

"Transnationalism of ostracism: Moroccan migrant minors and procedures of illegalization"  
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## 1. Introduction

The paper we are presenting here is the synthesis of the encounter of three anthropologists in their professional and scientific work. The three authors have undergone a thoughtful reflection about the new migratory reality from a transnational perspective. The migration phenomena studied is the one carried out by Moroccan youngsters and adolescents who migrate alone to Spain and Italy. The authors have taken into account different scales, different research contexts and different dimensions in their analysis.

The theoretical framework of this work is based on the premise that these migrating minors should be regarded as a new actor in the international migratory panorama. (Suárez 2006). These minors migrating alone face a crucial ambivalence: on the one side, as minors, they are subjects to protect. On the other side, however, they entered the country irregularly, hence facing a strong control from the foreigner's legislation of the destination countries. Sometimes, moreover, this control is exerted even by departure countries, as is the case of Morocco, where leaving the country irregularly is considered illegal and penalized. This ambivalence of being subjects who need protection and "objects" to control is in the genesis of the "treatment" and "mistreatment" that these minors receive in Morocco, Spain or Italy. This article aims at analyzing this process in the Mediterranean context, where the border control logic it is not only exerted in the European space, but that also has been delocalized to Morocco, that has assumed the role of "police control" of Europe.

Furthermore, this article presents the departure contexts of these minors and the development of this new migratory phenomenon, as well as the analyses of the contexts of their arrival in Spain and Italy, countries granting a similar juridical treatment. For that purpose, we have therefore organized our investigation on a "roundtrip" analysis, reconstructing, from a transnational perspective, a reflection focused on these new "rebels of globalization" (Jimenez 2007b)<sup>1</sup>. Certainly, with these adolescents and youngsters emerge the need to redefine not only our systems of border control but also our protection systems for the children. Their mobility and flexibility raises the need to incorporate more dynamic and creative means of intervention and analysis.

This new migratory reality brings about many new challenges. The authors developed throughout their professional task, from a transnational dimension, new forms of work and new forms of intervention. An example can be found in the creation of transnational networks for protection, transnational social mediation and the intervention in the countries of origin and destination from the point of view of local and communitarian development.

## 2. Methodology

The findings of this article are not the results of a research *per se*, but rather the fruit of the synthesis of the fieldwork and the common matured reflections throughout the time. The transnational dimension is at the base of the anthropological analysis of the authors on the migratory process that the Moroccan adolescents and young people undertake in the Mediterranean.

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<sup>1</sup> Ribas points out that this adolescent migrating alone are "the most vulnerable of the globalization" (Ribas 2003). Now, if we agree to consider the free circulation of goods and the institution of new borders for people as one of the most striking paradoxes of globalization, we can recognize the challenge posed by these youth, transforming an imagined "weakness" into form of "agency". Furthermore, observing the various strategies to flee from the social control and the general inversion of the social order they put in being with their migration, we prefer to talk about "rebels of the globalization".

Different approaches can be used for the same topic. The need for transnational studies arises to address the complexity of the globalization process, in which movements of people, goods and capital are taking place beyond the boundaries of a nation-state.

By considering the migratory patterns separately, and making a division among the context in the country of origin and the one in the country of destination, we miss the complexity and nuances of the phenomenon, leading to misunderstandings or poor conclusions. Furthermore, a localized sight is often consistent with the explicit strategy we often face today, aimed at reducing the profile of the migrant subject to an economic variable (Sayad, 1999).

It is difficult to evaluate thoroughly the direct impact that the Spanish and Italian foreigner's laws may have in Morocco and its relation to the phenomenon of unaccompanied minors. It is also hard to quantify the exact figure of minors crossing the shores. We must emphasize, however, that not all Moroccan children, of course, are trying to migrate, and that not all the families support their children's choice of migrating. Nonetheless, for example, it seems that the number of unaccompanied children in Spain and Italy has steadily increased since the 1990's, when the first case appeared, until now.

Methodologically, the authors have used the specific techniques of anthropology. Different contexts of investigation (associative, institutional, familiar, personal) have been conjugated in the fieldwork with different scales (family, city) and different dimensions, being the work in the transnational associative network a new form of approaching this new migratory reality. The "multisited" ethnography cannot only be justified by the diversity of origins and destinations of the researched objects, but also by their extended mobility. All three authors have conducted fieldwork and participant observation in two countries: Spain (mostly in Catalonia and Andalusia), Italy (Turin, Sicily, Lampedusa) and Morocco (mostly Tangiers, Casablanca, Beni Mellal, Khouribga, Kelaat Sragna). The fieldwork is still a work in progress and the authors are still undertaking research on this topic.

A specific professional facet complements the scientific dimension. All three authors operate directly in the field of intervention with teenagers and Moroccan youngsters (in Morocco, Spain and Italy). They try to carry out an applied anthropology task that incorporates the transnational dimension to design new forms of work and new forms of intervention in origin and destiny.

