transgression, action can range from individual cases to strategic public interest litigation (Schaaf & Khosla, 2021). While the framing of an issue as individual rights transgression assumingly informs an accountability strategy aimed at securing remedies for an individual migrant, framing the issue as emblematic informs additional accountability strategies aimed at legal and social change (Schaaf & Khosla, 2021). Standard setting implies that practitioners prescribe certain norms that actors should comply with as they carry out conduct. These norms do not have to be developed by practitioners themselves, but could be an existing set of rules (such as international human rights and refugee conventions) that are taken as a framework of reference for the evaluation of conduct (Hirschmann, 2020).

Finally, I argue that, choice of fora and approach are potentially reinformed by the outcomes of previous accountability action. When action has not led to a desired outcome, this could lead to a reorientation towards another forum, a reframing of the issue and a use of different standards. Also practitioners could be unable or unwilling to initiate or continue accountability strategies based on contextual factors.

As a third step, I consider the contextual factors that potentially constrain or enable practitioners' choice-making. The political and legal opportunity structure, migrants needs and available resources are included as contextual factors in the conceptual framework. While other factors are likely to play a role, these were deemed most relevant to practitioners' strategizing process. Further, practitioners' actor agency is considered.

First, it has remained rather unexplored in what ways a country's political and legal opportunity structure affects accountability strategizing. Cummings (2009) argues that the functioning of political institutions is key to shaping the possibilities for accountability action. Beyond political institutions, Brinkerhoff (2001) distinguishes between three elements of a country's legal structure potentially enables or constrains the use of legal fora. The first element concerns the structure of a country's institutions, the second element concerns the level of corruption within a country and whether a culture of impunity exists and the third element concerns the state of the rule of law, the functioning of the judiciary and its level of independence. Within fragile and transitional states, the institutional structure is usually non-permissive to accountability, levels of impunity are high and the functioning of the judiciary weak. Gloppen (2008) notes that in these contexts "few effective sanctions exist against judges submitting to extralegal influences, particularly where the society tolerates corruption and notions of judicial independence are not embedded in the legal culture" (p. 350). Thus, whether legal fora can respond to claims made by accountability actors on migrants rights highly depends on the contexts in which they are embedded. With regards to social

accountability, Bousquet et al. (2012) similarly point to the socio-political, policy and legal environment as enabling or constraining its possibilities. However, they suggest that there is still a lack of understanding on what specific aspects of these environments matter and in what way. Joshi (2014) also argues that, while it is presumed that contextual conditions affect social accountability outcomes, ambiguity exists over exactly what these conditions entail and how these are relevant. He asks: "So how can we get a handle on which elements of context are relevant to understanding success and failure?" (p. 23). By including the political and legal opportunity structure as contextual factor in the conceptual framework, this research seeks to inquire into what aspects of this structure play a role.

Second, I include migrants needs as central to practitioners' accountability strategizing. Gloppen (2008) argues that accountability action can only be undertaken on behalf of vulnerable groups such as migrants when they identify what has happened to them as a rights transgression themselves and are confident that accountability processes will help them realise remedies. Marginalized groups, such as migrants, are often distrustful of legal systems and other channels of accountability. Their needs for to addressing their problems and grievances should be centralized in any accountability process. This necessitates not only practical efforts on the part of practitioners, such as rights awareness campaigns to enable migrants to recognize their experiences as rights violations, but also requires their risk assessment and and prioritizing of migrants' direct needs over the pursuit of justice.

Third, I argue that available resources largely determine pracititioners' strategizing. But, as Vanhala (2009) suggests, both opportunity theories as well as resource mobilization theories have made important contributions to understanding strategizing, but that there are other factors often left out of the equation that deserve attention. Actor agency is often neglected in explaining their behaviour through opportunity and resource strategies. According to Pralle (2003), accountability actors cannot expected to be fully rational and strategizing solely based on resource and opportunity calculations, but that they might also act based on trial-and-error, are led by path dependency and sometimes make choices that are the most comfortable to them.

Integrating all of the above, the conceptual framework accountability strategizing is offered as central analytical lense to conduct this thesis research. I combined concepts from Bovens (2007) and Hirschmann (2020) and approached *accountability strategizing* as a dynamic process that involves practitioners' choices on accountability fora and approach. Accountability outcomes potentially lead to a reorientation towards different fora, a reframing of the approach taken or an overall termination of the process. Further, I conceptualized how choices are determined by a country's political and legal opportunity structure, migrants' needs, available resources and practitioners' actor agency. In figure 1, the conceptual framework is visualized.

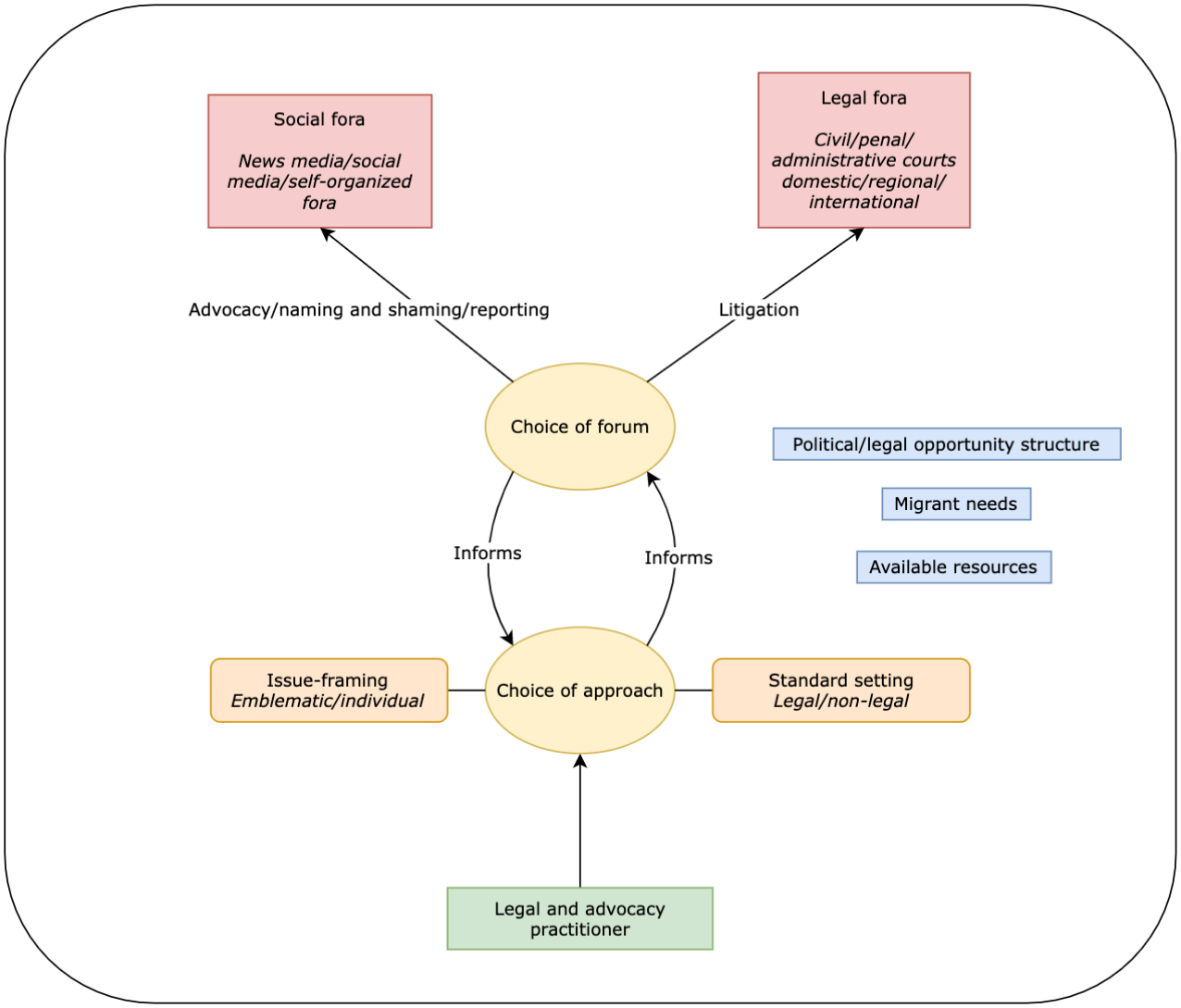

Figure 1. Conceptual model Accountability Strategizing

3: Methodology

3.1 A qualitative, comparative case study

The qualitative research strategy that is employed to study accountability strategies of legal and advocacy practitioners entails two steps, involving a document analysis and semi-structured interviews. The research employs comparative case study design. A case study is defined by Yin (2008) as "an empirical inquiry that investigates a contemporary phenomenon (the "case") in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident" (p. 90). The comparative design allows for an interpretation of similarities and differences between two cases. A small-*N* design is used, whereby two cases are selected on country basis, as country context are assumed decisive for findings on practitioners' accountability strategies. While a small-*N* comparative case study design does not allow for making large generalizations about non-EU contexts in general, it does make it possible to discuss differences between more detailed findings and develop theoretical expectations for further research.

3.2 Case selection

Yin (2008) argues that with multiple-case designs, case selection can be based on a "prediction of contrasting results but for anticipatable reasons" (p. 189). Country cases Morocco and Libya were purposefully selected for this research, as both countries cooperate in EU external migration policy initiatives to similar extents. Morocco and Libya are categorized as neighbourhood association countries in Lavenex & Ucarer's (2004) typology of institutional linkages to the EU, as their geographical proximity to the EU, their sharing of a maritime border with the EU and migrant profiles and trends have prompted EU entities and individual member states "to develop a more explicit migration dimension to its foreign policies toward these countries" (p. 433) and to initiate cooperation with Morocco and Libya on specific following policy domains: readmission of irregular migrants, exit border controls, joint naval patrols and the reception of asylum seekers. Cooperation between EU entities, member states and neighbourhood association countries is described as sectoral and driven by short-term interests on both sides, characterized by conditionality (Lavenex & Ucarer, 2004; El Qadim, 2018). On the other hand, Morocco and Libya were selected as their different scores on a number of political indicators used from existing indices were assumed to lead to different findings. Yin (2008) argues that with multiple-case designs, case selection can be based on a "prediction of contrasting results but for anticipatable reasons" (p. 189). This is called a *most-different* case selection according to Gerring (2007).

As literature established that the political and legal opportunity structures present within country contexts potentially constrain or enable accountability strategies, indicators were chosen that relate to this structure. Two political indicators *state legitimacy* and *human rights and rule of law* were selected from the Fragile State Index (FSI) from The Fund for Peace (2018). The first indicator looks at the trust of the population in state institutions while the latter considers to what extent human rights are protected in the relationship between the state and the population. In 2021, Morocco ranked 83rd and Libya 17th on the FSI in general. To further confirm the difference between the two cases, two political indicators from The Worldwide Governance Indicators (WGI) project were selected (World Bank, n.d.) named *voice and accountability* and *political stability and absence of violence. Voice and accountability* concerns the populations perceptions of political participation and freedom of expression, while *political stability and*

absence of violence considers the populations' perceptions on political stability. Scores from Morocco and Libya on FSI and WGI indicators are given in Table 1 below.

Based on the literature, it is expected that the difference in scores on these indicators lead to different findings on practitioners' accountability strategies. Through qualitative, interpretive research, I aim to understand how contextual factors affect practitioners' ability to perform their roles as accountability holders on these territories, and, by case comparison, develop theoretical expectations on how potential differences can be explained by their contexts. Given the fact that this research employs an interpretive, comparative case study design, findings from this research are contextualized and cannot generalized to other country contexts.

	FSI (2021)		**WGI (2020)**	
	Scale: 0-10 (0 being most stable, 10 being least stable)		Scale: -2.5 to 2.5 (-2.5 being worst governance, 2.5 being best governance)	
	State legitimacy	*Human rights and rule of law*	*Voice and accountability*	*Political stability and absence of violence*
Morocco	6.1	5.6	-0.61	-0.33
Libya	9.9	9.1	-1.48	-2.41

Table 1. Morocco and Libya scores on political/legal indicators from FSI and WGI.

3.3 Data collection methods: qualitative mixed methods

3.3.1 Secondary data collection: document analysis

The first research method employed is a qualitative document analysis, to map EU external relations on migration with country cases, their domestic legislations and international conventions ratified migrant protection. In this way, the policy and legal background against which practitioners operate is set out to inform subsequent data collection. Kvale (1996) suggests that an interviewer should be thoroughly familiar with the interview topic, to be able to comprehend contextual factors that interviewees refer to. Findings from the document analysis enable me to embed interviewees' answers and keep the interview conversation going on topics of relevance without interruptions.

The document analysis involved multiple sampling strategies. First, web pages of the EC on cooperation with Morocco and Libya were consulted for relevant agreements on migration. These web pages contain an overview of EU initiatives and financing instruments, with sub-links to pages where initiatives were explained more in-depth. Policy documents on EU-Morocco and EU-Libya migration cooperation that were linked on these web pages were analyzed. Second, Google advanced searches were conducted to obtain grey literature sources such as expert reports, news articles and additional policy documents. Finally, a Boolean search was conducted on Scopus to obtain peer-reviewed articles that provided analyses of EU-Morocco and EU-Libya external migration policy. The online searches were conducted in October 2021 and the time range of all searches was set from the year 2010 up to now. After conducting the Google advanced and scopus searches, sampled sources were screened for their relevance, applying inclusion criteria to select relevant documents for a full-read. The document analysis strategy is further elaborated in Appendix I.

