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acting in the best interests of the child»**

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THE SITUATION OF UNACCOMPANIED MINORS IN MOROCCO

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INTRODUCTION

The Council of the European Union has defined unaccompanied foreign minors as '*third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State*

While the subject of unaccompanied foreign minors has been on the political and social agenda for a number of years, the responses to it have so far been sectoral and inadequate and have tended to approach it from a security point of view, often violating the rights of the child and taking into account neither the opinions nor the best interests of the child.

This is a real tragedy with incalculable human costs: deaths, shipwrecks, rootlessness, breakdown, etc.

Was not the Euro-Mediterranean Partnership based on "shared peace and prosperity" on both sides of the Mediterranean? To the North are rich nations that virtually want to padlock their doors and, to the South, poor nations unable to prevent their young and not-so-young people from trying to reach the European El Dorado, thus helping to boost the profits of the smuggling networks present on both sides.

Morocco is situated at the crossroads of ever greater migratory flows. It is a country of emigration, transit and also of immigration. It should not be forgotten that Morocco's geographical position makes it a target of growing migration from sub-Saharan Africa. Is Morocco to be the policeman of Europe, responsible for controlling 3500 kilometres of coastline as well as its land borders?

Taking an approach based on the rights of the child, this study will analyse the migratory cycle of Moroccan minors in order to try to answer the following questions:

- What policies should be conducted in order to understand the migration of unaccompanied minors and help them by taking their needs/interests into account (*the best interests of the child*)?
- How could international cooperation strengthen member states' capacities to improve management of the migration of unaccompanied minors in Europe?

The study is divided into four parts:

- o analysis of the situation of lone children in Morocco: "street children"
- o analysis of the migratory cycle of unaccompanied foreign minors
- o analysis of the legal framework for the reception and care of unaccompanied foreign minors
- o analysis of reception and care methods in Morocco and destination countries.

CHAPTER 1

ANALYSIS OF THE SITUATION OF LONE CHILDREN IN MOROCCO “STREET CHILDREN”

1. Scale and forms of the “street children” phenomenon

The term “street children” includes children who sometimes or always live on the street and are therefore not supported or protected by their families.

It is, however, important to stress that not all street children are candidates for clandestine migration.

On the other hand, minors who have been time and again sent back from Europe squat the northern ports waiting for another opportunity to leave and end up becoming “street children”.

In 1999 the State Secretariat for Children, Women and the Family, in partnership with local authorities, conducted a preliminary study in most of the Kingdom’s medium-sized and large cities. The study, which found there to be between 14,000 and 16,000 street children in Morocco, showed how difficult it is to give exact figures because of the mobility of children who live or wander in the street.

City	Under 9		10 – 14		15 – 18		Total
			28.22%				
Marrakesh	217	35.15%	171		218	35.97%	606
Safi	793	34.15%	985	42.42%	544	23.43%	2322
El Jadida	132	26.19%	182	36.11%	190	37.70%	504
Beni Mellal	598	35.47%	547	32.44%	541	32.08%	1686
Tangier / Assila	121	24.69%	239	48.78%	130	26.53%	490
Tetouan	10	16.67%	23	38.33%	27	45%	60
Fez	272	16%	867	51%	561	33%	1700
Meknès	449	31.80%	473	33.50%	490	34.70%	1412
Casablanca							5430

Their number is now officially estimated at between **10,000** and **30,000**.

The invasion of the streets by children is the result of several factors:

- socio-economic factors (cf. Chapter 2): poverty, the flight from the land, uncontrolled urbanisation, unemployment, under-achievement at and dropping-out of school, economic exploitation of children;
- family factors: single-parent families (divorce, single mothers), domestic violence, families that have given up, lack of affection.

The street has become an alternative for these children: freedom, informal economy solidarity, clan, etc.

Street children are not a homogeneous group. A number of street typologies have been identified:

- permanent residents who have lived full-time on the street for years;
- working children: hawking, washing windscreens, working as packers in ports, shoe-shining, etc.
- sexually exploited children (prostitution);

- beggars;
- those who want to migrate clandestinely or have already been turned back and are awaiting another departure to Europe;
- offenders;
- runaways;
- child maids escaping violent employers.

Their age varies from 6 to 25, most being pre-adolescents (11-14). There are now almost as many girls as boys, girls being increasingly visible on the streets (48% girls and 52% boys, according to BAYTI, a Moroccan NGO involved in the protection, rehabilitation and social reintegration of street children).

