

5 Social construction of neglect: The case of unaccompanied minors from Morocco to Spain

Núria Empez Vidal

5.1 Introduction

One of the most riveting sets of images in the international press in the last decade has been the arrival of young North African boys who cross the Strait of Gibraltar trying to reach the shores of southern Spain. The majority of them are Moroccans. They enter Spain hidden under trucks or buses on ferries from Tangier, in northern Morocco, or in overloaded *pateras*, small, precarious speed boats run by professional smugglers.

The arrival of these boys has drawn considerable attention from policymakers, NGOs, scholars¹ and journalists. Under international law, children enjoy particular protection. As 'legal minors', children are regarded as a particularly vulnerable category of persons with specific protection needs. In addition, the young North African boys who are the subject of this chapter are also unaccompanied and thus enjoy specific protection under international law as unaccompanied minors. International humanitarian conventions view children lacking the care and supervision of an adult as 'neglected', a status that, irrespective of their nationality or circumstances, accords them immediate protection in whatever state they arrive.

Behind the sensational headlines are two issues: the pressures in the country of origin that have led these boys to embark on their journeys and reports of how they have fared in Spain. The notion of 'neglect' has been central to public debates about these boys. Typically, two types of factors may lead to situations of child neglect: 1) situations in which children's basic physical and emotional needs are disregarded and 2) situations in which a child's future prospects for success are not encouraged or invested in. Neglect may apply to all siblings; conversely, individual children may become the targets of exclusion and hence of neglect (e.g. Scheper-Hughes 1987). In such cases, families may try to invest their efforts in one child they think may have the best probability of success, neglecting other children within the family. In the case of unaccompanied Moroccan minors seeking to go to Spain, many families appear to make the opposite decision: they appear to 'neglect' the child they think will have more opportunities to succeed in migration. If a boy feels he is excluded from family investments, this may in fact encourage him to go to Spain: to

select himself for a pathway of migration. In such cases, conditions the boy encounters in leaving may put him in far greater situations of hardship than he had endured at home.

The migration of unaccompanied minors to Spain needs to be placed within the context of South-to-North migration and, as such, points to much broader issues of inequality and underdevelopment in relation to expanding global economies and their impact on North-South relations (Wolf 1982). Global North-South relations are characterised by two contradictory processes. On the one hand, economic and trade policies aim at reducing barriers to transborder exchanges of goods and capital and, to a somewhat lesser extent, services. On the other hand, migration policies simultaneously aim at limiting flows and admitting only those with sufficient human and/or financial capital. Thus, while borders increasingly lose their significance as regulatory mechanisms for global flows of capital, goods and services, they have enormously gained in importance for regulating or filtering flows of people. In the European context, the restriction of immigration policies has led to the creation of extensive buffer zones between the European Union and its immediate and more distant peripheries. In a similar vein, while freedom of movement within the EU has been massively expanded, the project of European integration has enhanced exclusion vis-à-vis third countries, notably those located in the global South. As Delgado (1998), De Genova (2005) and Calavita (2005) argue, it is the increasing restrictions for third-country nationals that produce irregular forms of migration.

Similarly, this chapter argues that global inequalities create the conditions that give rise to unaccompanied Moroccan children who arrive in Spain. In turn, Spain has created categories of marginality and deviance (such as unaccompanied minor) in which young Moroccan boys find themselves placed.

This chapter highlights the paradoxical effects of state regulation concerning unaccompanied minors, which, although intent on protecting the best interest of the child, frequently exacerbate – if not create – situations of neglect. The chapter focuses on the Autonomous Community of Catalonia in Spain, which, along with Andalucía and Madrid, is the main destination for unaccompanied Moroccan minors.

5.2 Background of the study

My earlier work examined the lives of unaccompanied minors in Catalonia where, as described above, many Moroccan children have come (Empez 2003). The work was based on my experiences as a professional social worker there, specialising in immigrant cases and in dealing with Spanish policies handling unaccompanied children who migrate to Spain. I began

participant observation in Barcelona in 2001. My Master's thesis (Empez 2003) on unaccompanied minors included four years of field-work in Barcelona, including visits to Tangier, Morocco, with some of the families of children I met in Spain. My most recent field-work in Morocco was on family migration dynamics, funded by the Max Planck Institute for Demographic Research and forming part of my PhD dissertation for the Universitat Autònoma de Barcelona. During field-work in Tangier, from April to October 2006, I studied socialisation practices and reproductive strategies among families who send children to Spain and the process of decision-making in child migration. The findings then took me back to Catalonia, where I interviewed professionals in the protection system dealing with unaccompanied minors.