Through this document analysis, an overview of EU relations to Morocco and Libya on migration is provided, but it is beyond it's aim to give an historic or in-depth analysis of all regional, multi-country policy processes that engage the EU, Morocco and Libya on this issue. Only the instruments and projects that had significant outcomes for Morocco's and Libya's current migration policies are considered. Additionally, a mapping of Moroccan and Libyan domestic legislation and international conventions ratified on migrant protection does not give an exhaustive overview of all legal frameworks that apply to situation of migrants. Only an overview of relevant legislation and ratified conventions on migrant and refugee protection is given.

3.3.2 Primary data collection: semi-structured interviews

As second method for data collection, qualitative expert interviews with legal and advocacy practitioners that operate in Morocco and Libya were conducted. Brinkmann (2018) suggests that qualitative interviews are conducted by a researcher with the *purpose* of acquiring participants' *descriptions* of their *lifeworlds* and creating knowledge based on the *interpretation of meaning*. Qualitative interviews make it possible to centralize practitioners' perspectives and allow for an in-depth understanding of their experiences with accountability (Yang, 2014). Accountability is described by Yang (2014) an "emergent property": something that changes and shifts meaning as actors interact. Therefore, "its manifestation or implementation cannot be separated from actors' values, perceptions, interpretations and strategic responses (Yang, 2014)," and should be clarified through interpretive research, obtaining data from special individuals who experience accountability in their daily life. Day and Klein (1987) also argue for the necessity to gain more understanding of the perspectives of individuals who serve as critical links in accountability systems.

Semi-structured interviews were opted for to allow practitioners to elaborate on the things that they find important to describe their experiences and to interrupt the interviewer with what they deemed relevant. A conversational structure was provided by an interview guide that operationalized the conceptual framework on accountability. But, a flexible approach, attentive of participant responses was required to be open to participants' ideas that exist outside of the scope of the conceptual framework.

Participant sampling

As legal and advocacy practitioners were identified as relevant population for the semi-structured interview, a purposeful snowball sampling strategy was employed. Legal and advocacy practitioners are assumed to be familiar with human rights and refugee law, migrants needs and engaged in strategies to hold state and non-state actors implementing migration control policies accountable (Tan & Gammeltoft-Hansen, 2020). Because of the COVID-19 pandemic and travel restrictions, sampling was limited to online channels in approaching participants. For this research, a total of 14 participants were sampled, 7 from Morocco and 7 from Libya. Multiple strategies were employed to sample participants through online services. First, emails were sent to Moroccan and Libyan NGOs and human rights organizations in the field of migrant protection and requested to share their networks of practitioners. It was presumed that these NGOs provided a possible link to networks of practitioners. Also, practitioners were approached through Linkedin, based on searches on relevant terms. As the first interview participants were sampled, the snowball sampling technique was employed as new participants were identified through referral of others.

Ethical considerations

The semi-structured interview method necessitates a reflection on ethical considerations and positionality of myself as an interviewer. In conducting social science research, Hammersly & Atkinson (2007) distinguish the following ethical principles to adhere to:

1) Establishing *informed consent* on the part of the participants.
2) Ensure that *privacy* of the participants is safeguarded.
3) Ensure that no *harm* is done to the participants.
4) Ensure that the field of research is not *exploited.*

Establishing informed consent refers to the participants' agreement to partaking in the research, being informed completely of its content and purposes. Hammersly & Atkinson (2007) argue that it is never possible for the interviewee to be fully informed of what the research is about, as the provision of too much information on the topic possibly steers interviewees answers. In this research, interview participants were informed about the basic themes of this research prior to the interview. Participants were asked whether they agree to the recording of and note taking throughout the interview and the use of the information provided by them for a master's thesis research. The participants were asked whether they agreed to the use of their anonimized quotes in the report. Also, they were informed that they could always provide additional comments through email. Concerning participants' privacy, it was ensured at the beginning of the interview that all interview data was kept confidentially and that participants' anonymity would be guarded as their names and personal information were removed from the transcripts. Due to COVID-19 travel restrictions (Morocco) and safety restrictions (Libya), the interviews were conducted through Microsoft Teams. Full confidentiality of information shared during the interviews cannot be guaranteed as virtual services have been accused of privacy issues.

With regards to the no harm principle, Hammersly & Atkinson (2007) distinguish between different types of harms that could be caused by social science research. Interviews about certain topics could worsen or create anxiety on the part of the participant and results could have negative effects on their public reputations and material circumstances. As practitioners in the field of migration and asylum law often work with vulnerable individuals, such as irregular migrants and refugees, it is possible that they do not want to share confidential information about their clients' situations or possible accountability strategies, as this could potentially do harm. I emphasized that personal information about their clients was anonymized and kept confidentially and that they should let me know that they do not want to go into detail about a certain case they work on.

On the principle of no exploitation, Hammersly & Atkinson (2007) argue that participants often provide crucial information while getting nothing in return. As practitioners in the field of migrant protection were identified as population for the interviews, whose time and resources are often limited, this is a significant challenge. I was not able to give interviewees anything in return for their participation in my research. The time that they spent on the interviews could have been spent on delivering legal services to vulnerable migrants in need. On the other hand, one of the main objectives of this research is to serve as a resource for legal practitioners themselves to gain insight into the challenges to accountability and best practices of others in the field. Thus, the research as an output itself could contribute to more effective

accountability strategizing. The aim was, therefore, to 'give back' with the knowledge and insights produced with this research. I sent participants the digital research after it was completed.

As last important ethical consideration to take into account in conducting social science research is my own positionality as researcher. My predominantly academic understanding of the research topic whilst lacking working experience in the field of migrant and refugee law and in-depth knowledge of its technical intricacies, all pose challenges to the validity of this research. It is very likely that I will not be completely familiar with legal and advocacy jargon that practitioners use. My lack of experience in this specific field limits me in my ability to interpret their experiences.

3.3.3 Interview data analysis

The conceptual framework *accountability strategizing* was operationalized in the itemlist prepared for this interview and data analysis. The itemlist allows for a certain flexibility to ask further questions and deepen the understanding of the diverse perspectives of participants (Bryman, 2016). The itemlist was organized around sub-dimensions of accountability as clarified in chapter two and followed a "funnel" structure, where more general (contextual) questions were posed at the beginning of the interview, while more specifying questions about accountability strategies and efforts were posed towards the ending.

As a first item, the rights situation of migrants and refugees within their countries were discussed with participants, to gain understanding of the rights violations that occur, the actors responsible and the legal protection of migrants. As a second item, participants were asked about their role as accountability holders, the specific activities that they engaged in in migrant protection and how these relate to accountability. As a third item, legal accountability strategies were discussed. Practitioners were asked about the functioning of legal fora and whether and how they take legal action. Practitioners were asked to give examples of migrant cases that they brought to court and elaborate on the approach of their accountability strategies more in-depth, such as the type of fora they turned to, the legal standards that they applied and whether individual or emblematic cases were litigated. This allowed me to gain more understanding of how legal accountability strategies are formulated, what the obstacles or opportunities are that practitioners take into account and what outcomes are. As a fourth item, social accountability strategies and efforts aimed at seeking remedies for migrants were discussed. Practitioners were asked about what action is undertaken outside of legal action, towards whom this action is directed and what the outcomes are. Again, practitioners were asked to elaborate on the different aspects of the social accountability strategies, such as fora and standards used, which cases were put forward and other elements. Lastly, legal practitioners were asked reflect on the future of their work and asked if they had any specific advice to others in the field. The complete itemlists for interviews with legal practitioners operating in Morocco and Libya is included in Appendix II. While this itemlist provided the general structure for the interviews, it was further adjusted to desk research on practitioners' occupations and activities prior to each interview. As some practitioners engaged more in legal accountability strategizing, while others engaged more in other social forms of accountability strategizing, These itemlists are refined based on findings from the literature review and policy document analysis.

All semi-structured interviews were transcribed and coded for analysis. Interviews were transcribed in *intelligent verbatim*, meaning that repetition, pauses and stammerings are left out. As legal practitioners are asked to give descriptions of experiences from their field of work, conversational behaviour during the

interview is assumed irrelevant and strict transcription is not necessary. After transcription, a hybrid approach was taken in coding the transcripts, combining deductive and inductive coding. Codes are considered ‘‘tags or labels for assigning units of meaning to the descriptive or inferential information compiled during a study (Miles and Huberman, 1994, p. 56).” A theory-driven codebook (Appendix III) was developed before conducting the interviews, operationalizing the theoretical framework on accountability. These theory-driven codes were applied to the data and their relevance was assessed. When codes were deemed non-applicable, they were either let go or adjusted. After these codes were applied, additional data-driven codes were identified through open coding. After that linkages between identified data-driven codes and theory-driven codes were sought and smaller codes were aggregated under larger thematic codes. The program Atlas.ti was used for transcription and coding. After the coding process, data analysis and interpretation followed.

3.4 Limitations

The design of this comparative case study is subject to limitations that are described in this section. The limitations of the qualitative design and limits to the transferability and credibility of findings are consecutively discussed. Finally, weaknesses of the methods employed are considered.

While qualitative research into accountability has the advantage of allowing for thick, interpreted understandings of the phenomenon within its specific contexts, findings cannot be systemically compared to other accountability research. Brandsma (2014) argues that most empirical findings on accountability are not cumulative, “leaving the actual workings of accountability poorly understood beyond the domains of single cases.” While the purpose of this study is to contribute to the advancement of a specific field, its findings could provide theoretical expectations that could support quantitative research.

Guba and Lincoln (1994) argue that qualitative research should be evaluated based on different criteria than those used with quantitative research, namely *transferability* and *credibility*. With regards to *transferability*, Guba and Lincoln (1994) suggest that this is subject to empirical inquiry. While findings from this comparative small-N study could provide theoretical expectations that could inform larger N-studies, research methods should be adjusted to other case contexts and their findings will very likely be influenced by different contexts. As this study is limited to two country cases, its findings are unlikely to be of use for practitioners operating in other non-EU contexts. Also, as due to the small sample of interviewees, it is questionable whether findings are representative of the whole population of practitioners operating in Morocco and Libya.

Credibility refers to whether the researcher has carried out the research according to good practice and whether it has correctly understood the phenomenon of study. In this regard, the identification of legal practitioners as expert informants should be reflected upon. It is possible that practitioners’ perceptions of accountability and of the effectiveness of strategies pursued differ from migrants’ own perceptions. To understand whether accountability strategies have led to desired outcomes, it could be argued that the perspectives of individuals whose rights it concerns are of primary interest, who are to judge whether or not their violators have been held accountable. For two reasons, migrants were not selected as population for the interviews. First, migrants often lack the resources, knowledge and networks to establish accountability relations in foreign countries. Legal practitioners are identified as both familiar with the EU external migration policy field, accountability fora and functions as well as directly engaging with migrants and

refugees over their needs and interests (Tan & Gammeltoft-Hansen, 2020). Second, practitioners were selected as population because of migrants' perceived vulnerability, as they are often held in detention or hiding from state authorities. Such vulnerable individuals are difficult to approach and their participation in the research could leave them exposed, cause stress, fear or other types of harm to them.

Research methods employed are subject to limitations. The document analysis is limited to English, online sources published by research journals or governments. Oral correspondence between EU, member state, Moroccan and Libyan state actors during formal meetings, informal and private correspondence, non-digitalized documents as well as many other sources of information on Moroccan and Libyan cooperation in EU external migration policy initiatives are left out. This is problematic, especially because EU and 'third country' state actors have continuously been accused of intransparency over cooperation by media outlets and NGOs (EuromedRights, 2019, Amnesty International, 2015). What is written in documents may not reflect the policies that are implemented in real-life. Also, the existence of legal frameworks on migration in Morocco and Libya does not imply their effectiveness. Moreover, because of the scope of this research, I will only be able to conduct an in-depth study a limited number of arrangements.

Some of the interview limitations have been addressed earlier. Additionally, it should be mentioned that in the interview, it is likely that participants do not want to talk about failures or disappointments in their work, as they could be afraid that this is associated with their individual incompetence. As such, findings on ineffective accountability strategies should be treated with caution. It could be argued that, to overcome challenges such as the interviewees' dishonest answers or the researcher's lack of knowledge, participant observation as a qualitative method could be employed to allow for a triangulation of data on the role of legal practitioners and the strategies they pursue. According to Bryman (2016), "Participant observation has the potential to come closer to a naturalistic emphasis, because the qualitative re- searcher confronts members of a social setting in their natural environments." Due to travel restrictions imposed based on COVID-19 and safety issues, I was unable to conduct participant observation, which would have been a valuable additional research method.

4: Migration relations with the EU and domestic legislation

In this chapter, findings from the document analysis on EU external migration relations with Morocco and Libya, their domestic legislation on migration and the international conventions on migrant protection that they ratified are presented. I found five overarching EU policy frameworks that shape the EUs bilateral migration relations with Morocco and Libya: 1) the European Neighbourhood policy, 2) the Global Approach to Migration and Mobility, 3) the Common Security and Defence Policy, 4) the EU Trust Fund for Africa and 5) the New Pact on Migration and Asylum. Also, I identified that both Morocco (Law n° 02-03) and Libya (Law n° 19) have specific domestic laws on irregular immigration and stay. Results are consecutively presented for both country cases.