Little has been written so far on transnational research methods applied to these new migrants. In contact with these minors, the authors were playing a double role: as researching anthropologists on one side, and as intervening operators on the other (a social worker, a NGO member and an ethnopsychologist). This double role provided several advantages, but also involved dilemmas which had to be faced and solved throughout the research process.

In this sense, this article does not try to compare the contexts in which Moroccan minors are placed in Spain or Italy, but rather it aims at carrying out a joint reflection on the processes and the conditions that configure a "good treatment" and a "mistreatment" to this group of adolescents and youngsters in both countries. We consider this treatment mainly dependent on the double condition of these subjects. This means that, on the one hand, they enjoy the legal condition of being "minors", which provides them with several measures of protection in Spain and Italy. On the other hand, however, they have the legal condition of foreigners having entered a territory irregularly and, according to the regulation of their administrative situation, they are subjects to a much more restrictive condition in which control seems to be a priority.

### **3. Exposition of the key ideas:**

Throughout this work, the authors base their reflections on three fundamental ideas:

1) Whitehead and Hashim (2005) state that the number of minors affected by the contemporary migratory flows is higher and more difficult to quantify than actually stated. Their study describes three main contexts in which the minors (children, adolescent and youngsters) can be placed. On the one hand, there are those who had been "left behind" when their father, mother

or both emigrated. On the other there are those migrating with their families and, finally, those making an autonomous project migrating independently from their families. Up to now, migration of minors and young people has traditionally been understood as part of a familiar strategy (Suárez 2006) as in many work on schooling, identity, transnationalism and family roles.

Without neglecting the importance of the family, that we consider anyway an important context of reference, we would like to emphasize the fact that these adolescents and youngsters migrate in many cases in an “independent form”. In order to understand this new migration trend we must overcome the conception of these minors being dependent subjects subordinated to their family units. We have to assume the hypothesis that unaccompanied minor migrants configure a new migratory actor in the international migratory panorama (Suárez 2006). We are not in front of isolated facts, nor especially adventurous boys or girls choosing to follow the path of their compatriots towards the Europe of welfare<sup>2</sup>. On the contrary, we witness the emergence of a new migratory agent, who follows the geographic trajectories of adult migrations, but that has its own dynamics and nature (Suárez 2004). It is for this reason that the widespread definition of “unaccompanied minors” manifests all its hermeneutic deficiencies: centering the meaning of the migratory experience mainly on adults supposed to escort them, the definition reinforces the idea of weak subjects ready to be “saved” and therefore disposed to accept any minimal answer. We will see that this is not the case.

2) We choose to deal, in this article, with the experience of Moroccan minors migrating to Spain and Italy. These two Mediterranean countries grant similar legal treatment to these minors and certain similarities can be found in front of other countries of Northern Europe<sup>3</sup>.

According to EU definition and to that of the Convention of Rights of the Childhood (New York 1989), minors would be expected to be treated equally everywhere. However, many differences can be appreciated when observing how different European countries treat their unaccompanied minors. For instance, Germany and Great Britain consider unaccompanied minors as asylum seekers (calling them ‘unaccompanied asylum seekers’, or ‘unaccompanied refugee minors’). Spain and Italy apply to them general child-related protection laws (and they are called “*menores no acompañados*” and “*miniori stranieri non accompagnati*”). Belgium combines both perspectives of asylum and protection. France does not have any special treatment for these children and they are integrated in the resources of the common law of protection (naming them “*mineurs isolés*”, without making any reference to their migrant condition) (Conred, 2005, Senovilla Hernandez, 2007).

The scenario of the tension between protection and control is well exemplified by the conditions in which familiar reunifications are carried out. In Spain and Italy, it is admitted, according to the New York Convention, that the child has the right to live with is family, but this topic has been frequently used as a mean to realize covered expulsions<sup>4</sup>. In Spain, familiar reunifications are carried out since 2000 harming fundamental rights, as it has been stated in diverse sentences<sup>5</sup>.

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<sup>2</sup> If it is generalized the pre-eminence of boys, girls are progressively increasing their number, although it is true that, for many reasons, they are generally “invisibilized” (Trujillo and Morante 2007).

<sup>3</sup> There are some difficulties in the sense that unaccompanied minors face different laws and treaties; definitions also vary from country to country. We could use the definition of the European Union (EU) that describes them as: “Third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person” EU Council Resolution 97/C 221/03 of 26 June 1997 on unaccompanied minors who are nationals of third countries. The Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989) in the article 20.1 states that: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”. As a summary of the definitions, we conclude that unaccompanied minor is a person under the age on 18 without any responsible adult; in such case, the States must provide them protection. We can find unaccompanied minors all over the world; like Latinos in the United States and unaccompanied minors with different ethnic backgrounds in other European countries. The situation of some of these children has been described in Quiroga (2003), Jimenez (2004, 2006), Empez (2003, 2007), Conred (2005), Senovilla Hernandez (2007).

<sup>4</sup> It is noteworthy that, on some occasions, minors orphans of father and with the mother at an unknown place have been repatriated from Spain to Morocco.