During the field-work in Morocco, I mainly relied on qualitative methods: participant observation, open-ended interviews, discussion groups, informal conversation and analysis of media reports. I had contact with a large number of Moroccan boys who were trying to cross over to Spain from the port. They comprised children from rural areas, boys who were temporarily on the street when I interviewed them but who don't consider themselves street children and boys coming from the city of Tangier. My subjects included people from Tangier and rural people from the district of Beni Mellal, children who were returned (i.e. deported) by Spain as 'minors' in family reunification² and their families, adults who wanted to migrate, families with children in Spain, former unaccompanied minors who were repatriated from Spain as adults, families with adult members living in Europe, young workers, students, older women, people living or working at the port, school teachers, NGO workers and members of Moroccan authorities. Finally, I also analysed various statistical data sources, including Centre d'Etudes et de Recherches Démographiques (CERED),³ the Spanish Municipal Register and the Spanish Census of 2001.⁴

5.3 Migration between Morocco and Spain

Migration between Morocco and Spain has been an essential element of relations between the two countries for a large part of their recent history. What has changed are the characteristics as well as the regulation of migration. Before 1985, a visa was not required to enter Spain; there were temporary agricultural and industrial workers coming to Spain for temporary work, without the intention of staying long in Spain. Such migrants were largely young men. Other Moroccans came for education or as tourists. Despite the difficulties they encountered, Moroccans found it relatively easy to come and go from Spain.

In 1985, Spain passed La Ley de Extranjería, its first Foreigners Law.⁵

This highly restrictive law, which coincided with, and was a requirement for, the accession of Spain to the EU, was created mainly for police control over migration to punish non-nationals in an irregular situation. The law did not provide for a permanent residence status for immigrants, and migrants could only obtain short-term permits, reflecting the country's negative views on immigration. With a major amendment of the Foreigners Law in 2000 (Law 4/2000) 'integration' became a major principle in migration policy involving, among others, the creation of a permanent residence status and a legal pathway to integration. At the same time, legal opportunities for irregular migrants to regularise themselves were significantly curtailed. Under the previous legal framework, undocumented migrants could apply for a residence permit for extraordinary circumstances if he or she had been resident in Spain for five consecutive years on Spanish territory. After the amendment, irregular migrants could get a permanent residence permit almost only by marrying a Spanish national. However, regularising one's status through proving what the Spanish legislation calls 'roots' (*arraigo*)⁶ is still possible. The conservative government, which had won the 2000 elections, cut back some of the liberal changes, arguing that improvement of the legal status of legal migrants might work as 'pull factor' and thus introduced new restrictions with the law 8/2000. In particular, this law considerably restricted the political, employment and social rights of irregular immigrants, and made irregular migration an infraction punishable by expulsion and a residence ban in force for a period defined in the respective rulings of the courts. Finally, law 8/2000 also tightened family reunification requirements, making it more difficult for migrant families to obtain a permanent permit.

In 2003, with the adoption of the Ley Organica 14/2003 and the Real Decreto 2393/2004, the legal framework governing migration was reformed yet again and new restrictions were introduced. Under this law, migrants can lose their residence if the conditions under which they obtained their permit change within the first five years, or until they get an individual permanent residence permit. In short, it has become more difficult to gain legal status if one enters in an irregular way. The current Real Decreto 2393/2004⁷ contains several other provisions for legal entry and residence in the country. Among them are family reunifications, a student visa or a job contract obtained in the country of origin. Most Moroccans in Spain, however, are not in a situation that would allow them to apply for any of these permits.

5.4 A window of legal opportunity: 'Neglected' children

What is important about these children's moves is their potential future impact on vital events for families anticipating the problems and needs

of all their members. Generally, successful migration may affect not just the individual boys' life events, but also the life events of other family members. Because of the increasingly limited legal opportunities for legal immigration, Moroccan migrants increasingly resort to irregular migration strategies and regularisation. For Moroccan boys, the only feasible way to obtain a residence permit is being declared legally a neglected minor.

The Convention on the Rights of the Child adopted by the UN General Assembly in 1989 recognised that children had special needs for assistance and hence should be entitled to special protection. According to the convention, all signatory countries are obliged to take care of unaccompanied or neglected children, regardless of nationality, race, color, sex, language or religion within their jurisdiction. The convention recognised that every country had its own internal laws and policy structures and each was asked to create its own arrangements on how protection was to be enacted. For example, according to the *Comunidad Virtual Contra la Violencia Ejercida sobre los Niños y Adolescentes Inmigrantes sin Red de Apoyo Social*, a Spanish project under the Equal Programme of the European Commission known as CONRED (a virtual community against violence towards child and adolescent immigrants), in Denmark, Belgium, Portugal and Sweden⁸ unaccompanied children are treated as asylum seekers irrespective of age. Meanwhile, Spain and Italy choose to treat them as neglected minors, which in the Spanish case effectively puts them in an ambiguous position between the Foreigners Law and the child protection system of the autonomous communities (CONRED 2005).⁹