The street affects its inhabitants, sometimes irreversibly. According to profile, age, time spent and way of life on the street, the following are observed to varying degrees:

- **Behavioural problems:**

- loss of temporal-spatial reference-points: the notion of time and space is gradually lost; cold, hunger, fear of roundups and the need for solidarity become their only reference-points;
- loss of self-esteem; loss of self-confidence and of confidence in others;
- rejection of any form of institutionalisation;
- rootlessness: they move from squat to squat and from town to town according to their mood and needs. They can no longer bear to settle in one place;
- physical, verbal and sexual violence becomes a way of life, violence leading to crime in some cases;
- behavioural instability;
- delinquency: thefts, using a knife, rape. These youngsters are often caught up in a vicious circle: street – prison – street.

- **Drug and alcohol dependency**

95% sniff glue or thinners (*tshamkir*). The effects of sniffing are:

- loss of conscience: no longer responsible for their acts;
- courage: ability to confront others, beg and bear humiliation;
- means of survival: no longer feel hungry or cold and sink into a deep sleep;
- escape, access to a fantasy world of fiction, incoherence, delirium;
- mental sluggishness (neurological effect of inhaling glue);
- acting out: fights, self-mutilation, suicide attempts.

They become dependent very quickly. Some sniff as many as ten tins of glue a day.

Some young people take other types of drug: cough mixture, antidepressants, hashish. They are relatively few in number because of the cost.

A great many are dependent on tobacco.

Fewer use alcohol, which is mainly the preserve of young adults.

In addition, because of the living conditions on the street (lack of hygiene, malnutrition, deficiencies, violence) many youngsters have health problems: tuberculosis, stunted growth, sexually transmitted diseases.

2. Analysis of responses to the problem

a) The legal response

Morocco ratified the Convention on the Rights of the Child in 1993. In order to bring national law into line with the various international conventions and protocols ratified, the New Code of Criminal Procedure was introduced in 2002.

This revision of the law included the reform and reorganisation of juvenile justice. In the context of this reform, particular emphasis was placed on the protection of:

- young offenders (Articles 512 to 517)
- young victims of crime (Articles 510 to 511)
- minors in difficulty exposed to offending (Articles 512 to 517).

Street children are considered children in difficulty and therefore at risk. Under Article 513, “A child under 16 shall be considered to be in difficulty where his/her physical, mental, psychological or moral security or his/her education is at risk because he/she associates with offenders, persons of ill-repute or persons with criminal records, where he/she rebels against the authority of his/her parents, the person who has custody of him/her, his/her guardian or family-council guardian, the person who cares for him/her, the person or institution in whose care he/she has been placed, where he/she habitually runs away from the place where he/she is being educated or trained, where he/she leaves his/her home or has no adequate shelter”.

The juvenile judge of the first instance court may, at the public prosecutor’s request, apply one of the following measures to minors:

- hand them over to their parents, guardian, family-council appointed guardian or the person who cares for or has custody of them;
- hand them over to the reception section of a public or private institution authorised for this purpose;
- hand them over to a public service or public institution responsible for assisting children or to a hospital, in particular where treatment for drug dependency is required;
- hand them over to a government vocational training or care facility or an appropriate public department or registered institution;
- hand them over to a government-approved association authorised for this purpose.

If the juvenile judge considers that the child’s state of health, psychological state or behaviour requires thorough examination, he may order him/her to be placed in a registered, recognised centre for a maximum period of three months.

These measures are applied under the probation system and a probation officer is appointed.

The juvenile judge may at any time order the cancellation or modification of measures in accordance with the child’s interests. He will make this decision either of his own motion or

at the request of the public prosecutor or the person or institution who has custody of the child. If it is not the prosecutor who has made the request, his opinion must be sought.

Measures taken with respect to a minor end on the date provided for in the decision and in all cases when the child reaches the age of 16. In exceptional cases, where the child's interest so requires, the judge may decide to extend the measures until the child is 18.