4.1 EU external relations migration policy

Bilateral relations under the European Neighbourhood Policy

From the 2000s onwards, the EU pursued cooperation on migration with third countries in distinctive ways. The European Neighbourhood Policy (ENP) was implemented in 2003 as the foreign relations instrument that coordinates EU external action towards neighbouring countries. The ENP is a "blanket framework" (Macaulay Miller, 2019, p. 21) and is layered with more specific regional, bilateral or multilateral cooperation agreements (Hennebry et al., 2014). While with Morocco, EU relations were formalized through legal frameworks for cooperation under the ENP, with Libya, cooperation developed as incidental EU financial assistance without a full-fledged partnership. How this assistance relates to the ENP is less clear.

The ECs High-Level Working Group (HLWG) on Asylum and Migration developed an action plan for Morocco amongst other neighbouring countries selected based on the high number of migrants and asylum seekers that entered Europe from or through their territories (HLWG, 1999). Based on the HLWGs action plan, a permanent EU-Morocco migration dialogue was established through a subsequent Association Agreement (AA) that served legal basis for bilateral cooperation (Wolff, 2014). The AA put in place a council, engaging EU and Morocco ministers in dialogues on the operational priorities for EU-Morocco cooperation for yearly or multi-annual action plans (European Commission, n.d.1). Council negotiations advanced throughout the 2000s, with the EU putting emphasis on the conclusion of an EU-wide Readmission Agreement (EURA) (El Qadim, 2017; Natter, 2014). While Morocco has concluded readmission agreements with several EU member states, it has refused to agree to an EURA, due to the third country national clause, obligating it to readmit irregular third country nationals that have transited through Moroccan territories (Carrera et al., 2016). In return for an EURA, the EU has offered Morocco accompanying visa facilitation possibilities, but up until now, Morocco has deemed costs of readmitting third country nationals too high to concede. In 2010, EURA negotiations with Morocco were suspended after 15 rounds of negotiations (Den Hertog, 2016). In the Council's action plan in 2005, it is mentioned that dialogue on migration as well as cross border cooperation should be strengthened between the two countries (European Commission, 2005). The EU emphasized the security dimension in cooperation, while Morocco wished that socio-economic considerations of migration were also included. In 2008, the EU attributed an Advanced Status to Morocco within the ENP framework, which, according to Govantes (2018), can be considered as a symbolic recognition of Morocco as strategic partner, without leading to any real policy changes with regards to their

cooperation. Direct budget support to Moroccan government agencies for migration under the ENPs financial instrument, the European Neighbourhood Instrument (ENI), was afforded for the institutional support to improve border management and anti-trafficking measures (Council of the European Union, 2021).

Without similarly formalizing bilateral relations through an ENP association agreement, the EU established more informal relations with Libya on migration throughout the same period (Cusumano, 2019). According to Bosse (2011), "the partial inclusion of Libya into the ENP clearly reflects the increasing role of the EU's internal security concerns vis-à-vis the country and a change in policy as concerns the instruments with which to pursue its goal" (p. 447). While the EU laid down economic sanctions on Libya before the turn of the century due to its support of terrorism, it reconsidered its stance towards its neighbour in 2004, after an exploratory mission was sent to find out whether Libya was willing to cooperate on migration, and a subsequent technical mission to identify the grounds for cooperation (Hamood, 2008). The report of the technical mission prioritized cooperation in the area of border management. While a legal framework for cooperation remained absent, the EU started to provide financial assistance to Libya from 2004 onwards, by committing 2 million euros to the strengthening of Libya's southern borders and 3.5 million to capacity-building of Libyan migration officers, under the 2008 EU thematic Action Plan for migration and asylum. A plan to formalize EU-Libya cooperation was drafted in 2006, but never formally implemented (Hamood, 2008). In 2007, the commission made renewed efforts to engage in negotiations with Libya on a framework agreement (Joffé, 2011). This framework agreement includes areas of common interest, such as international security, energy and migration, but is not to be understood as full-fledged AA, as no permanent dialogue is established, but existing forms of cooperation are acknowledged. While bilateral cooperation between the EU and Libya is fragmented, bilateral relations between Italy and Libya are more formalized. An agreement between the two countries was signed in the 2000s on cooperation in different security related areas, establishing a permanent exchange between security officers on both sides (Lutterbeck, 2009). Border control equipment and financial aid to building detention centers and operating repatriation flights was provided by Italy to Libya under this agreement, mounting to approximately 5.5 million euros (Lutterbeck, 2009). In 2008, Libya and Italy further signed a Friendship Treaty that formalized points of action for cooperation on migration control.

The Global Approach to Migration and Mobility

The Global Approach to Migration and Mobility (GAMM) was adopted in 2005 to guide EU external migration policy as framework for dialogues and cooperation with non-EU countries under the ENP. Mobility Partnerships (MP) were devised as the GAMMs principal bilateral cooperation frameworks, tailor-made to engaged third countries (European Commission, 2011a). These partnerships were non-legally binding soft policy declarations to facilitate bilateral partnerships between member states and third countries (Tittel-Mosser, 2018). Countries that were not targeted for MPs were engaged in dialogues on common agendas for migration.

Morocco signed a MP with the EU and nine member States in 2013 (Council of the European Union, 2013). The four areas of operational priority that were laid down, in line with existing EU-Morocco cooperation, were:

1. legal migration and labour mobility

2. migration and development
3. the combat of illegal migration and promotion effective return
4. migrant and refugee protection (Council of the European Union, 2013).

For the first operational priority, continued cooperation on readmission between Morocco and member states and a political commitment to resume EURA negotiations were defined as key activities (which were suspended again in 2015). For the second operational priority, EU and member state development funding to tackling irregular migration was proposed. For the third operational priority, institutional, legislative and operational capacity-building and information exchange between the EU agencies, members states and Morocco were projected. Finally, for the fourth operational priority, EU capacity-building of the Moroccan asylum framework are formulated. Several projects were proposed under the MP, funded with the ENI, the EUs Development Cooperation Instrument and bilateral member state funding. The project scoreboard shows that from the initial 37 projects that were listed in the 2013 declaration, 28 projects were aimed at combating irregular migration, 14 at legal migration, 7 projects at migration and development and 6 projects for migrant protection (Wolff, 2014). The main MP projects are two MIEUX projects aimed at capacity-building of Moroccan authorities to implement the National Strategy on Immigration and Asylum (NSIA), fight human trafficking and establish asylum procedures, that were implemented by the International Centre for Migration Policy Development (ICMPD) and lasted from April 2013 until April 2019 (Tittel-Mosser, 2018). The Sharaka project was another project aimed at institutional support to the Moroccan implementation of the NSIA, implemented by Expertise France.

While Libya was not targeted for a MP under the GAMM, the EC and Libya agreed on a Memorandum of Understanding (MoU) in October 2010 that provided the basis for financial assistance in the field of migration control for the period 2011-2013 that reached approximately 50 million euros (European Commission, 2010). In the Migration Cooperation Agenda under the MoU, concrete plans for EU assistance to border surveillance systems and anti-trafficking measures were proposed (Bosse, 2011). The funding proposed in this agenda would be complementary to existing funding. While cooperation on aspects such as migrant protection is also proposed, border control and the fight against illegal migration plans are more elaborate. As the Ghaddafi regime was overthrown in August 2011 and Libya entered into civil war, EU cooperation with the Libyan government was suspended. In the GAMM communication of 2011, the EC proposes to relaunch a dialogue on migration and mobility with Libya “as soon as the political situation permits” (European Commission, 2011b).

Throughout the years with interim governments, Libya did receive support under the EUs Common Security and Defence Policy (CSDP) by two military missions, the European Union Border Assistance Mission (EUBAM) Libya and the EUNAVFOR MED Operation Sophia (European Commission, n.d.b). The EUBAM mission was established in 2013 by the EC to support Libyan border management and provide capacity-building to strengthen the institutional framework on migration (Battaglia, 2017). However, EUBAM had limited impact and had to relocate to Tunisia because of increased instability in Libya, where it merely mapped the different Libyan agencies involved in border management. The EUNAVFOR MED Operation Sophia was established in 2015, tasked with mapping smuggling activity along the Central Mediterranean route and conducting search operations on the high seas. In 2016, two tasks were added to the mandate of the EUNAVFOR MED: training of the Libyan Coast Guard and enforcing the UN arms embargo (Baldwin-Edwards & Lutterbeck, 2019). Under EUNAFVOR MED, the Libyan coastguard was provided

with 16 patrol vessels, up to 500 Libyan personnel was trained and the Government of National Accord (GNA, interim government since 2015) was supported in declaring the Libyan Search and Rescue Region under the International Maritime Organization (Amnesty International, 2020). After providing capacity-building and training equipment, the EUNAFVOR MED has delegated responsibility for rescue operations to the Libyan coastguard and withdrawn its own vessels.

The Valletta Summit and the EUTF (2015)

As the influx of migrants and refugees to the EU surged during the 2015 refugee crisis, the EU intensified its efforts at enlisting neighbouring countries' into cooperation on border management and refugee reception. Both Morocco and Libya participated in the Valletta Summit that brought together European and African leaders for the development of a common action plan to address the crisis, leading to the establishment of the multi-donor EU Trust Fund (EUTF) for Africa. Until now, the EUTF is the main financial instrument funding EU external migration and development projects, adjusted to changing needs and resting upon four priority areas: 1) Greater economic and employment opportunities, 2) Strengthening resilience of communities, 3) Improved migration management, and 4) Improved governance and conflict prevention (European Commission, n.d.).

EUTF funding for migration projects in Morocco currently amounts to around 236 million, out of the 343 million total EU funding for Morocco for migration cooperation (European Commission, n.d.). While 28,3 million EUTF funding is attributed to migrant protection and 20,5 million to socio-economic integration of migrants, 190 million is attributed to institutional support and border management (European Commission, n.d.). Thus, similarly to the MP, most EUTF projects are in support of restrictive measures. Two EUTF projects in the area of institutional support and border management are implemented worth 44 million and 101,7 million, providing EU capacity-building to the Moroccan institutional framework, border management and policies to tackle irregular migration and human trafficking. While EUTF projects in the areas of migrant protection and socio-economic integration also exist, funding for these projects is minimal. The implementing partners of the EUTF projects in Morocco mentioned on the website and the EUTF factsheet are mostly international organizations from member states Belgium, Spain, Germany and France, as well as the ICMPD. Moroccan organizations are rarely made primarily responsible for implementation. In June 2019, the EU-Morocco Association Council issued a Joint Declaration giving new impetus to bilateral cooperation for the period 2019-2020 in line with existing cooperation objectives (European Commission, 2019).

The EUTF projects for Libya were developed in line with cooperation priorities set out in two communications, the Malta Declaration and the 2017 EU-Libya Joint Communication. Both communications propose renewed EU-Libya joint action against irregular migration and human trafficking along the Central Mediterranean route and EU support to the Libyan Coast Guard (Council of the European Union, 2017; European Commission, 2017). Additionally, a renewed MoU between Italy and the Libyan GNA was incorporated in the Malta Declaration, adding Italian technical and financial bilateral support to Libya, such as training and equipment to the Libyan Coast Guard, construction of detention centers and support for repatriation flights organized by international organizations such as the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR). Bilateral activities funded by the Italian government are complemented by EUTF funding through the Malta Declaration. EUTF

funded migration projects in Libya currently amount to 455 million euros, making Libya the main beneficiary of the EUTF North Africa Window (European Commission, n.d.). This funding is divided in projects in three different thematic areas: protection and assistance to those in need, stabilisation of Libyan municipalities and integrated border management. The EU committed 91.3 million euros to projects within the latter thematic area to provide institutional support, and support to the establishment of a maritime rescue coordination center, implemented by the Italian Ministry of Interior. Major projects in the first and second thematic area include two projects of 99.6 million and 75 million aimed at expanding protection space and humanitarian assistance to migrants inside Libya and a 56 million project to establish evacuation mechanisms for the repatriation of stranded migrants to country of origin. Projects are mainly implemented by UN agencies. Outside of the EUTF, the Italian government has additionally donated 12 patrol vessels to the Libyan Coast Guard and another 6 in 2020 (El Zaidy, 2019).

The New Pact on Migration and Asylum (2020)

In September 2020, the EC presented the New Pact on Migration and Asylum as a fresh start in European migration policy, but many (Polman, 2020; Kirişci et al., 2020) argue that it is in fact much of the same as previous EU policy-making, as it prioritizes a common response in areas of border management and prevention irregular migration over areas such as migrant protection and legal migration. Mutually beneficial partnerships with third countries remain a priority pact in the New Pact. The EU Observer obtained leaked EC draft proposals for cooperation with Morocco and Libya under the new pact, dated October 2021 that outline the EU objectives towards both countries for the period 2021-2027 (EU Observer, 2021). Objectives for Morocco remain the same as in the 2019 Joint Declaration, but activities are elaborated more in detail (Council of the European Union, 2021a). The document proposes sustained EU support for the implementation of the Morocco's NSIA and strengthening of Morocco's border management, migrant integration programmes, support to a national commission to fight human trafficking and support to awareness raising campaigns on the dangers of irregular migration. The EU proposes technical dialogues and working arrangements between FRONTEX, EASO and Moroccan authorities.