In the Catalan case, different laws apply to the protection of the child. Law 37/1991 of 30 December on protection measures for neglected minors and adoption, arguably the most significant piece of legislation on child protection, centres on neglect. The following is the definition used by the Catalan childhood protection system in order to determine which children are neglected and which, consequently, should be the subjects of its protection:

We can consider minors neglected when:

- a) They lack persons who by law would take on the guardian role or when such persons are unable to take on this function or they would do so in a way that would put the minor at risk.
- b) When there is any evidence of failure to carry out the protective duties decreed for the protection of these minors or [such guardians] lack the basic elements for the normal development of the minor's personality.
- c) When the minor displays signs of physical or psychological mistreatment, or sexual abuse, or similar cases of abuse (Law 37/1991 of 30 December on protection measures for neglected minors and adoption).¹⁰

Unaccompanied minors meet minimum conditions when they lack guardians. Under the Catalan child protection system, minors without a guardian in the country are thus considered neglected, and the Catalan government automatically assumes the role of *tutela* or the 'custodian' who takes legal responsibility for them. The complication is that the rules governing unaccompanied children from Morocco fall under both the childhood protection system and the Foreigners Law. Thus, being under the guardianship of the state and being provided with food and shelter does not change their irregular status. This implies that children might be sent back any time, and that they cannot engage in activities that require legal residence. Nevertheless, being in custody of the state is a way to gain legal status, but it cannot be obtained immediately. When a boy enters the Spanish protection system, his case comes under a specific article (RD 2393/2004) that approves the regulation of the Foreigners Law concerning the rights and liberties of foreigners in Spain and their social integration,¹¹ regulating the entry and residence of foreign nationals, namely, art. 92 about unaccompanied minors. Paragraph 5 of that article of the Foreigners Law stipulates the following:

Passing nine months since the minor was put in the competent services of minors' protection, in agreement with section 2, and once having tried repatriation with his or her family or to the country of origin, and this having not been possible, will grant him or her the residence authorisation to which refers the statutory law 4/2000, of 11 of January.¹²

Thus, if a boy arrives in Spain and is judged to be both a minor (with legal papers or through a radiography test) and neglected, he should be taken to an emergency centre created for unaccompanied children. The government is then required to try to reunify him with his family within nine months. In order to assess whether family reunification is feasible and in the best interest of the child, government officials are required to carry out a telephone interview with parents. If the government has not succeeded in reunifying the boy with his family within the specified period or if the government determines that family reunification would not be in his best interest, he must be given a residence permit in Spain.

In the case of Catalonia, the implementation of international legal norms of child protection has created specific opportunities for unaccompanied minors. However, Catalan authorities treat children without a status differently from how they treat those with legal status in Catalonia. In particular, the Catalan state has created special centres for Moroccans, whereas the members of other communities, for example, South Americans, are mixed with Catalan children. This creation of a parallel system has been criticised by several NGOs (see e.g. CONRED 2005; Save the

Children 2004). Under this parallel system, children from specific foreign countries can obtain protection if they can prove that they have nobody at all to look after them. Catalan children or children who are members of other communities typically enter into the protection system through different circuits.

If, on the other hand, a child is found to have some relation in Spain (even if a distant relative), he or she cannot enter the protection system. In most cases, however, relatives of this kind are not in a position to take care of the child, or have no interest in doing so, leaving the child in a liminal situation: not fitting into the category of unaccompanied foreign minor and unable to enter the 'normal' protection system. These children, even if they are at risk of being deported due to their irregular status, are, in a sense, invisible from a child protection perspective because they are ineligible for child protection mechanisms.

5.5 Becoming neglected

In the following section, I summarise several ways in which neglect among Moroccan children arises. I will refer to unaccompanied minors and the ones back in Morocco trying to migrate, both migrants, and those who are not successful in migrating, whether directly or indirectly. In describing situations of neglect, I do not limit my analysis to situations of neglect that may arise on Spanish territory, but will also reflect on 'neglect' in Morocco and the interrelationship between situations of neglect on both sides of the Strait of Gibraltar. To illustrate, I use case studies obtained during my field-work and in some of my interviews.

5.5.1 *Exposure at the port in Tangier*

Many boys staying at the port in Tangier while awaiting an opportunity to cross are exposed to physical danger. This period of time could last for years.

I met H. in 2001. His family lives in the suburbs of Tangier, in a poor neighborhood, in a small self-constructed house. His father is retired and his mother is a housekeeper; he has an older brother and a younger sister. In summer of 2006, when I met him, H was seventeen years old, his older brother of twenty worked in a small leather factory, without a contract or social security, providing the only income that enters the home. His younger sister is still at school. He has been trying to cross to Spain for five years. He reached Spain three times, but each time was sent back. He sleeps during the day, and goes to the port at night. He had been beaten by the police and the port security members on several occasions. He argues that his family knows his intention, and they don't try to stop him,

but they don't support him either.