Under the New Code of Criminal Procedure the age of criminal responsibility is 18. In the criminal sense of the term, a minor is any person under the age of 18. Minors under 12 years of age are considered to have no responsibility whatsoever for their actions. No sentence may be imposed on them. Only protective and rehabilitative measures may be taken in their regard. Between 12 and 16 years of age, minors are considered partially responsible. Protective and rehabilitative measures may be taken in their regard and, in exceptional cases, a mitigated sentence may be imposed.

b) Public policy

Essentially three ministries have powers with respect to children: the Ministry of Social Development, the Family and Solidarity, of which the State Secretariat for the Protection of Children, the Family and the Disabled is part; the Ministry of Justice; the State Secretariat for Youth.

Other ministerial departments are also involved: the Interior Ministry (police), which has replaced the young offenders squad with police officers responsible for the protection of minors; the Ministry of Health with respect to the care of child victims of violence and to forensics (examination and description); the Ministry of Education with respect to compulsory schooling and non-formal education; the Ministry of Employment and Vocational Training with respect to combating child labour (labour inspectorate).

At present government reception centres and institutions caring for street children are managed by the State Secretariat for Youth. There are 16 such centres scattered throughout the Kingdom. In January 2002 King Mohammed VI established the Mohammed VI Foundation for the rehabilitation and reintegration of adult and young offenders. Its mission is:

- to equip centres to care for children well and humanely;
- to control the cycle of prevention, protection, rehabilitation and reintegration of minors;
- to develop follow-up methods in order to prevent reoffending and to consolidate reintegration.

A draft decree on the opening of social protection establishments is at present being examined by the Government Secretariat-General. It concerns ways and means of managing and supervising social protection establishments; it also refers to standards and norms on reception structures, with respect to infrastructure, capacity, target population, quality of programmes and staffing, evaluation and follow-up.

Five years ago the National Rights of the Child Observatory introduced a telephone hot-line and a children's parliament; ten medical units were set up in hospitals for child victims of violence.

A mobile emergency medical service for the homeless has just been launched in Casablanca for action in the street, initially for children and women.

Training programmes for judges, police officers and others working with children have been introduced since the introduction of the New Code of Criminal Procedure.

A draft law on the status of social workers is currently under examination.

With respect to promoting and protecting the rights of the child, the responsibilities of the Consultative Council for Human Rights include “examining on its own initiative or at the request of the party concerned the cases of human rights violations referred to it and making the necessary recommendations to the relevant authority” (Article 2 of the Royal Decree regulating it). The Council can therefore intervene whenever a violation of the rights of the child is referred to it.

c) The voluntary sector

NGOs initiated programmes for street children as early as 1995: street workshops, “street-screening”, reception centres, education and training and family support programmes, etc.

They are present in Casablanca, Safi, Mohammedia, Tangier, Tetouan, Fez, Marrakesh, Salé, Meknès and Essaouira.

Public-NGO partnerships are proliferating with a view to strengthening actions and synergies. For example, BAYTI, the first Moroccan NGO to work in the streets of Casablanca, Meknès and Essaouira, has cared for 17,000 children over a ten-year period (1995-2005).

d) The best interests of the child

Not all methods of receiving and caring for street children take the best interests of the child into account.

While national child protection legislation has advanced considerably, its implementation is still piecemeal and suffers from lack of:

- human resources
- conceptual tools (methodology, approach, programmes)
- rigorous follow-up and supervisory mechanisms
- coordination and clarification of the roles of the various agencies involved.

CHAPTER 2

ANALYSIS OF THE MIGRATORY CYCLE OF UNACCOMPANIED MINORS

1. Underlying causes of migration of unaccompanied minors

a) Socio-economic, political and cultural context in the country of origin

Morocco is a constitutional monarchy with an elected parliament.

Socio-demographic data from the last census, taken in 2004 by the High Commission for the Plan (HCP):

Population: 29,891,708 (20.9.2004, HCP Morocco): 16,463,634 in towns and 13,428,174 in rural areas, i.e. 55.1% in towns. The profile of the age pyramid shows it to be a young population: 31.6% are under 15.

Density: 13 per km²

Male life expectancy: 68.08 (in 2004)

Female life expectancy: (72.74 (in 2004)

Population growth rate: 1.61% (in 2004)

Birth rate: 22.79% (in 2004)

Mortality rate: 5.71% (in 2004)

Infant mortality rate: 43.25% (in 2004)

Fertility rate: 2.82 (in 2004)

Political and social situation

Morocco is distinguished in the Middle East and North Africa region by its political openness which was initiated in the mid-1990s and gathered pace with King Mohammed VI's accession to the throne in 1999: free, transparent elections, the emergence of a flourishing civil society and a lively press. A great many legislative reforms have been introduced in order to bring the country into line with the conventions, protocols and other international instruments the country has ratified. The most remarkable reform has been that of the Family Code (*Mudawwana*) which has contributed to the recognition of women's rights.