The Libya document suggests that stabilisation of the situation in Libya would offer an opportunity to establish an EU-Libya migration partnership framework and that this could be explored after the parliamentary elections in December 2021 (Council of the European Union, 2021b). Current objectives are support to humanitarian evacuations of migrants and Libyans in distress, as well as capacity-building to develop the Libyan migration and asylum system, upport to anti-smuggling measures and border management. Also, the EU reinstates its support to emergency assistance at disembarkation points as well as inside detention centers and urban areas provided by international organizations and UN agencies. Further, the document mentions that the EU will assess options to engage in dialogue with the Ministry of Justice on arbitrary detention of migrants and alternatives. Also, it is mentioned that EUBAM and EUNAVFOR operations are to continue.

To conclude, it is suggested that since the turn of the century, EU migration relations with Morocco developed through formalized agreements such as the AA under the ENP and the MP under the GAMM. EU relations with Libya were characterized by fragmented financial assistance, while more integrated bilateral cooperation with Italy developed over the years. Due to instability created by civil war, EU support to Libya was interrupted and less stable as compared to Morocco. On the other hand, it is suggested that EU funding

to both countries was committed to similar migration policy domains over the years. Morocco and Libya increasingly received EU financial and capacity-building support to scale-up border management and anti-trafficking measures. Currently, both countries are the largest receivers of EUTF funding under its North Africa Window. While Morocco receives support to implement a more integral migration policy strategy, this has remained absent in Libya due to continued instability where support has obtained a security and humanitarian dimension. In projected cooperation with both countries under the New Pact, EU support to restrictive policies remains prioritized.

4.2 Domestic legislation and ratified conventions

While clauses relevant to migrant protection can be found across multiple Moroccan and Libyan legal sources, both countries adopted specific legislation on irregular immigration and stay. Law n° 02-03 on the (illegal) entry and stay of foreigners was adopted in Morocco in November 2003 (Law n° 02-03 of 2003). Article 1 of the law states that it is subject to international conventions. The law requires that any foreigner on Moroccan territory is to hold either a registration card or residence permit (art. 6) and should leave Moroccan territory within 15 days in case this card is withdrawn or refused. Further, the law contains provisions on the deportation to the border (art. 21) in case of irregular stay, provisions on expulsion (art. 26) and provisions on appeal of these decisions, (art. 33). Article 29 of the law protects the status of refugees as it is stipulated that: “no foreigner can be expelled to a country if he establishes that his life or liberty are threatened or if he will be exposed to inhuman, cruel, or degrading treatment.”

In Libya, Law n° 19 on the “combatting of illegal immigration” was adopted in 2010, that contains a definition of an illegal migrant and acts of illegal migration (art. 1 and 2), penalties for illegal migration (art. 6) by hard labour or fines not exceeding 1000 dinar (190 euros), penalties for employment of illegal migrants (art. 3) by fines not exceeding 3000 dinar (570 euros) and penalties for migrant smuggling (art. 4) by penalies of imprisonment or fines up ranging between 5000 and 30.000 dinars (950 to 5700 euros). It also contains provision on the deportation process (art. 6) (Law n° 19 of 2010). The law states that, upon the arrest of illegal immigrants, their rights shall be respected and their money and property will not be violated (art. 10). In 2014 the Department of Combating Illegal Migration was established by the Libyan Ministry of Interior to enforce Law n° 19 (El Zaidy, 2019). While both laws criminalize irregular entry and stay, the Moroccan law is more elaborate and contains provisions on migrants’ entitlements in case of arrest or decision to deportation or expulsion compared to its Libyan counterpart.

Other than specific immigration law, the constitutions of both countries are relevant legal sources to migrants rights. The Moroccan constitution was reformed in July 2011 in response to Arab Spring demands from the Moroccan February 4th movement (Euro-Mediterranean Human Rights Network, 2012). Most significantly for the situation of migrants rights in Morocco, the constitution recognizes international instruments that Morocco has ratified as superior domestic legislation in its preamble and states that Morocco makes efforts to harmonize domestic legislation in accordance with ratified conventions (Constitution, 2011). Other than that, the Moroccan constitution includes provisions on the prohibition of arbitrary detention (art. 23) and on the granting of the right to asylum (art. 30), that is said to be defined in the law, but that has not been substantiated by any legislation up until now.

After the 2011 fall of the Ghaddafi government, the National Transitional Council drafted a new constitution that updated the constitution of 1951 (UNHCR, 2019). In this constitution, the right to asylum is

provided under article 10, along with the prohibition to extradite political refugees, but domestic legislation that implements this right remains absent (Constitutional Declaration, 2011). As a result of this, asylum seekers and refugees that enter or are disembarked in Libya without documentation are subject Law n° 19, as there is no separate legislation pertaining to asylum law and procedures. In article 7 of the constitution, it is stated that the Libyan state "shall safeguard human rights and fundamental freedoms**,** endeavor to join regional and international declarations and covenants which protect these rights and freedoms." Any efforts to implement the latter commitment through national legislation remain absent (UNHCR, 2019).

As mentioned, Morocco differs from Libya as it implements a National Strategy on Immigration and Asylum (NSIA) since 2013. In response to civil society pressure with regards to migrants rights in the country and a report from the National Council of Human Rights, the Moroccan government recognized the need for a "humanitarian approach" to migration and asylum issues and adopted the NSIA, in which objectives related to migrant integration, legal and institutional reform and migration management in accordance with human rights principles are proposed (Euro-Mediterranean Human Rights Network, 2012). The strategy stipulates eleven programmes in different areas such as housing, education and health. Also, as part of the NSIA, two regularization campaigns of irregular migrants that were eligible based on specific requirements were implemented in 2014 and 2017. Additionally under the NSIA, Morocco passed Law no 27/14 on human trafficking in August 2016, introducing a definition of human trafficking, provisions on penalties as well as on the assistance of victims. Finally, the need for domestic asylum law and an asylum system was recognized under the NSIA, resulting in a draft asylum law (66/17) that was concluded in 2017 and submit to council in 2018, but that has not been adopted up until today (Knoll & Teevan, 2020).

With regards to international conventions on migrant protection ratified by both countries, the Geneva Convention of 1951 is considered first. The Convention and its 1967 protocol outline specific rights that refugees enjoy and state obligations to their protection (UNHCR, 1951). The Convention includes the international legal definition of a refugee, grants them a special status under international law and progressively affords them rights upon arrival in the country where they seek asylum, such as the right to non-discrimination (article 3), the right to wage earning employment (article 17), the right to housing (article 21) and education (article 22). Based on article 33 on non-refoulement, states cannot return or expel a person from there territories before an individualized asylum procedure that determines whether the life of the refugee would not be at risk when they are expelled. While states become bound by international conventions as they ratify these, international conventions still require domestic legislation to be able to effect them.

Morocco ratified the Geneva Convention, as the Royal Decree No. 2/57/1256 from August 1957 describes how the convention is to be applied, provides a scheme for how asylum is to be requested, criteria for refugee status determination and establishes an office that is given the authority to carry out this process, the BRA (*Bureau des Réfugiés et Apatrides*). While the BRA became inactive in 2004, it was reopend in 2013 to set up an asylum system. In the meantime, the UNHCR signed a cooperation agreement with Morocco in 2007 and was given the responsibility for the refugee determination procedure. The refugees that were registered by the BRA prior to its closure in 2004 have obtained a residence permit and economic and social rights as provided under the refugee convention, such as the right to work (Knoll & Teevan, 2020). While the UNHCR is currently mandated with the refugee determination procedure, it is not able to give refugees access to a residence permit, nor this set of rights.

Libya has not ratified the 1951 Geneva convention nor its 1967 protocol. Currently, the UNHCR operates in Libya without full recognition of the GNA, based on a working agreement from 2008 with the old Ghaddafi regime, and performs the registration, documentation and determination of refugee status as a national asylum system remains absent (UNHCR, 2019). Based the 2008 working agreement from 2008, the UNHCR is only allowed to register seven nationalities as refugees (Iraqi, Syrian, Palestinian, Eritrean, Ethiopian, Somali, Sudanese, South Sudanese, Yemeni) and therefore limited in its capacities to provide protection (UNHCR, 2019). The current GNA does allow the UNHCR and other organizations like the IOM to access detention centers to provide assistance.

A regional legal instrument that specifically relates to the rights of refugees is the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa (African Union, 1969). The Convention presents a regional complement to the 1951 Geneva Convention. While it similarly contains specific obligations of African countries with regards to the protection of refugees, it also contains clauses on cooperation between different OAU member states to share the burden of asylum seekers through resettlement and support. Both Morocco and Libya have ratified the OAU Convention, although Morocco has left the Organization of African Unity in 1984 but rejoined again in 2017.

Apart from the above specific conventions, there are also other human rights conventions that can be invoked to grant migrants access to specific rights. Morocco and Libya have ratified the International Covenant on Civil and Political Rights (ICCPR), that includes article 9 on a person's right to liberty and the prohibition of arbitrary detention. the International Covenant on Economic, Social and Cultural Rights (ICESCR), Additionally, both countries ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which commits states to actively prevent torture within their own jurisdictions, but also forbids expulsing people to territories outside of their jurisdiction where these will be subject to torture.

Relating to more specific subgroups of the population, Morocco and Libya have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child and its Optional Protocol (CRC), which grants access to birth certificates or registration to all children that are born on a country's soil. On the CEDAW, Libya made reservations with regards to article 2 (right to non-discriminination) and article 16 (non-discrimination in matters related to marriage and family) that implementation of this convention should be in accordance with *Shari'a* law (UNHCR, 2019). Further, Morocco and Libya have ratified the Convention on the Protection of All Migrant Workers, the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness, the Convention on the Abolition of Slavery, as well as the Convention on Maritime Search and Rescue. The latter convention requires states to assist any individual that is in distress at sea, deliver medical assistance and delivers them to a safe port.

5: Accountability Strategizing in Morocco and Libya

In this chapter, the analysis of interview data is thematically presented. The concept accountability strategizing was applied as analytical lense to study legal and advocacy practitioners' choice of accountability approach and fora and identify how contextual factors present obstacles and opportunities. Practitioners' strategies in Morocco and Libya are consecutively presented per accountability fora. An anonymized respondent list is included in appendix IV.

5.1 Accountability Strategizing in Morocco

5.1.1 Strategizing for domestic legal accountability

In Morocco, practitioners strategize to obtain legal accountability for rights violations by consistently directing action at domestic courts through provision of legal aid to migrants, such as translation or litigation in court (R1, R2, R3, R4, R5). Additionally, practitioners engage in awareness raising to migrants on their basic rights to enable them to make use of domestic courts themselves, as fora for accountability (R6). Domestic courts are resorted to to take legal action on both individual migrant cases and emblematic issues. Emblematic migrant issues identified by practitioners are arbitrary arrest and detention in illegal centers, forced displacement from border cities Nador, Oujda and Tanger towards cities in the center and South of Morocco or towards the border with Algeria, as well as refugees' inaccess to residence permits. Pertaining to these issues, practioners engage in strategic public interest litigation to try to effect change in government conduct. Individual cases, such as migrants whose rights are violated by other migrants or Moroccan citizens, are also taken to court. In action directed at domestic courts, practitioners apply domestic and international rights standards, mentioning their frequent use of domestic Law n° 02-03 as it contains many provisions on migrants rights. Practitioners describe Law n° 02-03 as problematic, due to its criminalization of irregular entry and stay, its incompleteness and its outdatedness (R1, R2, R3, R6). However, practitioners do consider the law useful for litigation and other legal action in court, as it, next to containing provisions on penalties on irregular stay, includes for limited entitlements such as appeal to the decision of extradition (R5). Practitioners confer that it is not so much domestic legislation as it is its partial implementation by domestic authorities that is problematic.

In many cases, legal action is further supported by standard setting based on international conventions. Practitioners mention their use of the Moroccan constitution as legal source, as it declares primacy of international law over Moroccan domestic legislation, to justify their use of international conventions. Conventions that are used by legal practitioners depend on the nature of the case, as some cases are a violation of the non-refoulement principle, while others concern a violation of the CAT or the CRC. Practitioners argue that their usage of international conventions in litigation can be useful, describing victories such as migrant children being pardoned or extradition cases being held back (R3, R4). A Moroccan lawyer in the field of migrant protection describes how in all legal action directed at domestic courts, he uses international law to support his litigation, even if there is corresponding domestic legislation in place.

"Judges are the most nationalist people in the country. They like national law the most. But, the constitution of Morocco states that the international laws that Morocco has ratified have primacy over national laws, on the condition that they are ratified. Even if there is a contradiction between international law and national law, it is the international law that we should apply. So at all times, I invoke international law. At all times. Even if there is already national law made for it, I still also invoke international law to support it. And in many judgements, the judges make references to the international laws themselves (R4, 2021)."

While legal action is directed at either penal, administrative, civil or other courts depending on the nature of cases, most practitioners operate in larger cities like Rabat and Casablanca and describe slight regional differences pertaining to how some courts deal with migrant cases as opposed to others (R3, R4, R6). Regulatory authorities in Rabat and Casablanca are described as more permissive, while authorities in Southern and bordering areas are said to be more tough in dealing with migrant cases. A member of a Moroccan human rights organization describes that how his organization engages with legal authorities in major cities on migrant issues, leading to these authorities being more willing to observe migrants rights issues. He reflects that in Moroccan localities outside of these larger cities, there might be less support due to unfamiliarity with migrant issues.