They [referring to his family] said that I'm a *shem kare*¹³ ['drug user']. Though I just use drugs sometimes, they don't believe me. One day I will reach Spain, then they will change their opinion about me. I will help them to get out of poverty.

The family does not trust H. about his real intentions to try to reach Spain. Sometimes he spends some nights at the port and uses the house just as a base camp to rest and recover.

For H., the fact that he is the second child is crucial; his older brother cannot think of migration because he had to work to support the family. H. is free of this duty, but the family could not afford to pay his school fees. Since the younger sister showed more interest in school and better aptitude than him, she was the one whose studies they supported. H. has many friends from the neighborhood who are now in Spain. They told him about the protection system. He still lives with his family who give him food and shelter. His family does not think he is serious about trying to cross; they think that he is just having fun with his friends and taking drugs. H. is risking his life daily at the port; his only activity is to try to migrate, so he has left school and other activities that his peers can pursue. Although his parents, by providing food and shelter, fulfil some of the functions expected from families, their relationship lacks several elements usually associated with a 'functioning family', notably protection, communication and affection.

The case of H. represents the majority of the migrant boys who live in Tangier, a boy who was able to draw on the occasional help of his family because they lived in the city. As I said above, however, the situation of boys living in rural areas is worse, because they lack support from their families while they are in Tangier away from home.

B. is another boy who has suffered from the harsh conditions of trying to live at the port and migrate from it. Unlike H., however, his family does not live in Tangier but in a distant rural area. I met B. in the surroundings of the port area in May 2006. A thin, illiterate and shy rural sixteen-year-old boy, he has been trying to migrate intermittently for two years. He spent some time at home in a rural area and some time in the vicinity of the Tangier port trying to cross. So far, he has never reached Spain. In June 2006, he broke his elbow falling from the top of the six-metre-high wall dividing the beach from the port. He tried to live at the port in this condition, but the other boys made fun of his bad luck. He decided to go back to his parents' house (ten hours by bus to the rural area where it was located) until he recovered. Before he left Tangier, B. told me that when he recovered he would try again. His family knows what he is doing, and makes comparisons to other boys who have achieved their goal. I asked

him if he thought his family knows the conditions he lives in; he answered that boys never explain the real conditions of living at the port to their families because they do not want to worry them, but he thinks they can imagine how it could be. B. thus represented a case of a boy experiencing neglect at the port but, because he was far from his family's support, he was forced not just to try to migrate but to survive in the meantime, looking for shelter, food, a place to wash himself, etc. Like other boys in such circumstances, he easily gets exhausted without any external support; his clothes also get older and dirtier faster than those of the boys from Tangier, and it is easy to recognise him by his ragged looks. This has made him more vulnerable.

5.5.2 *Becoming a street child in Spain*

A boy who migrates and becomes aware that he is going to be sent back to Morocco is very likely to escape the protection system and go live on the streets. There, he feels that he has failed his family members and ends up without protection, either from the state or his own family.

One of the first motivations of this research started with the question of why some of these children end up on the streets (Empez 2005). Five years of intermittent field-work in Barcelona, including talking with many of these boys and interviewing some of the professionals who interact with them, have persuaded me that a large number of boys mistrust the protection system; they are afraid of being sent back to Morocco, and they are living without protection. As a social educator told me in an interview:

I know a lot of cases in which they [officials] gave them [Moroccan boys] a proposal to return, based on the concept of family reunification. That means that they are not accepted to stay in Spain. If they stay in the protection system the police will come to take them and they will be sent back under family reunification. These children don't want to return and they end up on the street or leaving for another autonomous community. Sometimes this other community gives them a different response, or it helps them to integrate, but what happens is that they [the minors] develop a certain mistrust of the protection system. And kids who stay here on the streets in Barcelona and don't want to return, what do they have? If they don't leave the centre, they will be repatriated; then they become minors moving around to other parts of Spain or even Europe, searching for a place that really welcomes them, or they will make a living off the street.

Some boys, if they have friends or relatives, are able to live outside the system in relatively 'normal' living conditions, but most of them end up

living in *harbas*, occupied houses in poor conditions, and making the street their way of life. A large number of these boys end up in the justice system or in mental care. The same social educator pointed out:

But of course this makes them exhausted, insecure and mistrustful. In the end, it is like a self-fulfilling prophecy... We can find some small kids who, when they first arrived, were thirteen; they were in Madrid, then came here; after that they were sent back and I don't know. The kids have been switching communities, because everywhere people give them the same answer and they don't really want to leave. And then of course they are kids who have been on the street since they were thirteen, sixteen and seventeen and entering and living in the centres, they have really, really, deteriorated.

Especially when they know they are going to be sent back through 'family reunification', most try their luck in other autonomous communities; if unsuccessful, they move on to the streets. These boys depend on their social networks and personal abilities. Many become excluded, consuming alcohol and drugs. It is also common to observe self-injury scars. If they escape the protection centres, no one goes to look for them.