In response to the terrorist attacks in Casablanca on 16 May 2003 committed by radical Islamists living in urban shantytowns, initiatives to improve the social conditions in urban, suburban and rural areas were strengthened, at the same time as more stringent security measures were introduced.

Many challenges remain, however:

- Poverty and economic insecurity

About 15% of the population is currently considered poor. Some two-thirds of the poor live in rural areas but the percentage in urban areas is rising. Recent analytical studies by the World Bank and the Moroccan Government showed there to be considerable variations in poverty levels in different districts (and even within the same province or region), and found pockets of poverty in both urban and rural areas.

Apart from the segment of the population that is below the poverty line, about one-quarter of the population is considered economically vulnerable. This population lives on the poverty line or at least 50% above the poverty line and is therefore not in a position to deal with crises such as illness, drought or loss of employment. This group presents a considerable challenge to social stability.

Taken together, the “poor” and the “vulnerable” account for around 40% of the population of Morocco and should have greater opportunities to benefit from growth and access to basic services and infrastructure.

- *While with respect to education*, the indicators have improved significantly, particularly for girls and women, with a net national primary education enrolment rate of 92% (boys: 82%; girls: 89%), the large number of drop-outs and pupils repeating a year, as well as geographic disparities, underline the internal inefficiency of the education system.

More than 48% of the population of 15 years and over are illiterate.

- The flight from the land is in part the result of the gradual desertification of the southern regions of the country and of successive years of drought. It has led to:

- an annual 4% increase in the working population in towns
- uncontrolled urbanisation: overpopulation of conurbations unprepared to receive such an influx and the mushrooming of shantytowns and insalubrious dwellings in suburban areas without basic infrastructure or social services.

- Unemployment: as economic growth is relatively low (4.5%), new arrivals on the job market, particularly young people and women, have difficulty finding employment. The consequent increase in urban unemployment has led to more exclusion. The increase is particularly marked among the young and the educated, the rates being 34% and 26% respectively.

In order to meet these challenges, King Mohammed VI has since his accession constantly made the social dimension of development and poverty eradication his priorities. This was recently reiterated when the *NHDI, National Human Development Initiative*, was launched, a comprehensive, integrated strategy based on respect for social, economic and cultural rights.

The Government has also launched a wide-ranging reform and investment programme on both the economic and social levels.

b) Decisive factors underlying unaccompanied minors' migration plans

What numbers are involved? What is their age and gender distribution? Which regions do they come from? Where do they go?

It is difficult to reply exactly to these questions precisely because the migration is illegal. The figures vary according to country and sources. As an example, in the first quarter of 2005, some 300 Moroccan minors arrived in Spain, the majority them boys, most between 13 and 16 years of age (Spanish authorities).

European officials constantly refer to a massive and growing influx of African minors but do not give precise figures.

Intra-European mobility makes any estimate still more difficult.

Boys still form the majority; girls are less visible and less frequently apprehended because they arrive in Europe with forged passports (family reunification) or sponsorship or with forged employment contracts. They are therefore invisible because they lie low or are shut away in “host”

families (slavery) or by trafficking networks (prostitution). They are often discovered in the context of particular events (escape, violence, suicide attempt).

These minors come from every region and city of Morocco. It is hard to establish which regions are dominant.

The main European countries of destination are Spain, France, Italy and Belgium.

Why do they migrate?

In order to understand the processes underlying emigration, the aspirations and expectation of each migrant have to be examined, since each weighs the pros and cons before taking a decision.

Despite this individual decision-making process, a number of common characteristics of the conditions in which migrants live can be identified. Migrants develop in economic, social and political structures that fashion their existence and in a sense drive them from their country: these are what are termed the push factors. There are also elements that attract them to a new home base: these are the pull factors.

This is why, while migrants are in a sense pushed towards other places by the economic and social impasse in which they find themselves, their perception of the (real or imagined) economic possibilities in host countries is an element that is at least as important in their decision to leave, as is the network they may use to implement their emigration plan.