"I think that all courts deal with migrants in the same way. There are no differences between the courts. With the exception of, for example, those in Rabat, that are familiar with migrant cases, it is easier. So Rabat, Casablanca, where we have some activities with the tribunal, so they know what the problems are that exist. For example, when they see that a migrant is a child, they may pardon them. They accept those things easily. But we don't know what is happening in other towns, such as Beni-Mallal, if they are well aware of these situations, so it is possible that the person is arrested and expedited out of Morocco (R3, 202)."

One respondent is members of a migrants' rights group that works in different parts of Morocco and describes how her organization filed for a judicial inspection of arbitrary migrant detention by the government, right after the regularisation campaign as part of the NSIA ended in 2014. The group resorted to two administrative courts, one in Agadir and one in Casablanca. While the first was rejected, they got authorization at the latter court. Additionally, she points to differences in implementation of domestic migration legislation depending on the locality. In the bordering areas of Morocco, close to Spanish enclaves Ceuta and Melilla and Algeria, authorities are described as more severe in their treatment of migrants.

"Implementation can be very different in different places of Moroccon territory. If you look at near the border, like cities like Layoune or Tafaya or when you go in the South or Tangier, Tetouan, Oujda you can see that the implementation of rights of migrants and foreigners is very tough. Very very tough, and it's well known. Even the people know that they can be easily arrested and they have almost no rights. If you are a black foreigner in these part of Morocco, there is already some order that they can be arrested, they can be forcibly displaced. Anything can happen (R6, 2022)."

Migrants needs, specifically their lack of awareness on their legal rights and fear to come forward, are put forward by practitioners as complicating their legal accountability strateziging at the domestic level. Practitioners describe how migrants often refuse to 'complain,' are scared of going to court or are unaware of their legal entitlements in the first place (R1, R2, R6, R7). To support legal accountability strategizing, practitioners organize awareness raising and outreach campaigns to make migrants more aware of their legal rights. Two respondents that work at an organization that provides legal aid to migrants, describe that they often deal with cases of migrants who have been severely violated by others, but refuse any legal aid to seek

remedies (R1, R2). Another respondent adds that in some cases, taking legal action at the tribunal can have more harmful effects on the situation of the individual migrant, and migrants are afraid of these consequences or a possible counter judgement (R6).

Considering the political legal opportunity structure, practitioners indicate that the perceived lack of independence of Moroccan courts further complicates legal accountability strategizing at the domestic level (R5, R6). As practitioners direct legal action at domestic courts they suggest that courts are often not performing independently, do not respond to requests, or do not handle cases properly, depending on the issue at hand. Migrants right to appeal decisions is often violated due to courts' lack of independence specifically on migrant issues, as, according to respondents, court decisions are in line with the Moroccan political strategy on migration.

> "It could be like two years ago very easy, now very complicated. It's of course a question of the independence of the justice here in Morocco, and on some issue you can say that it's not there. I was talking about the aid for irregular immigration and I think nowadays it's issue that is important because it's actually a tool, a political tool to fight against irregular migration, and it's linked to all the cooperation with other countries like Spain. You can see that there is strengthening on this matter here in Morocco, on the field and in the tribunals, we never had that much condemnation for this issue before (R6, 2021)."

Another respondent describes how the letters from his organization to legal authorities in Nador are often left unanswered, but his organization keeps trying (R5). His' and other practitioners' accounts confirm that despite the lack of independence being perceived as a challenge, legal action at the domestic level is not entirely dismissed.

5.1.2 Strategizing to engage government authorities

Next to strategizing to obtain legal accountability, practitioners strategize to engage directly with Moroccan government authorities to seek remedies for migrants rights violations. Respondents distinguish between two approaches in strategizing directed at different government levels: strategizing pertaining to less urgent, emblematic issues on the one hand and to more urgent individual issues on the other hand (R1, R2, R3, R5). Towards higher level authorities like the Ministry of Interior, the Ministry of Foreign Affairs and the Ministry of Health, practitioners demand accountability for emblematic migrant issues, while with lower level authorities, like public services, they engage in negotiations on a case-by-case basis.

Towards higher level authorities, practitioners take a confrontational, rights-based approach and demand a change in government conduct towards migrants. Action ranges from protests organized in front of the Ministry of Interior, advocacy through open letters and yearly reports sent to authorities and the direct monitoring of government conduct, when it becomes known that there will be arbitrary arrest or evacuation of migrant slums (R3, R5). Confronting authorities with their presence at scenes of arrest or with information they received about arrests or displacements is put forward by practitioners as strategy to deter future rights violations. One respondent describes how his organization directly intervenes when authorities displace groups of migrants from Tangier or Tetouan to the border with Algeria, by requesting for due legal process.

> "It is not easy to take everybody out of Morocco because we will immediately expose this, also when we just have little information. We write and we call anyone responsible to tell them that we have two children that are arrested, or we have some women… So they know that. It is not easy to do it but they do it (R3, 2020)."

In reports and letters, government authorities are directly addressed as perpatrators of rights violations under both national and international law. A respondent describes how his organization does not shy away from naming and shaming of government authorities that are guilty of rights violations in the yearly reports that published on their website.

"We continue to work as an impartial organization, when we find out about bad practices of the authorities to migrants and refugees, we will tell them. And when we find about about rights violations, we will tell them, with a loud voice (R5, 2020)."

For more urgent individual cases, practitioners engage in negotiations with lower level public service authorities to grant migrants access to basic services like health, housing, schooling or in case of a migrant's arrest by the police. Two respondents describe that their organization first engages in outreach work at large migrant reception center, to find out about urgent individual concerns and follows up with these by accompanying migrants to gain access to public services.

"For example with the administration of hospitals. We see the financial staff and accounting staff and ask them to forget, because they don't have money. They can't pay and they can't have the benefits to keep with them the certificate of birth of the baby, for example (R2, 2020)."

While practitioners take a rights-based confrontational approach in strategies aimed at higher level authorities as rights violations and migrants' legal entitlements are directly addressed, in action on behalf of individual cases directed at public services, they rather refer to the basic needs of migrants in vulnerable positions. Thus, instead of applying legal standards, practitioners 'plead' with public service authorities to make exceptions for individual cases, specifically cases that require urgent assistance.

"We provide direct assistance to urgent cases. Like a women that needs to deliver a baby, we don't write to the hospital, but we go with her to the hospital and speak with the director. We tell them that it is necessary that this women is helped immediately. This is the style that helps (R3, 2020)."

Strategies on behalf of individual cases directed at public service authorities are not aimed at obtaining accountability through the judgement of government conduct, but rather at seeking urgent remedies for migrants.

5.1.3 Strategizing for domestic social accountability

Practitioners describe that, when Moroccan authorities do not respond to letters or requests for dialogue, they reorient towards national media to amplify their reports and open letters addressed at government authorities. In their resort to national media, practitioners maintain a rights-based approach on behalf of emblematic issues. A respondent describes how his organization communicates any arrest of a migrant by the Moroccan authorities to the general public through media (R3). Another respondent illustrates that media campaigns can also have adverse effects, as she recounts a campaign from her organization that accelerated the authorities' deportation of migrants being arbitrarily detained (R6). On the other hand, the respondent does stress the importance of extrajudicial strategies, like media strategies, to raise awareness on migrant issues

and mobilize the Moroccan public. Another respondent points out that his organization's continuous engagement with media has sometimes led government authorities to change their conduct towards migrants.

> "Journalism is very important […]. Media are an important channel through which the voice of the organization is heard, and through which the practices are shamed, and to make these violations known. And sometimes this has the effect that authorities withdraw from these shameful practices. But only sometimes (R5, 2020)."

5.1.4 Strategizing for international accountability

Moroccan practitioners reorient towards international fora only limitedly, in case of cross-border rights violations or specific emblematic cases. Moroccan practitioners put forward that domestic fora like national courts and government authorities themselves do not function properly for migrants rights violations on Moroccan territory, they argue that cross-border rights violations by Moroccan authorities in cooperation with Spanish authorities cannot be litigated in Moroccan courts at all, due to a lack of legal jurisdiction (R1, R2, R4). In case of cross-border rights violations, practitioners therefore direct legal advocacy at international organizations, such as the UN human rights reporter and UN working groups. One respondent describes that whenever a violation occured in cross-border areas, his legal strategies are limited to advocacy directed at UN agencies and that resort to domestic courts is not possible.

> "We had many cases of Yemenite people that tried to cross to Melilla or Ceuta, the Spanish enclaves. They entered the enclaves and applied for asylum there at the office of the UNHCR, but they were pushed back to Morocco by the Spanish authorities. They were, like they said, beaten by the Spanish authorities. But, since they were on Moroccan territories, I could not do anything against that occurred outside of Morocco. To take action against authorities outside of Morocco or in cross-border situations is not evident (R4, 2020)."

To make international strategies more effective, practitioners create alliances with transnational human rights networks, through which they address European institutions to change external migration policies (R1, R2, R3, R6). Two respondents describe how their organization exchanges information and engages in benchmarking with organizations that operate in other North African countries, like Algeria and Tunisia, to learn from best practices within other contexts and share interventions such legal aid clinics for migrants, that could be replicated (R1, R2). Practitioners suggest that transnational networks are vital for stronger advocacy campaigns (R3, R5, R6). Also, alliances and information exchange with other organizations allows them to share information that they themselves would not have acted upon, but that could support accountability action by others in that field. A respondent describes how through such exchange with other organizations, her organization can keep its focus on specific issues.

> "It gave us another channel to write to others, not as GADEM but to give the information through organizations that have other channels of action or mobilization. We are not all the time at the front place. It's not only a question of choice because of the security of the organization, but sometimes it's also a question of effectiveness of what we're doing and what we are trying to achieve (R6, 2021)."

In figure 2, an overview of Moroccan practitioners' accountability strategies at the domestic level and international level is given.

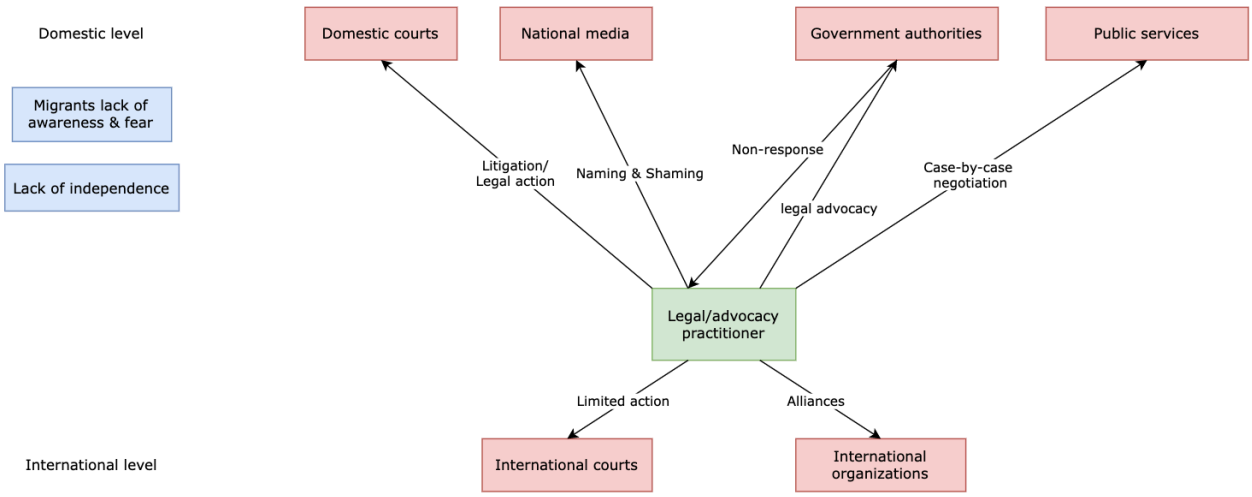

Figure 2. Moroccan accountability strategies

5.2 Accountability Strategizing in Libya

5.2.1 Strategizing for domestic legal accountability

"To obtain accountability through Libyan domestic means is very difficult right now, and to be honest not realistic. I don't think it is possible to obtain that in Libya right now, it is really difficult (R8, 2021)."

When asked about strategizing to obtain domestic legal accountability, Libyan practitioners mention that they do not direct any action at Libyan courts. They describe that an unfavorable domestic environment, constituting of interlinked political and legal contextual factors, does not allow them to strategize for domestic legal accountability. As a results, neither litigation nor other legal efforts are being pursued at domestic legal fora for individual or emblematic migrant cases (R8, R9, R10).

First, domestic legislation itself is put forward by practitioners as factor that complicates the application of legal standards to migrant cases. Domestic Law n° 19 of 2010 on the "combatting of illegal immigration," (4.2) is depicted as main barrier to legal accountability strategizing, because of its provisions that criminalize migrants irregular entry and stay in Libya as well as individuals and groups that provide them assistance. Law n° 19 is described by practitioners as old and controversial and efforts to reform this law as complicated by political instability. According to practitioners, any individual or emblematic cases involving irregular migrants cannot be litigated in court, nor any other legal action can be taken, as resort to court puts the migrants at risk of being prosecuted for their irregular status (R9, R11, R12). Thus, Law n° 19 blocks practitioners from strategizing to resort to domestic legal fora and take action on behalf of migrant for violations like violence, rape and extortion. A respondent (R11) illustrates how Law n° 19 denies migrants access to courts, as, prior to considering their case, migrants are asked to prove the legality of their stay. When authorities put an end to situations of migrant exploitation and abuse themselves, migrant victims are, irrespective of violations endured, immediately prosecuted and detained under Law n° 19.