To illustrate, I knew three boys who in April 2006 left the child protection system because they were aware they were going to be sent back through family reunification, and lived for two months on the streets. After a time, they decided to leave for the Basque Country, where they spent three months. The Basque Country's new autonomous community has not yet ruled on the future of these boys; two decided to stay, but the third, tired and scared, decided to go back to the last autonomous community, where he lived on the streets. He was caught stealing in November 2006 and was last reported in a justice centre.

5.5.3 *The risks of family reunification*

As described, a boy who manages to get to Spain may be sent back under so-called 'family reunification'. Children who arrive in the Spanish protection system know that they are unwelcome and in a precarious situation, but the prospect of being sent back to Morocco to their families is hardly a goal. Rather, it is a threat that hangs over them.

Failing in his plans and those of the family that invested in him, he will try again to migrate, eventually worsening relations with his family. My observations in the field and in interviews with 'reunified' boys and professionals suggest that few such cases fulfill the requirements under the law of family reunification. The law specifically protects the right of minors to live with their families, a notion not limited to non-nationals. In case of child neglect, the Catalan child protection system thus routinely con-

siders the possibility of returning the child to his parents. But to do that, the system must guarantee that the family fulfill the requirements to take good care of their child. In the case of Moroccan children, however, authorities lack the infrastructure to make a profound analysis of the families' situation in the country of origin – as required by law – and most reunifications seem to take place without the requisite guarantee. My field-work did not turn up a single case of family reunification that would have complied with all the requirements of law (see also Jimenez 2003, 2004, 2006). In the case of Moroccan minors, 'family reunification' paradoxically may lead to neglect in Morocco; few boys are readily welcomed back in their families. Frequently, the family does not understand why the child has been sent back and often will blame the boy for not succeeding in his migration project. If other boys have made it, they reason, ours must have done something wrong.

The case of A. whom I met in the Tangier port area at the end of April 2006 is instructive. When we became acquainted, he was seventeen years old and had just returned from his rural home area to try to migrate again. He also seemed a very shy boy. After seeing each other many times, we developed a good relationship and he became one of my best informants. I also visited his family in the rural area where they lived, which helped me to better understand the context of unaccompanied minors.

When he was fifteen, A. managed to get to Spain. He first lived in Almeria, working in the fields. When a compatriot told him that as a minor he could have benefits from the protection system, he moved to Madrid and was accepted into the childhood protection system where he lived for fourteen months. According to the Spanish Foreigners Law, A. should have been given a residence permit after nine months in the protection system. Instead, he was sent back through family reunification in March 2006. His repatriation was widely discussed in the national media for its spectacular execution. The police came to look for him at two o'clock in the morning. When he realised what was happening, he entrenched himself in his room, barricading it with furniture. The police tried to get in for more than four hours; he threatened to kill himself if they came. When the police finally broke down the door he was trying to escape with sheets out the window of the ninth floor. Another police officer, knowing what could happen, was on the eighth floor and rescued him from falling. In a state of shock, he was transferred to the airport, where a doctor saw him and put him on the plane. They brought him to Casablanca, where he saw a judge and was told to go home. His family, however, knew nothing of this 'family reunification' until they saw him arriving. The family and the entire neighborhood could not understand why he was sent back. Ashamed, he spent just a week with his family in the rural area where they lived, and then went back to Tangier to try to migrate again. Ever since, he has been living on the

street at the port. He had been beaten by port guards three times. In summer, with the annual arrival of Moroccans living in Europe, an event in which the returnees display their wealth and seek out brides – and the city puts on an extravagant welcome – his father told him: ‘The only thing you brought from Spain was your long hair.’ A. knows that it is not easy to go back to Spain, but he argues that ‘there is no alternative’. When I visited his family, he just agreed to go with me because of my request that we do so, and he returned to the port as quickly as possible. The situation with the father was tense; they love each other, but all the hopes in his migration were gone. According to the family’s expectations, he was supposed to be the first to go and then help his older brother migrate, too; then his 45-year-old father could retire. Now the father and the son do not trust each other; both blame each other for A.’s current situation.

As this case suggests, the situation of boys who are sent back is worse than those who never reach Spain. They can either be victims of family reunification policy, seeing their migratory hopes dashed after reaching Spain, or they may be humiliated back in their own country, becoming a target of neighbors’ and relatives’ laughter; the dream of Europe was in their hands yet they let it escape. Above all, family reunification may not redress situations of neglect, but instead lead to renewed neglect in the country of origin. The majority of boys thus attempt to migrate again, often under worse conditions than their first time. Not only are they older, but they mistrust the protection system. Others become socially excluded, some become mentally ill or use drugs. In a wide range of cases, it is apparent how the assumption that family reunification is in the child’s best interest proves problematic; the underlying premise that the family will provide a safe place for the child does not hold true in reality.