Push factors in the country of origin

The current socio-economic context of the country, which faces the many challenges described earlier, does not offer minors all the guarantees required for them to project themselves into a Moroccan future. Children are the first victims of poverty, economic insecurity and exclusion.

Parents who are victims of poverty, who are struggling to survive and who have given up no longer know how to fulfil their role. Helped by fatalism, they give up and resignedly wait for assistance from the Welfare State. The status of fathers has changed: they are gradually losing their parental authority as a result of losing their essential role as family breadwinners. Because they find it more and more difficult to impose their will through words, they use violence or simply give in.

Children are often the only source of income for a whole family.

Families' very low socio-economic level forces parents to put their children to work when they are very young. The initiative to work sometimes comes from the children themselves who approach the various craftsmen on their own since school is no longer a sure option in their view (school is no longer seen as a means of social promotion in view of the high rate of unemployment among qualified people) and since they see the prospect of speedy financial autonomy through a job enabling them to look after themselves and support their families.

Despite the Employment Code passed that makes it illegal for children under 15 to work and the various programmes to combat child labour initiated in recent years, many children (600,000) aged between 7 and 14 still work in the informal sectors of agriculture, crafts and textiles. The number of girls working as domestics is estimated at 60,000 (study conducted by the ILO, UNICEF and the World Bank, UCW Project 2000).

The complete idleness of a large number of young people can be explained by the lack of appropriate community infrastructure and socio-cultural programmes taking their needs and expectations into account.

What is most serious is that these young people lose any illusion as to the possibility of a future in Morocco. The myth of the European El Dorado becomes their dream and migration to Europe their life plan, whatever price they have to pay. These young people think they have nothing more to lose since in any case they have no life.

Pull factors in destination countries

The European El Dorado – so near, yet inaccessible by legal means – is tempting and becomes the only alternative for these young people, who play their last card: double or quits.

They, and sometimes their families, have an idealised image of Europe: rich, democratic, respectful of human rights and therefore of the rights of the child, a consumer society guaranteeing quality of life, education, basic social services and employment.

The arrival of legal migrants in the summer, conveying an image of financial success (nice cars, presents, the latest young fashions), regular currency transfers by Moroccans living abroad to help their families who have stayed in Morocco and the European media made accessible by satellite dishes in every corner of the country, simply strengthen this perception.

The historic memory linking Morocco to Europe should above all not be forgotten:

- the Spanish and French protectorates that had a great impact on the socio-cultural heritage of Morocco;
- successive waves of legal economic migration in response to the needs of European countries (Italy, the Netherlands, Belgium, France, Spain, etc.);

Precedent plays its part: earlier migrations and the links maintained between the emigrant community and the country of origin may create a dynamic that pushes others to emigrate in their turn.

Migration presupposes mobility: changes in the means and costs of transport and technological progress foster such mobility.

The presence of relatives or acquaintances in host countries, of a social network, can cause a veritable chain reaction.

2. Migration networks as facilitators of migration plans

a) Factors pushing minors into traffickers' hands

It goes without saying that the decision to emigrate is also influenced by the means of access to a country. The rules governing entering and leaving a territory constitute a mechanism that regulates migratory flows:

- European policy on the granting of visas that seeks to be increasingly restrictive and very demanding is also a factor encouraging irregular migration.
- The status of minors, who may not be deported, plays a not insignificant role in the migration of minors.

One last point, as *clandestine migration has become a lucrative market for smuggling networks* on both sides of the Mediterranean, minors and their families are approached by those networks which, in return for a fee, hold out the prospect of their plans being realised.

b) Network modus operandi

The smugglers offer various means of transport:

- *pateras*, the most popular, leave from all along the north coast of Morocco from Al-Hoceima to Kenitra, as well as from the Saharan coast opposite the Canary Isles from Tarfaya to Dakhla: 5 000 to 10 000 dirhams (€500 to €1 000);

- boats from the major freight ports;
- goods lorries going to Europe from exporting Moroccan cities: 10 000 to 15 000 dirhams (€1 000 to €1 500);
- cars;
- planes, more seldom;
- land borders between Tetouan, Nador and, respectively, Ceuta and Melilla, the two Spanish enclaves in Morocco that are increasingly difficult of access (because of the triple barbed-wire hedges, thermal cameras and watchtowers);
- more seldom, craft leaving the 1 300-kilometre-long Tunisian coastline for the Italian coast: €700 to €1 200 per person.