"A victim can't go to any judge, you understand? I remember an accident that happened a few months ago. We found a group of Somali migrants, around eighteen people, in a dwelling. Among them were 5 women, two of them were pregnant and there were also children amongst them. This group was tortured for six months, in a dwelling, in a district approximately 160 kilometers from Kufra. The Libyan authorities found out about their location and cleared out the place. They freed the migrants from detainment and torture. And this is what happened next. When they got the migrants out, they asked them immediately: Did you enter Libya legally or illegally? After that they were locked up in a prison for criminals. And among these people are pregnant women, who are now in prison (R11, 2021)."

The law hinders the application of other domestic legislation or international conventions to cases, such as the CAT, CEDAW or CRC (4.2). Practitioners describe how the law limits them in their means to apply standards as part of accountability strategizing and puts them and the people on who's behalf they litigate at risk of prosecution. A respondent who works as legal assistance specialist describes how her organization does not engage in any litigation or other action directed at legal fora on detention issues, as it is justified under law n° 19.

"We do not have enough cards in our hands and the law is playing against us. We cannot engage in strategic litigation in that field because there is no strategy to have. The law is what it is, so we can put forward international principles and regulations, but it is not something that authorities are keen to look into today (R9, 2020)."

Political instability caused by divide is put forward by practitioners as second contextual factor that constitutes the unfavorable environment for domestic legal accountability. Practitioners describe how the Libyan civil war created a divide between the GNA in the West of Libya and the Libyan National Army in the East of Libya. While both warring parties agreed on a ceasefire in October 2020, the current political environment is described by practitioners as volatile and unpredictable, without real central authority, making it difficult to strategize ahead. Due to political divide, courts within different two spheres of influence operate differently, abiding to different norms and standard, necessitating a different approach to migrant issues required in different places (R8, R10, R13). One respondent explains how these differences are difficult to navigate in her day-to-day work (R13).

"So if we say Tripoli as a capital, that might be easy. But when we go to remote areas it might be way harder, specially when it comes to the areas that are quite divided in terms of the way they are administered in the country. So when we compare East and West, that's going to be a different story. So what's validated or approved here will not be accepted in the East, and vice versa so (R13, 2021)."

Practitioners describe how, due to instability and political divide, impunity exists at the domestic level for crimes committed by the government or militia groups against irregular migrants, but also Libyans in general. Crimes are seldomly convicted, and even if perpatrators are caught by the police, there is no transparency nor public record about the consequences they face (R12). Practitioners put forward multiple examples of rights violations at the hands of government agencies and non-state actors that have been dismissed (R8, R9, R10).

"When a migrant is murdered, like in May 2020, there were 30 migrants killed in a region called Mizda. The government said that the perpetrators would be convicted, but sadly there was no conviction at all. Libya suffers from impunity. Even towards Libyans themselves, not just the migrants (R8, 2021)."

This sense of impunity results in a fear of repercussions experienced by practitioners for accountability strategizing on migrant issues. Most respondents explain that the threatening and harrassment of individuals and groups working on human rights, particularly migrants rights, by militias and the members of the general public are common and left unpunished (R10, R12). It is also described that, due to fear, most national civil society organizations avoid working on migrant issues (R8, R9, R12). One respondent mentions how working on migrants rights, as opposed to other human rights fields such as childrens' rights or women's rights, makes him mindful of his movement and interaction with others.

> "Sometimes I'm afraid to travel. Sometimes I'm scared to be on my own. Sometimes I'm scared to meet, like I'm meeting with you now, because of the current government (R11, 2021)."

Practitioners describe that, due to this fear, only a very limited number of people and organizations deal with migrant rights (R8, R13). These organizations maintain a low profile and conduct risk assessments before engaging in any (legal) support or advocacy. One respondent explains how, as part of this assessment, her organization looks at whether other, bigger organizations have already engaged in this field, as a good indicator of whether her organization can take action (R9).

Practitioners describe Libya as a country in transition and mention that they experience uncertainty about the future and await more favorable circumstances after new elections, that were scheduled for December 2021 but postponed. In their view, the domestic political and legal environment needs to be improved and central authority reestablished before legal accountability strategies can be pursued at this level. One respondent describes that therefore, her organization currently focuses on the collection of evidence that could be used for prosecution when stability has improved (R10).

> "Because we are fighting this fight for investigations and accountability, like I said, it is not accountability in and withing itself, but the mission's findings are fed to the ICC. They are also mandated for the preservation of evidence which I think is something that is extremely important for future prosecution and accountability when the day arrives. If anything at least we have that (R10, 2021)."

5.2.2 Strategizing for domestic social accountability

In absence of domestic legal accountability strategies, practitioners were asked whether they engage in domestic social accountability strategies by directing action at domestic social fora. According to practitioners, the unfavorable domestic environment similarly lead to a malfunctioning of domestic social fora for obtaining accountability, resulting in inaction in the domestic social realm. Law n° 19 and political instability are said to negatively affect Libyan public opinion on migrants, making it impossible to mobilize the Libyan public as social forum to put pressure on state conduct (R8, R11, R13).

In the first place, the general public is deemed unsympathetic and indifferent to the situation of irregular migrants in Libya due to their their criminalization under Law n° 19. The legal criminalization of an irregular status translates, according to practitioners, into a general public perception of irregular migrants as criminals (R8, R11, R13). One respondent recounts social media reactions to a mass arrest of migrants that reflect a shared Libyan public opinion on migrant issues in line with Law n° 19.

"In October there was the mass arrest. So what I saw on social media from my side is that most people are actually uploading such arrests and they're even requesting the government to start doing arrests om other areas where there is a mass of refugees or migrants. And this is because for them, the solution is to put them in detention centers. They think this is true, and they're illegal and they should be put there, they don't link up with the fact that even those that have been in the country for 10 years or more who are quite settled, there are also being detained (R13, 2022)."

In the second place, political instability causes Libyans to experience hardship and live in difficult, insecure circumstances themselves. Due to the conflict, many are internally displaced and subject to violence on a daily basis (R8). Multiple practitioners refer to Libyans' "own problems" as a cause of public indifference towards hardship experienced by "others," in this case, migrants (R8, R11, R12, R13). It is described how Libyans prioritize their own hardship and show unwillingnesss or inability to engage on migrant issues. Sympathizing with migrants is stigmatized and the topic is described as handled with caution in public debate (R12). According to practitioners, migrants are even deemed as a cause of the current crisis by the Libyan public, instead of victims to rights violations, by disrupting social cohesion and Libyan culture. One respondent notes how she experiences difficulties when she disseminates reports on migrant issues among Libyan audiences, as they show disinterest to learn about the circumstances of migrants (R13). When being asked about domestic alternatives to legal accountability, another respondent similarly notes that the Libyan public's own suffering makes it unfit to serve as forum for social accountability strategizing (R8).

"Libya is too occupied with its own war. There are many problems for Libyans themselves already, so they do not consider migrants to much. They have their own problems, war, having to abandon their houses, no money in the bank, not enough food. The Libyans themselves have plenty of grave problems (R8, 2021)."

Indifference and antipathy in the public realm towards migrant issues lead to practitioners not opting for domestic media channels as social fora, such as newspapers, radio and television, to initiate action, such as advocacy or awareness raising by sharing reports. Libyan media is described as using similar criminalizing language when reporting on migrants, not distinguishing between irregular migrants and refugees (R8, R11). Media are also described as mobilized by the authorities to 'feed' members of the public negative political rhetoric on migration (R12). Positive language about migrants is said to exist only little. Being politicized and lacking independence, the Libyan media landscape is described as difficult to navigate by practitioners. They express their distrust in media as accountability channel, and negative media attention as possibly compromising their position (R11, R14). One respondent worked with Libyan media as a journalist in the past, but considers himself an individual contributor now, due to the lack of human language in the media when reporting on migrant issues (R11).

"The media has a very weak voice, it is affected by the political situation and the security situation currently in Libya, also affected by the laws in place in Libya. There is no compassion with images of migrants in detention centers, because they are always described as criminals, rather than victims (R11, 2021)."

5.2.3 Strategizing to engage government authorities

Whilst domestic legal and social accountability strategies are dismissed by Libyan practitioners, they indicate that they do strategize to engage in limited negotiation and capacity-building on migrant issues with

Libyan government authorities at different levels (R8, R9, R11, R13). These engagements are not considered accountability strategizing, but included as alternative ways to seek remedies for migrants rights violations at the domestic level. Action directed at government authorities as fora to alleviate migrant suffering could be said to respond to domestic accountability barriers by applying a different approach.

Due to domestic legislation and political instability as described earlier, practitioners take a non-confrontational approach in their engagement with government authorities. Negotiations are undertaken on an individual case-by-case basis to facilitate migrant access to public services, such as schooling for migrant children, civil documentation, medical care, birth registration, housing as wel as employment rights. Migrants are assisted at police station levels in order to ensure that cases are handled with due diligence and assessed individually. In these negotiations, practitioners generally refrain from using rights-based standards to circumvent what is prescribed by Law n° 19 about support to irregular migrants and rather use humanitarian standards negotiating on behalf of individual, urgent cases. A Libyan humanitarian worker and migration specialist points to the inutility of rights-based standard setting in negotiations and resort to humanitarian principles to seek remedies for migrants in need.

> "We're trying to propose it from a humanitarian approach and say: OK, we understand the law, we understand the legal perspective here, but what can you do about this? What kind of support can the government offer? You know that, for example, women and children are more vulnerable to abuse in detention. It's a crowded place. After they visit the place, after they visit the detention, they can argue based on what they see. If the room is small, if the minors are being held in the same cell with adults, all of these kind of specifics and then based on that they say OK, how about you released the single woman or the woman and the other children, or how about you reunite them with their father that might be in a different detention (R12, 2021)."

Additionally, practitioners engage in technical, evidence-based discussions with Libyan authorities at higher levels of government, such as the Ministry of Interior on detention issues (R5). Rather than making use of rights-based language to contest situations of arbitrary detention, practitioners advance technical solutions, such as alternatives to detention, especially for women and children.

5.2.4 Strategizing for International Accountability

Libyan practitioners, as compared to their Moroccan counterparts who less actively engage at the international level (only in specific cases and in alliance with others) predominantly reorient their accountability strategizing towards international fora. International legal fora that are resorted to are international legal bodies such as the International Criminal Court and EU member states' national courts. Non-legal fora are either European political fora such as EU institutions and the EU parliament, EU capitals, or socia fora such as international media. International organizations and embassies that are present in Libya are also considered international fora.

As legal practitioners reorient their strategies towards international fora, they apply a different approach, using emblematic framing of migrant issues and applying rights-based standards next to humanitarian standards by invoking international legal conventions that Libya has ratified. Libya's commitment to the AOU convention on Specific Aspects of Refugee Problems in Africa is frequently mentioned by practitioners as used in advocacy campaigns, as well as conventions like the CEDAW and CRC, that could not be used at the domestic level due to the primacy of Law n° 19. In accountability action

towards international fora, practitioners take a more confrontational approach, as the fear of possible repercussions for acting on migrant issues that exists at the domestic level does not exist at the international level. The naming and shaming of Libyan government authority is left out in engagement at the domestic level, but included in advocacy directed at international fora. One of the respondents gave an example of how her organization did not share information on the drivers behind a mass arrest of migrants publicly at the domestic level, but did include it in private advocacy efforts directed at international fora.

> "For example, when the mass arrests were occurring in the first week of October, the Libyan Prime Minister at the time was posting these propaganda shots on social media showing his strength and how he's cracking down on irregular migration and stuff like that. We would never say anything about that publicly, but when donors ask us what was the motivation? We won't shy away from saying that we believe a lot of this was political based on the statements and social media posts of the Prime Minister. So we'll say stuff like that privately. We would never say that publicly (R14, 2022)."

The example shows that in strategizing accountability action towards fora outside of Libya, practitioners do not eschew making accusations against perpetrators of migrants rights violations. One of the respondents describes how he changes the contents of reports on migrant issues depending on the forum that he submits these reports to. While reports that he submits to international fora like embassies and international organizations contain names of government officials responsible for rights violations, those reports are not submitted to domestic authorities due to possible harmful consequences.

> "Sometimes we cannot send the reports to the authorities because they are full of accusations directed at the employees of the government, and we are scared. Legal work is difficult. Sometimes when I write a report, there is an accusation, about how migrants are tortured by the guards, or beaten by the guards. I cannot send that report to the Libyan authorities. Because when I do that, I get into trouble. So I choose to send these reports to the embassies (R11, 2021)."

One contextual factor that is put forward as influencing accountability strategizing at the international level is a lack of political will. All practitioners indicate a lack of political will that leads to migrant issues not being prioritized by international legal and EU political bodies, despite practitioners' continued accountability action directed at these fora. Political objectives, such as elections for a new Libyan government, are given priority at both political and legal international fora over holding Libyan authorities accountability for migrants rights violations (R9, R10, R14). One of the respondents noted that, despite her organization's continued advocacy directed at EU fora to demand EU policy change towards Libya, these fora remain hesitant to reconsider EU migration cooperation with Libya in light of structural rights violations and rather focus on policies in support of Libya's transition towards democracy.