5.5.4 *The consequences of ‘success’ in the childhood protection system*

What families and their sons both want has the perverse effect of ‘forcing’ these boys into neglect. This is due to the severely limited economic and migration options available and their having to assume adult roles at a very young age, taking care of themselves and living apart from their families. The case of F. illustrates this.

I first met F., then aged seventeen, in Barcelona in 2002. He had come to Spain one year earlier. He later obtained his residence and work permits and got a good job in a factory. Talking with him, I learned that he badly missed Morocco and would have liked to go back to live with his parents. Yet he had a responsibility to help his family and they would not understand if he decided to go back. Like an adult, F. feels the difficulties and struggles of migration, but he is young. Some can handle the situation, but others who, even after succeeding in getting to Spain and becoming

legal, experience anxiety, depression and other mental problems related to this lonely migration.

I met J.'s father at the end of April 2006. We met in Morocco in the taxi he was driving. He asked me if I could find his son, who left two months ago as an unaccompanied minor. He knew his son was in Barcelona. Keeping contact with the father, I started to ask about the boy in the Catalan protection system and my informal network. His father told me that he could not sleep thinking about the situation of his son. After a month, I found an educator who knew him. When I brought this news to the family, they were really happy. The family lives in moderate circumstances and thought that the migration of their son would give them a possibility for upward mobility. Knowing that only a 'neglected' child would be allowed to stay in Spain, when a social worker from Catalonia called them, they exaggerated their current situation to ensure J. would be accepted in the protection system. They thus described their situation as one of extreme poverty, characterised by marital conflict between the mother and the father. Under the current arrangements, there is little scope for social workers to get to know the real situation of the families in question. Spanish officials must carry out a telephone interview. In most cases, more experienced families know what to say to get their child accepted into the welfare system in Europe. Families without resources, by contrast, do not know how to act, making it more likely that these children will actually be sent back to situations of neglect.

Most boys who manage to stay in Spain because of their 'neglected' status are proud of their accomplishments in managing to stay, though stress that they lead a hard life. Many of them report that they feel lonely, especially at times of festivity like Ramadan or Eid al Kabir, which are major holidays in their countries of origin, both being celebrations involving families. On these occasions, they must pass the time alone in Europe. They say they cannot reveal the struggles they undergo in Spain because they do not want to worry their relatives. Sometimes they feel pressure to send money, when they do not even earn enough to off live themselves. They can only go to visit their families if they have enough money, often through borrowing, to pretend that they have an easy life in Spain.

5.5.5 *Accompanied but unattended*

The rise in what I call 'transcontinental fostering', in which children move in with relatives or family friends, means that these children have shelter, protection and food; some of them, if they are younger than sixteen, can even attend school. However, these children are in a paradoxical situation. According to the Spanish government, they are not unaccompanied minors because they are in the country with an adult. Because the government recognises the guardianship in fostering cases, but does not make it legal,

the Spanish police effectively turn a blind eye to such children who cannot obtain legal residence permits. They are not sent back when they are still minors, though when they turn eighteen they become irregular migrants and are liable to be deported.

One social worker from the city hall social services from a city near Barcelona told me that a man reported how his relatives in Morocco had sent his niece to him without telling him they were going to do so. He could not take care of her, he explained, and wanted to put her in the child protection system. The social worker called the emergency child service and explained the situation. In response, the protection system told the social worker that because this girl had a family of reference, she had to stay with the uncle or she would be sent back to Morocco. The social worker explained the situation to the uncle, who then decided to keep the girl in custody. But, as the social worker learned later, this man had an open file with the child protection system because he had abused his own children, whom the local government had wanted to take into protective custody.

In effect, his own children, who are legal Spanish residents and have residence permits, are treated by the Catalan government as children, as are the rest of Catalan children, but the girl who is fostered according to Moroccan custom is not. Nonetheless, she must stay in the same house, under the protection of the same man whom the government had declared unfit to take care of his own children.

This case concerns a girl, but it parallels the situation of the boys who do not fit in the category of unaccompanied minors. They have difficulties entering the 'normal' child protection system because the government looks only at the 'accompanied' piece of their situation, ignoring the other elements of neglect. In such cases, the government tries to treat these children more as irregular migrants than as unaccompanied minors needing protection. As migrants, they only require protection if they are unaccompanied, without giving importance to other factors that should warrant their being defined as children lacking protection.

5.6 Conclusion

The migration of unaccompanied minors from Morocco to Spain represents a specific case of globalisation and it reflects the persistent and deeply entrenched inequalities between the global North and the global South. This chapter has shown how the legal framework for migration impacts minors and their families and how it intersects with, and partly contradicts, child protection legislation. The legal framework has an impact in Europe, particularly on how institutions handle unaccompanied minors; it has an impact on Moroccan families, particularly in the way child migration, as

a coping strategy against poverty, affects ideas about the meaning of children and migration. The changing legal framework regulating migration, both nationally in Spain and at the EU level, have made migration a phenomenon very different from what it was just a decade or two ago. For Moroccans, it has placed increasing emphasis on children as the bearers of this burden, and has made it increasingly difficult for them to return, even if 'successful,' for anything except short visits. They are separated from their families at young ages not just by spatial, but also emotional distance, in that they cannot reveal the extent of their struggles. Some of these children become hence neglected by the very systems that are responsible for their protection.