Differing packages

Some networks only guarantee the crossing: once they have arrived in Europe the minors have to fend for themselves.

Others arrange everything from departure to final destination, providing a real chain of transport and accommodation in transit.

Others approach parents and/or minors offering a complete migration package:

- family reunification assistance, the minor being declared related to someone legally resident in Europe;
- sponsorships, legal guardian papers, enabling families who are or who are not related to have mainly young children and especially girls working as domestics;
- forged employment contracts: 5 000 to 10 000 dirhams (€500 to €1 000);
- forged papers to obtain tourist visas;
- forged residence permits: 5000 dirhams (€500).

This trade is said to bring smuggling networks more than 200 million dirhams a year (H. Kenzeddine, Atlasvista, 2005)

According to statistics provided by the International Labour Organisation, the annual income of traffickers in the European Union is between 2 000 and 4 000 billion euros.

The crossing of the Straits of Gibraltar by Moroccan minors is now one of the smugglers' most profitable businesses: about €800 per child (Amnesty International, 2005).

c) Strategies to combat all forms of trafficking in and exploitation of unaccompanied minors

In the framework of the Euro-Mediterranean Partnership, the European Union has recently granted Morocco €40 million for a project to improve the management and control of borders:

provision of mobile means of detection, identification, surveillance, intervention, transport and assistance; training programme for units responsible for combating illegal emigration.

Bilateral cooperation between Morocco and Spain has considerably reduced the number of candidates for illegal emigration using makeshift craft: 18% fewer than in 2003. In other words, 15 675 illegal immigrants on board 740 craft were intercepted on the coasts of Andalusia or the Canary Isles, as against 19 176 on 924 craft in 2003. The number of minors is not given.

On the Moroccan side, attempts to tackle illegal emigration networks have had some significant results:

- in 2004: 27% fall in the number of candidates for illegal emigration, compared with 2003; 61% more networks dismantled than in 2003.
- more than 26,000 illegal emigration attempts failed.
- in the first six months of 2005, the number of craft that successfully crossed the Straits of Gibraltar fell by 20%; in the direction of the Canaries, there was a 41% fall.
- the number of clandestine emigrants arrested in the first six months of 2005 was up by 13% for Moroccans and 27% for people from sub-Saharan Africa (Interior Ministry of Morocco, 2005).

Between Morocco and Spain, the number of smugglers arrested rose by 26% between 2003 and 2004.

Law 2/2003 on entry to and residence in Morocco by foreigners and irregular emigration and immigration, which came into force in November 2003, made trafficking in minors a criminal offence; it made sleeping partners and corrupt officials liable to heavy fines and prison sentences of up to 10 years or, in the event of murder, life.

The Minister of the Interior recently established two bodies with a view to combating illegal migration effectively: the Migration Observatory and the Migration and Border Surveillance Directorate.

It should be noted that, while security has been greatly strengthened in the attempt to tackle illegal migration, the issue of protecting the rights of the child has been ignored.

3. Situation of unaccompanied minors in host countries

a) Reception methods and procedures, agencies involved

It should first be emphasised that many attempts to emigrate clandestinely end in death through the use of flimsy craft. Migrants drown in the Mediterranean and their bodies are fished out by Spanish coastguards.

Others are reported missing, probably drowned or thrown overboard.

For example, in 2004 at least 290 would-be clandestine emigrants drowned in the sea separating Morocco and Spain: 150 of them died soon after leaving the Moroccan coast in the grip of general panic, but also because of the lack of rescue equipment (*Pro Derechos Humanos* Association, Andalusia, 2004). The exact number of minors who died is not given.

Minors arrested at borders are placed in waiting areas (Algeciras, Fuerteventura, Lanzarote, Roissy, etc.) or in closed detention centres with extraterritorial status located near the border (Belgium: Centres 127 and 127bis).

Unaccompanied minors are then questioned, in most cases with the assistance of an interpreter, to determine their age, country of origin, the means of transport and whether a network was used.

In most host countries their elbows and wrists are x-rayed in order to determine their osseous age.

Those lucky enough not to be deported to their country of origin because they have the status of unaccompanied minors are placed by the juvenile court in a reception centre according to the protection procedures in force in the host country.

The reception centres, whether they are emergency, day, night, open or closed centres, either come under the direct authority of government departments responsible for children or government-recognised and subsidised NGOs.