<sup>5</sup> Sentencia de 25.09.2006 del JCA nº 14 de Madrid; Sentencia de 26.04.2007 de la Sección Quinta de la Sala de lo Contencioso Administrativo del Tribunal Superior de Justicia de Madrid; Sentencia de 31.07.2007 de la Sala de lo Contencioso- Administrativo del Tribunal Superior de Justicia de Cantabria; Sentencia de 14.2.2008 de la Sala Contencioso Administrativa del País Vasco.

The administrative procedures that execute these irregular reunifications are violating the fundamental rights to such an extent that the Ombudsman presented a specific accusation in his annual report to the Parliament (years 2004, 2005 and 2006)<sup>6</sup>. Therefore, the tension yields in favor of a State logic that uses the reunifications as a sort of “punishment”, as a form of control or as a “dissuasion” to diminish the presence of the minors in the protection systems. In this way, this procedure does seem to be based on a principle of right only in a rhetorical way, covering the real interest, aimed at safeguarding more a “superior interest of the nation” than a “superior interests of the minor”.

This kind of procedures, raise question about the deep ambivalence towards these subjects. We analyze the consequences of this ambivalence and formulate a series of questions like: what happens when a minor crosses the border and meets the contradiction between protection and repression? How do minors react and what strategies decide to use to secure their objectives? How do the individual interests is conjugated with the exigencies imposed in a system of welcome built up according to political priorities? What is the result of a protection “vanishing” when they turn 18 years, most of the times without having reached a consolidated educative and personal project of autonomy and without a regularized legal situation? What challenges do these minors present to our societies and us?

There are many other questions to answer, some of them are still under construction and some others still need a more complex analysis, such as: to what extent is protection declined as a tool to control these new migrants? What happens to the minors refusing help and thus “escaping” from the system of protection/control?

3) The ambivalence previously described takes place namely in a Mediterranean context. In 1985 five states of the then called CEE signed the Schengen agreement (Germany, France, Belgium, the Netherlands and Luxembourg). At present, the adhered states come to 23 (Spain adhered in 1991 and Italy in 1990). Schengen agreement is aimed at suppressing all inner borders within the EU and at reinforcing the outer frontier<sup>7</sup>. As different authors indicate, the “Fortress Europe” created by Schengen agreement, suppose an unfolding of technologies and control mechanisms (foreigner laws, detention centers, agencies of control, public grant for border management, system of monitoring, etc.) and, at the same time, an increasing infringement to the rights of the migrant people (Mezzadra, 2004; Sossi 2005; Sossi 2006)<sup>8</sup>.

We are currently witnessing the delocalization of the southern external border of the EU in the Mediterranean through different political mechanisms: agreements between EU and coastal third-party countries; the constitution of a “new generation” of foreigner Law’s in Morocco, Algeria, Tunisia and Libya mixed by the externalization of detention centers, border patrols, strengthen control to foreign people in the country, etc. Again, we also observe the systematic infringement of the human rights without the existence of sufficient mechanisms of monitoring and protection.

It is well known that Morocco occupies an outstanding geostrategic position in the Mediterranean space. The “delocalization” of the southern border of the UE began on 2000, when Morocco accepted to play the role of “guardian of Europe”. These are some of the outstanding events that mark this new international function: i) the Law n° 02-03 regulating the entrance and residence of foreigners in Morocco as well as the irregular emigration.; II) the violation of rights and the expulsions of economic migrants, asylum seekers and refugees from the territory, reported by different international organisms from the coming into force of the law; III) The signature in 2003 of the "*Memorandum of agreement for the Attended Repatriation of Minors between Spain and Morocco*" and its conversion in the Bilateral Agreement of March of the 2007; IV) the repeated expulsions, from 2000 to 2008, of Moroccan minors from Spain dressed up as arranged returns.

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<sup>6</sup> Particularly, absence of notification, nonexistence of the hearing process, absence of the judicial defender in case of conflict of interests, impossibility to accede to an appointed counsel have been reported.

<sup>7</sup> The Directive of Return approved by the European Parliament in June of 2008 is the maximum expression of this will.

<sup>8</sup> See also all documents published of <http://fortresseurope.blogspot.com/>; <http://melillafronterasur.blogspot.com/>; <http://www.es.amnesty.org/temas/refugio-e-inmigracion/espana-frontera-sur/>; <http://www.hrw.org/spanish/informes/2002/inmigrantes.html>; <http://www.no-fortress-europe.eu/showPage.jsp>; <http://www.migreurop.org/>; <http://www.indymedia.org/es/>; <http://www.apdha.org/>

In the Mediterranean space, where the logic of security and control unfolds clearly, irregular migrants become an element of control. These minors migrating alone become a destabilizing element in society because of their attitude to use a “windows of opportunity” (Empez 2007) entailed by their special condition. In addition, the system of protection designed for “native” minors, is often undermined by a presence demanding an active and productive role.

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XX

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