In Spain, the legal and social status of Moroccan child migrants is viewed with ambivalence. On the one hand, they are minors who should be protected; on the other, they are illegal migrants who should be sent back. If they manage to reach legal Spanish territory, humanitarian laws governing child protection are supposed to take precedence, treating them as neglected children who require protection by the state as well as the international community. However, the very humanitarian ideology that claims to protect them in fact works against them in two ways. First, for children to qualify for state protection, the only pathway to legality open to them is to be seen as neglected – meaning that Moroccan families must distance themselves from their children. Second, Spanish officials, citing international legal humanitarian codes that stress the family as a key human value, with its emphasis on the rights of children to live with their parents, use the idiom of family reunification as a rationale for sending these children back. For such children, their families, formerly supportive, now come to resent them as 'failures', refusing to accept them back as full family members. Family reunification is hardly the result.

The globalisation process, while promoted by developed countries, is contradictory. It promotes free circulation of goods but also extensive control of people, making marginalised people the workforce that Europe needs. In the case of unaccompanied minors, as Suarez in Checa et al. (2006) note:

it is a disquieting phenomenon in a double sense, first because the special vulnerability of the minors is evident, crossing the powerful borders between countries and continents [...] and second, because they manifest their capacity to navigate among the interstices of the contradictions of our Western society, and even the pathetic and dangerous comprise their strategies of resistance.

These boys desire to consume Western goods, to have access to Western benefits such as holidays and medical insurance. But they desire these things not just for themselves. They know their migration could change

the course of their family members' lives. Each time a boy reaches Spain hidden under a truck or a bus, however, the failure of the ideals of human rights and the precariousness of familial reproduction become transparent.

The expanding EU border and concomitant tactics of exclusion have come at a high price. In Morocco, there have been enormous repercussions for marginal people who struggle to make ends meet or as they are trying to find access to the wealth of the EU. For their children, however, the costs are becoming even higher. The fact that under humanitarian law children must be neglected to qualify for protection of the state and 'neglect' is the only realistic means to get legal status in Europe generates real neglect among children, both in Europe and North Africa, whether unintended or intentional. Unaccompanied children are not seen as minors, but as *unaccompanied*. They need protection, as the international laws point out, but they are treated as immigrants. This is a reason why two parallel lines of protection exist: one for unaccompanied minors and another for other children, whether foreigners with residence permits or Catalan children. In this case, we point to a gap in the system of protection that leaves out all children in irregular administrative situations who are not entirely unaccompanied.

With the constant change in policies regulating migration and family reunification and increasing border controls, we do not know how the next generation of potential migrants will be affected. We do not know who in the future is going to appear as the best candidate to represent a family abroad and who will be the next to feel the perverse effects of changing laws in a globalised world. Since the laws are changing rapidly and the EU is making major efforts to send back children through family reunification, the unaccompanied minors phenomenon will likely decrease in significance or change in character in the next few years. Nevertheless, the fundamental contradictions between individual migrants' migration strategies, migration control and humanitarian laws are likely to remain in the future.

Acknowledgments

This paper has gained much from the support of Caroline Bledsoe. I would also like to thank the Max Planck Institute for Demographic Research for financial support of my work and my colleagues Gunnar Andersson, Annett Fleischer and Montserrat Ventura for comments on earlier versions of this chapter. I am grateful to all the boys and families that contributed their histories and to Àlex Muñoz, Mercedes Jimenez, Vicens Galea, Marta Civit and Laila Bakkali for their help in the field.