In response to this perceived lack of political will, Libyan practitioners describe perseverance and the aim for small wins as part of accountability strategizing to direct action at international fora. All interviewees mentioned their strategizing of multiple actions at the same time, targeting different international accountability fora and using different, legal and non-legal approaches. One respondent described how his organization strategizes to file individual legal cases at as many courts in European member states as possible, whilst simultaneously directing advocacy at EU embassies and international organizations. He notes that strategizing different action directed at different fora takes a lot of time, and that

patience is important. Another respondent confirmed that while advocacy strategies are formulated at the long term, small wins respresent important landmarks from where onwards new strategies can be pursued.

> "I mean advocacy is long term, it is not a short term win. You should never do the job if you are expecting that, because it takes a lot of patience and you get frustrated at times but you just have to perservere and I think the fact finding mission is a good example. I personally have been working on that for over five years. Geneva became like a pilgrimage. Every year you go. Unfortunately I can't say the same with European policy. You get small tiny little acknowledgements or little wins. For example the Dutch ministry of environment went to Libya in 2018 and openly called for an end of detention. That was a win. Because none of the other countries want to come out and blatantly say that this a massive problem. So that kind of open public statement is important (R10, 2021)."

In figure 3, an overview of Libyan practitioners' accountability strategies at the domestic level and international level is given.

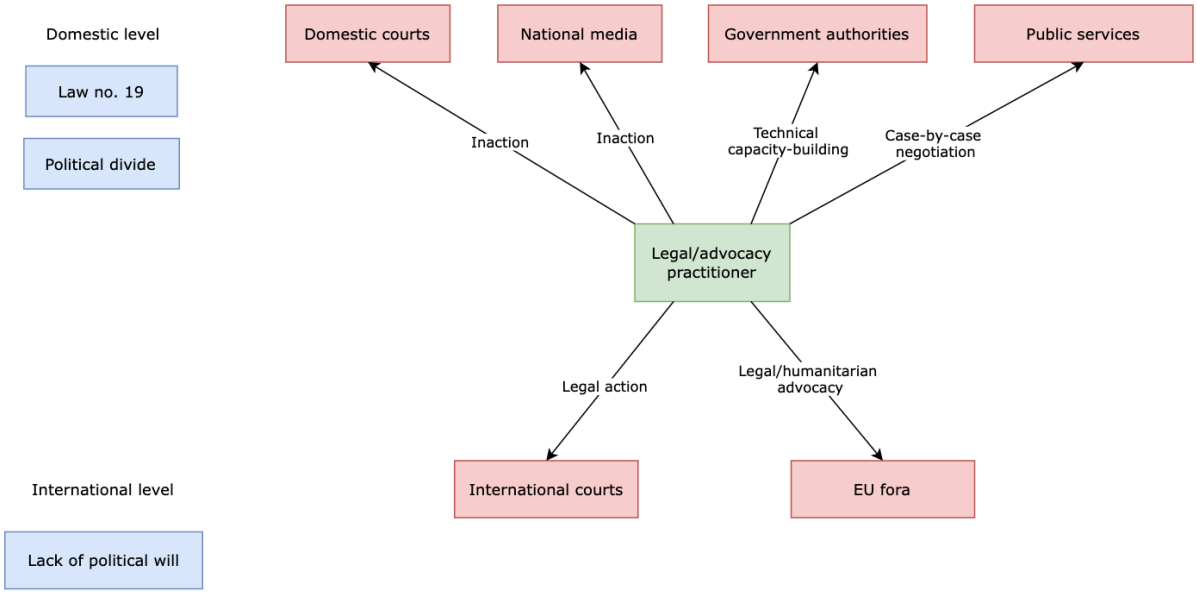

Figure 3. Libyan accountability strategies

6: Discussion

In this chapter, findings on accountability strategizing in Morocco and Libya are reviewed in light of prior expectations. Further, this study's key contributions to existing academic debates are considered. Per contribution, theoretical expectations and recommendations for further research are provided. Finally, a reflection on the research as conducted is included.

6.1 Accountability strategizing as analytical lense

As a first contribution, this study's findings suggest that *accountability strategizing* is a relevant conceptual framework to study accountability processes that complements existing accountability theory. Approaches to accountability within existing theory prove useful to study accountability relationships as established, but cannot be applied in an aim to understand the processes prior to establishment. Such processes involve choice-making based on context and other factors. Leading definitions of accountability put forward by Keohane (2003), Mashaw (2006) and Bovens (2007) emphasize elements required for an accountability relationship as established, without discussing ability and choice to hold to account from the perspective of third party accountability holders. While Keohane (2003) recognizes a difference between ability and choice to hold to account by discussing that a third party's ability to sanction does not always imply that it will choose to do so, he does not further explore this difference theoretically. Hirschmann's (2020) theory of *pluralist accountability* centralizes the agency of third party accountability holders as situated outside of given principal-agent relationship, who initiate accountability functions independently, but still, preconditions and decision-making as part of accountability action are left unconceptualized.

Firstly, the inclusion of strategizing in the conceptual framework to study accountability allowed for a separation between accountability fora and the accountability holders that use these fora to hold to account. Bovens (2007) distinguishes between different types of accountability fora, but does not describe how actors could opt for some fora over others. Findings from this research show that *venue shopping,* as concept borrowed from political theory, is also relevant in studying accountability processes. While in Libya, practitioners reorient from fora at the domestic level to fora at the international level as they deem domestic conditions unfavorable, in Morocco, practitioners reorient towards news media as social fora when authorities themselves did not respond to their requests. Practitioners from both countries clearly describe when fora are deemed inaccessible and when alternatives should be pursued. Thus, as this research conceptualized fora as entities through which to hold to account and practitioners as accountability holders that can opt for some fora over others, it was possible to suggest when and how fora were deemed (in)effective.

Secondly, the inclusion of strategizing in the conceptual framework allowed for an investigation of practitioners' choice-making in accountability fora and action, how these are choices informed by context and how their choices relate to results. Findings suggest that, to understand the barriers to accountability for rights violations, it is necessary to include strategizing based on contextual factors in the picture. Findings from both country cases illustrate that practitioners showed very aware of their position vis-à-vis the actors that they intended to hold to account, their ability to make choices with regards to the fora that they resort to and the action that they initiate and the contextual factors that provided either obstacles or opportunities within this process. In the Libyan case, a focus on accountability relationships as established (Keohane,

2003; Mashaw, 2006; Bovens, 2007) would result in an incomplete picture of the processes that practitioners engage in, specifically at the domestic level. When their choice-making based on contextual conditions are included, there is a lot more to discover that informs us on the reasons for inaction at the domestic level. Similarly in the case of Morocco, the rich descriptions of legal and social strategizing at the domestic level could not be obtained once there would be a focus on the accountability relationship as established. Further theoretical exploration of the strategizing process of accountability, based on law and social movement theory and larger-N comparative case studies could contribute to a more rigorous conceptual framework. Additionally, alternative qualitative research methods such as participant observation could be employed next to interviews to study strategizing processes, for a triangulation of data.

6.2 Accountability strategizing in context

As a second contribution, this study's findings suggest that country contexts are decisive for the accountability strategies that practitioners are able to pursue. The expectation on interaction between context and strategy underpinned this research's comparative case study design. Results confirm this expectation, as there are significant differences in practitioners' resort to accountability fora and choice of accountability action between Morocco and Libya. Further, it was of relevance what specific contextual elements are of relevance and *how* these are of relevance (Bousquet et al., 2012; Joshi, 2014). Practitioners explain the opportunities and constraints of their strategies based on different legal and socio-political factors.

As for domestic legal accountability, it stands out that Libyan practitioners indicate that they largely do not undertake action, while Moroccan practitioners consistently direct litigation and other legal action at domestic administrative, penal and civil courts on behalf of individual and emblematic cases, using both domestic legislation (Law n° 02-03) and international conventions to support their action. While contextual factors such stability and domestic legislation are put forward by Libyan practitioners as impeding any domestic legal accountability strategizing, and migrants' lack of awareness and fear and the court's lack of independence put forward by Moroccan practitioners are only said to complicate, but not entirely prevent domestic legal accountability strategizing. In light of Gammeltoft-Hansen & Tan's (2021) topographical approach to accountability, two observations on the interaction between legal strategizing and context are important.

Firstly, Gammeltoft-Hansen & Tan (2021) call for a more opportunist and pragmatic approach to accountability, in absence of refugee protection legislation, whereby practitioners in neighbouring countries explore alternative legal frameworks to hold state actors to account. In the Libyan case, it is shown that practitioners do not use alternative legal frameworks, as they do not direct any legal action at domestic courts but reorient geographically towards legal fora in the EU. While Gammeltoft-Hansen & Tan (2021) presume that the absence of protection legislation requires a search for legal alternatives, criminalizing domestic Law n° 19 in the Libyan case serves as barrier to any legal strategy in the first place. The law is described by Libyan practitioners as applied by courts and authorities prior to considering entitlements based on alternative laws. It is not merely the absence of refugee protection legislation, but also the presence of criminalizing legislation that should be taken into account when studying domestic accountability legal strategies, as possibilities to explore also depend on domestic legal barriers. Further research should not only map legal alternatives in neighbouring countries, but also legal barriers provided by domestic laws and

possibities for legal reform.While criminalizing legislation (Law n° 02-03) does not lead to legal inaction in the Moroccan case, there are two possible explanations for this. The moroccan Law n° 02-03 is more extensive than its Libyan counterpart and contains protection clauses, providing migrants entitlements in case of prosecution of irregular status. Additionally, the primacy of international law, and the 1951 convention as ratified by Morocco, as is provided in the constitution, results in that Law n° 02-03 cannot be applied in all cases.

Secondly, there are other, non-legal factors not considered by Gammeltoft-Hansen & Tan (2021) which may impede resort to legal fora in the first place and thus, any alternative action. Libyan practitioners mention how instability has led to a disfunctioning of domestic legal fora that makes them unable to prosecute, no matter the type of legislation that is applied. Studying such unstable contexts, it is not only important to look for legal alternatives in third country settings, but also look at factors that impede legal access in the first place. In Libya, there is no reorientation to alternative legal strategies at the domestic level, but a geographical reorientation towards the EU. In Libya's context, it is suggested that it is not the absence of refugee protection legislation that requires alternative strategies, but a combination of legal and socio-political factors that inhibit litigation in the first place. In the case of Morocco, contextual conditions such as migrants' lack of awareness and fear, as well as courts' lack of independence, were deemed as complicating domestic legal accountability strategizing, but did not lead to a dismissal of domestic legal avenues overall.

As for domestic social accountability, it stands out that Libyan practitioners do not employ social accountability strategies at the domestic level, while Moroccan practitioners reorient advocacy towards national media in case Moroccan authorities do not respond to accusations. While Rijpma (2018) suggests that, in case of a country's lower human rights standards, non-legal strategies may be pursued when legal access is impeded, it is observed in the Libyan case that legal barriers and a disfunctioning of the judiciary have effects beyond the legal domain and impede social accountability strategies, as they immobilize the public for migrant issues and inhibit press freedom. Libyan practitioners mention that same contextual conditions that hamper legal strategies are hampering domestic social strategies. Law n° 19 leads to a public perception of migrants as criminals and fear of repercussions for migrant support and because of instability, Libyans experience hardship themselves, leading to unwillingness or inability to engage with migrant issues. Additionally, Libyan media are described as using similar criminalizing rhetoric and politicized due to instability, making them difficult to navigate. Thus, possibilities for social accountability strategizing are also highly contextualized and may not always serve as an alternative to legal strategies, but may be affected by the same contextual conditions that affect legal options.

In light of the above findings on the interaction between strategizing and context, two theoretical expectations are formulated. First, it is expected that, in case of legal barriers (such as criminalizing legislation) and a disfunctioning of domestic legal fora, practitioners will refrain from domestic legal accountability strategizing and reorient towards foreign accountability fora for rights-based action. Second, it is expected that such legal barriers and a disfunctioning of domestic legal fora, in light of political instability, will similarly affect the public as accountability forum, meaning that it becomes hard to mobilize to put pressure on state conduct. In further larger-N studies on the interaction between context and strategy, these expectations can be explored.

6.3 Strategizing beyond accountability

As a third contribution, this study's findings show that other important domestic strategies to seek remedies for migrants rights violations outside of the accountability concept al provided by literature. As Gammeltoft-Hansen & Tan (2021) make a case for a more migrant-centered perspective in mapping options to obtain remedies for migrants rights violations and encourage accountability research that looks, beyond what is missing, such as protection legislation, for alternatives to access remedies. While Gammeltoft-Hansen & Tan (2021) limit their critique to the narrow geographical focus in studying accountability that comes at the expense of alternative options in neighbouring countries, this research suggests that a narrow analytical focus risks the exclusion of important strategies within unstable contexts that do not tick all the accountability boxes. For the Libyan context, we might miss out on vital work at the domestic level aimed at engagement with authorities, seeking remedies for individual migrants and minimising harm, if we stick to a strict interpretation of accountability as put forward by theory, focused on passing judgement and the possibility of sanctions (Mashaw, 2006; Bovens, 2007; Keohane, 2003). The analytical lense used in this research failed to to account for practitioners alternative domestic strategies aimed, first and foremost, at seeking remedies for migrants, which resonates with the 'migrant-centered' perspective that Gammeltoft-Hansen & Tan (2021) propose. While in Libya, these efforts are combined with accountability strategies in the more strict sense, reoriented abroad towards EU fora, it is important that they are acknowledged in their own right. Further research that applies a broader analytical focus, beyond the accountability concept, to study practitioners strategies to obtain remedies for migrants' rights violations could provide a more in-depth understanding of the approaches used that substitute, support or compliment accountability strategies.