Notes

- 1 Most of the literature and findings on unaccompanied minors – Capdevila (2003), CONRED (2005), Empez (2005), Jimenez (2004), UNICEF (2005) – is about boys. However, there also exist social networks for girls who come to be fostered by families in Europe and who quickly become invisible subjects in the unaccompanied minors migratory phenomenon.
- 2 The meaning of ‘family reunification’ differs here from its meaning in the context of admission policies. In the context of child protection legislation, the term refers to the reunification of children with their parents, based on the ‘best interest of the child’ principle and a child’s right to live with family members. Legally, thus, the child is not ‘expelled’, but simply sent back to its family.
- 3 <http://www.cered.hcp.ma>.
- 4 <http://www.ine.es>.
- 5 Ley Orgánica 7/1985, de 1 de Julio, sobre derechos y libertades de los extranjeros en España.
- 6 This consists of proof of having been resident in the country for three continuous years, having a crime-free record, possessing a minimum one-year job contract and being closely related to a legal resident (parent, child or spouse; not qualifying are siblings, cousins or other relatives) – or by possessing a report expedited by social workers at the local city hall confirming that the migrant has developed social and cultural ‘roots’ in the country.
- 7 The legal framework has since been amended and a new law was adopted in 2009 (Law 2 of 11 December 2009).
- 8 <http://www.peretarres.org/daphneconred/estudi/index.html>.
- 9 For the case of Catalonia, see Llei 8/1995, 27 del juliol, d’atenció i protecció dels infants i adolescents.
- 10 <http://www.gencat.net/benestar/dgaia/conceptes.htm>.
- 11 Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.
- 12 Article 92.5 reads in Spanish as follows:
Artículo 92.5 Transcurridos nueve meses desde que el menor haya sido puesto a disposición de los servicios competentes de protección de menores, de acuerdo con el apartado 2, y una vez intentada la repatriación con su familia o al país de origen, si esta no hubiera sido posible, se procederá a otorgarle la autorización de residencia a la que se refiere la Ley Orgánica 4/2000, de 11 de enero.
- 13 *Shem kare* is a nickname for a drug-using boy who inhales solvents. In Arabic ‘*shem*’ means ‘to inhale’ and ‘*kare*’ is the dissolvent.

References

- Calavita, K. (2005), *Immigrants at the margins: Law, race, and exclusion in southern Europe*. New York: Cambridge University Press.
- Capdevila, M. & M. Ferrer (2003), ‘Els menors estrangers indocumentats no acompanyats (MEINA)’, *Justícia i Societat*, no. 24. Barcelona: Centre d’Estudis Jurídics i Formació especialitzada.
- CERED (Centre d’Etudes et de Recherches Démographiques) (2004). <http://www.cered.hcp.ma>.

- Checa, F., A. Olmos & J.C. Arjona (eds.) (2006), *Menores tras la frontera, otra emigración que aguarda*. Barcelona: Icaria editorial.
- CONRED (Comunidad virtual contra la violencia ejercida sobre los niños y adolescentes inmigrantes) (2005), 'Rutas de pequeños sueños: Los menores migrantes no acompañados en Europa', report. Barcelona: Fundación Pere Tarres. <http://www.peretarres.org/daphneconred/estudi/informe.html>.
- De Genova, N. (2005), *Working the boundaries: Race, space, and 'illegality' in Mexican Chicago*. Durham: Duke University Press.
- Delgado, M. (1998), *Diversitat i Integració*. Barcelona: Empúries.
- Empez Vidal, N. (2005), 'Menores no acompañados en situación de exclusión social', in T. Fernandez Garcia & J.G. Molina (eds.), *Multiculturalidad y educación: Teorías, ámbitos, prácticas*, 314-333. Madrid: Alianza Editorial.
- Empez Vidal, N. (2003), 'Menors no acompanyats estrangers indocumentats: Una aproximació al fenomen', Master's thesis. Barcelona: Universitat Autònoma de Barcelona.
- Jimenez, M.A. (2006), 'Donde quiebra la protección: Las reagrupaciones familiares sin garantías', unpublished report. Taller de Estudios Internacionales Mediterráneos (UAM).
- Jimenez, M.A. (2003), *Buscar-se la vida: Análisis transnacional de los procesos migratorios de los menores de origen marroquí en Andalucía*. Madrid: Editorial Santa Maria. http://images.indymedia.org/imc/estrecho/application/11/Buscarse_la_vida.pdf.
- Jimenez, M.A. & D. Lorente (2004), 'Menores en las fronteras: De los retornos efectuados sin garantías a menores marroquíes y de los malos tratos sufridos', report. Federación SOS Racismo. http://www.mugak.eu/ef_etp_files/view/Informe_menores_retornados.pdf?revision_id=9202&package_id=9185.
- Save the Children (2004), 'Informe sobre la situación de los menores no acompañados en España', Documento de trabajo IV. http://www.savethechildren.es/ver_doc.php?id=16.
- Scheper-Hughes, N. (ed.) (1987), *Child survival: Anthropological perspectives on the treatment and maltreatment of children*. Boston: Dordrecht.
- Suárez, L. (2006), 'Un nuevo actor migratorio: Jóvenes, rutas y ritos juveniles transnacionales', in F. Checa, A. Olmos & J.C. Arjona (eds.), *Menores tras la frontera, la otra emigración que Aguarda*, 17-50. Barcelona: Icaria.
- UNICEF, Fundacio Jaume Bofill & Junta de Andalucía (2005), 'Nouveau visage de la migration les mineurs non accompagnés, analyse transnationale du phénomène migratoire des mineurs marocains vers l'Espagne'. http://www.unicef.org/morocco/french/Etude_Migrations_Mineurs.pdf.
- Wolf, E. (1982), *Europe and the people without history*. Berkeley/Los Angeles: California Press.