6.4 Reflection on research as performed

In this section, a brief reflection on how the research was conducted and its change of focus is provided. At the beginning of the data collection phase, it was intended to strictly include legal practitioners from both countries in the sample for semi-structured interviews, as legal accountability served as this research's starting point. A sample of only legal practitioners would allow interviews to be centered around legal accountability, discussing social accountability only as alternative and identify under which conditions practitioners would operate outside of the legal field. During participant sampling, it proved very difficult to find strictly legal practitioners, due to the fact that, as respondents indicated themselves, there were only very limited individuals providing legal services to migrants in Morocco and Libya. Therefore, also others, such as individuals engaged in (non-legal) advocacy on behalf of migrants rights and members of local and international NGOs for migrant protection were sampled. This led to a diverse group of respondents engaged in migrant protection work in Morocco and Libya, resulting in interviews that covered sometimes more social accountability strategies and sometimes more legal accountability strategies. As the sample of respondents was more diverse than initially aimed for, the interview guide had to be adjusted to the specific activities that respondents engaged in. This led to some incoherence in the questions posed. Also, in interviews with some respondents, the language barrier was larger than with others, making it necessary to simplify or rephrase some of the questions.

After all interviews were conducted, the data analysis phase started. It is necessary to consider how the theoretical framework that was developed as part of the research was applied to the data. The analytical lense accountability strategizing, based on accountability and interest group scholarship, was operationalized in the interview itemlist and deductively applied to the interview data through a codebook that was developed prior to analysis. While accountability strategizing as analytical lense provided a valuable starting point from where to engage with practitioners on the nature of their work, it should be noted that the deductive approach fails to account for the alternative strategies that Libyan, and also Moroccan practitioners pursue to obtain remedies for migrants. For further research, a more inductive approach would potentially allow for richer findings on strategies pursued and practitioners own understanding of their work.

Finally, it is important to consider this research's initial focus vis-à-vis final research outcomes. While this study was initially aimed as empirical contribution to academic debates on accountability for EU externalized migration control, geographical reach of legal responsibility of international human rights and refugee law and extraterritorial jurisdiction, it can be questioned whether findings still primarily these debates. Rather it can be said that outcomes address a larger debate on how to pursue and study accountability within fragile state contexts such as Libya. A comparison between findings from the Libyan context and the Moroccan context show that options to pursue accountability are highly contextualized and that practitioners efforts aimed at engagement outside of conventional conceptualizations of accountability deserve further attention.

7: Conclusion

This research sought to give an empirical account of how accountability for migrants rights violations in neighbouring countries to the EU is pursued. Literature on EU external migration policy has only narrowly examined its accountability outcomes by interpreting EU external policy initiatives in light of interpretations of international human rights and refugee law, to determine the geographical reach of EU legal responsibility. Drawing on Gammeltoft-Hansen & Tan's (2020) topographical approach to accountability, this thesis aimed to empirically map the options for accountability for migrants rights violations within neighbouring countries and legal and advocacy practitioners' strategies to pursue these. The main research question that emerged was: "How do legal and advocacy practitioners in neighbouring countries to the EU hold actors accountable for migrants' rights violations?" The analytical lense *accountability strategizing* was conceptualized to study practitioners' choice of approach and forum in accountability action on behalf of a migrant's case. A qualitative, comparative case study design was used, to allow for an interpretation of how practitioners' strategies are potentially affected by factors present within their specific country contexts Morocco and Libya. The research involved a document analysis to embed data from semi-structured interviews with practitioners.

Findings show that there are clear differences between how accountability strategies are pursued within Morocco and Libya. While legislation criminalizing irregular migration exists in Morocco, it contains more protection provisions and is accompanied by other domestic legal sources that provide Moroccan practitioners with options to legally contest migration control conduct. Contextual factors are put forward by Moroccan practitioners that complicate strategizing, but domestic legal avenues are not dismissed. Additionally, Moroccan practitioners directly confront authorities with accountability action and engage with domestic media in case of non-response. Moroccan practitioners only limitedly reorient to the international level in case of specific issues and in cooperation with others. In Libya, criminalizing domestic legislation and political instability have impeded Libyan practitioners resort to domestic legal and social accountability fora. Libyan practitioners engage with authorities to seek remedies for migrants, but primarily redirect accountability efforts towards international fora. Findings confirm the expectation that different socio-political and legal contexts potentially constrain or encourage certain strategies.

This study's most important contributions are its conceptualization of accountability strategizing as addition to existing accountability theory, its findings on the interaction between strategizing and country context and its findings on strategizing beyond accountability to seek remedies for migrants. The conceptualization accountability strategizing allowed for an inquiry into not only accountability as established, but also into the process prior to establishment. Interaction between strategies and country contexts is shown as how practitioners within both country contexts explain their choice of strategy according to different contextual factors and are enabled or constrained in different ways to either pursue domestic accountability or reorient towards international fora. Finally, findings on strategizing beyond accountability suggest that more attention should be paid to how practitioners navigate contexts where fora to initiate accountability action are inaccessible. Despite action not being aimed at judgement and in these contexts, alternative strategies to access for migrants rights violations should be given due consideration if remedies, not accountability are put first.

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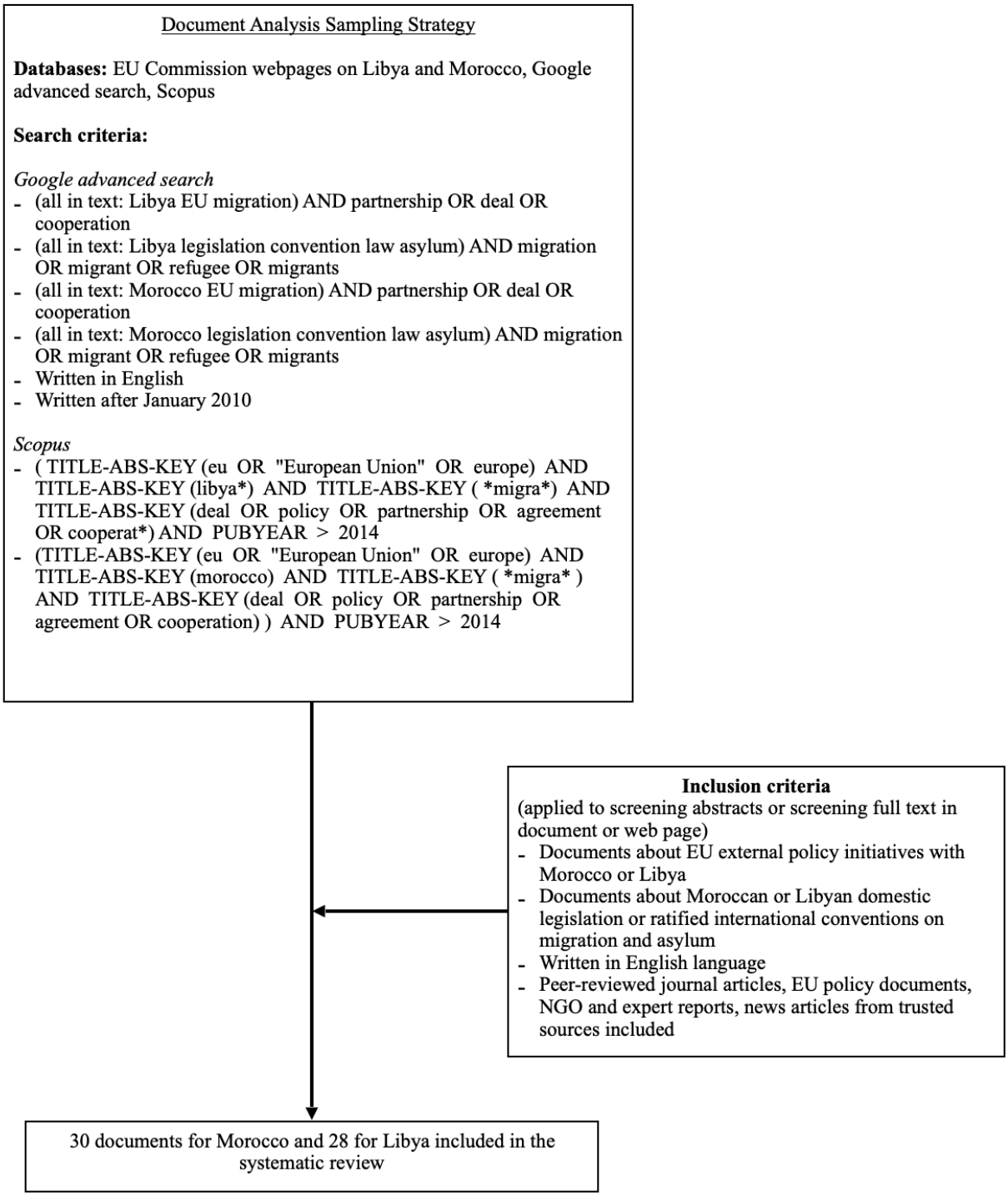
9: Appendices

Appendix I: Document analysis sampling strategy



Appendix II: Itemlist Interviews

1. Introduction

- Introduce myself, thank participants for their time, let them know that I value their perspectives on the topic.
- Introduce the subject of the research: a research into the work of people that assist migrant and refugee protection in Morocco and Libya. Themes: migrant protection in Libya, accountability for rights violations, justice for migrants and the strategies of people that assist migrants to obtain justice.
- Objective of this research is to bring together the experiences of legal practitioners in EU bordering countries and serve as a resource to increase understanding of the field they operate in.
- Ask for permission to record and take notes during interview.
- Ensure anonymity of the participants, of individuals/cases they talk about in the interview and confidentiality of data.
- State that there are no right or wrong answers, that they can elaborate as much as they like on their answers and interrupt with anything they think is important.
- Ask participants to tell me something about their backgrounds: who they are, where they are from, their job title, working experience and study background.

2. Migration control/migrant protection

- Can you tell me about cases of migrants and refugees rights violations in Libya/Morocco?

Are there problems with legal protection of migrants and refugees? Can you give examples?
What is needed to enhance legal protection of migrants in Libya/Morocco?

3. Accountability work

- What different activities are part of your work in the field of migrant protection?
- Who do you target with your activities?
- How do these activities relate to accountability for rights violations?

4. Legal Accountability

- What are the different legal ways to hold violators of migrants rights to account Libya/Morocco?
- Can you explain about the legal strategies to obtain accountability/to acquire justice for violations of their rights? Can you give examples?

Legal fora
- How is determined whether you take a case to court?
- What are the different courts in Libya/Morocco that deal with migrant and refugee cases?
- How are migrant issues dealt with in Libyan/Moroccan courts?
- Do you have different experiences with different courts? Can you give examples?

Standards
- What are different conventions and laws that you refer to in legal action? Are these effective?
- What is needed to ensure that these conventions are effective?
- How do you contribute to that?

Issue framing
- When you present a case of migrant's or refugee's rights violation in court or somewhere else, do you focus on the individual experience of the migrant or on the experiences of migrants and refugees in general?

Action/inaction
- Can you give me an example of a time that you did not take on a case?

- How do you determine whether you take action on a case?

5. Social Accountability

- What other action besides going to court can you undertake to hold actors accountable for migrants rights violations?
- Can you explain about other strategies to obtain accountability/to acquire justice for violations of migrants rights? Can you give examples?

6. Ending

- What can you say about the future of your work?
- What advice would you give others that want to engage in this work?
- Is there anything else that you would like to add?

Appendix III: Theory-driven codebook

theory-driven code	description	example
accountability forum	Any entity, such as a parliament, an audit office, a court, through which accountability functions are performed.	interviewees' reference to entity through which they perform accountability functions.
accountability action	any action performed at an accountability forum, whereby conduct is judged on their conduct.	interviewees' reference to action aimed at judging actors based on their conduct.
standard-setting	The prescription of norms that actors should comply with as they carry out conduct.	interviewees' reference to any code/ norm/standard to judge migration control conduct.
sanctioning	The imposition of penalties for possible misconduct.	interviewees' reference to imposition formal or informal sanctions for misconduct of actor involved in migration control.
individual issue-framing	Framing an issue as a singular rights' transgression.	interviewees' reference to situation of framing of migrants rights violation as singular rights transgression.
emblematic issue-framing	Framing an issue as emblematic of a larger societal problem.	interviewees' reference to situation of framing of migrants rights violation as emblematic of situation of migrants and refugees.
choice of forum		
choice of approach		
strategic choice: reorienting	Reorienting towards new/other accountability fora to perform accountability functions.	interviewees' reference to reorienting towards other, new or existing accountability fora to perform functions.
strategic choice: new approach	Reframing accountability action	interviewees' reference reframing of case according to other standards.
contextual factor	Contexual factors specific to countries of origin that influence accountability strategies.	interviewees' reference contexual factors specific to their country of origin that influence their work.

Appendix IV: Respondent list

RI: Respondent 1 (Morocco)
R2: Respondent 2 (Morocco)
R3: Respondent 3 (Morocco)
R4: Respondent 4 (Morocco)
R5: Respondent 5 (Morocco)
R6: Respondent 6 (Morocco)
R7: Respondent 7 (Morocco)

R8: Respondent 8 (Libya)
R9: Respondent 9 (Libya)
R10: Respondent 10 (Libya)
R11: Respondent 11 (Libya)
R12: Respondent 12 (Libya)
R13: Respondent 13 (Libya)
R14: Respondent 14 (Libya)