After a period of time in waiting areas or detention centres, some minors are deported to Morocco in the framework of assisted repatriation (Morocco-Spain Memorandum) or simply because the x-rays show them to be adults.

Some of those who manage to get through the security net join a family member or acquaintance who is expecting them, while others simply pass through the first country to reach the true destination country. In the end they are often arrested by the police and sent back to square one.

b) Networks exploiting unaccompanied minors (illegal work, prostitution, drugs, etc.)

The fact that crossings are a very lucrative market with fares varying according to the minor's nationality and points of departure and arrival is no longer disputed. Smuggling and trafficking networks are extremely well-organised and well-structured in countries of origin, transit and destination and are aided and abetted by some public officials.

Therefore, in parallel to the official system, unaccompanied minors arriving in Europe are also faced with a profitable and extremely well-organised illegal system lying in wait for victims (drug-trafficking, prostitution and theft networks). The factors that lead unaccompanied minors to fall into the hands of these organised crime networks are:

- fear of being arrested by the police and deported;
- financial gain;
- they are nearing or have reached their majority.

This is not to forget the unaccompanied minors who, having been accompanied from Morocco by a spurious guardian or "relative" who takes their papers from them, then find themselves hostages of economic exploitation (illegal work, slavery), sexual exploitation or drug-trafficking networks.

CHAPTER 3

ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING THE RECEPTION AND CARE OF UNACCOMPANIED MINORS

a) 1. International instruments, conventions and mechanisms

Morocco and all the European Union countries have ratified the *Convention on the Rights of the Child and therefore accept its founding principles: the best interests of the child; the right to life, survival and development; non-discrimination and respect for the child's opinions.*

Protection is a cross-cutting theme found throughout the Convention on the Rights of the Child and particularly in Articles 20 (children deprived of their family environment), 22 (refugee children) and 37 (torture, degrading treatment and deprivation of liberty).

Morocco and the European Union are also parties to the following treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention relating to the Status of Refugees and its Optional Protocol.

Morocco and the European Union have also ratified *ILO Conventions 138 and 182, as well as the two Optional Protocols to the Convention on the Rights of the Child* (the involvement of children in armed conflicts; the sale of children, child prostitution and child pornography).

With a view to bringing its legislation into line with the Conventions on the Rights of the Child, as well as all the other international instruments it has ratified, Morocco has introduced wide-ranging legislative reform in recent years: *Family Code, Code of Criminal Procedure, Press Code, Sponsorship Act, Prisons Act, Employment Code, Nationality Code, Migration Act, etc.*

2. **National legislation**

Mention should be made of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. It entered into force in July 2003 and has been ratified by Morocco, which is therefore bound by its provisions. The convention reaffirms the fundamental rights of all migrant workers and members of their families (right to life, liberty and security of person, freedom of opinion, religion, etc.).

Articles 29 and 30, which concern all migrant workers, *whether or not their situation is regular, affirms the right to a name, to registration of birth and to a nationality (Article 29), as well as the right to education on the basis of equality of treatment with nationals of the State concerned. Access to educational institutions may not be refused by reason of an irregular situation (Article 30).*

Where migrants are in a regular situation, Article 45 of the convention provides that members of their families shall have access to educational institutions and services, vocational guidance and training, social and health services and access to and participation in cultural life. States are required to pursue a policy aimed at facilitating the integration of children in the local school system and the teaching of their mother tongue.

Taken together, the provisions of the convention are such as to provide effective protection to migrants and their families. For States Parties to the Convention, however, *they represent protection of immigrants but not emigrants*.

At regional level Morocco has ratified the *Convention Governing the Specific Aspects of Refugee Problems in Africa*.

Act 2/2003 (November 2003) on entry to and residence in Morocco by foreigners and irregular emigration and immigration is much concerned with emigration and immigration. As regards children, Sections 26 and 29 stipulate that foreign minors, like pregnant women, cannot be deported.

With respect to emigrant minors, the problem arises of young people who have left the national territory without legal travel documents and have been deported to Morocco by the authorities of the State they have entered illegally. The new Act sets out punishments for irregular emigration (Section 50: any person who leaves Moroccan territory illegally is liable to one to six months' imprisonment and/or a fine of from 3 000 to 10 000 dirhams). Repatriated minors therefore run the risk of prosecution and conviction. The Act makes no provision for their reintegration in Morocco. This is one of the observations made by the Committee on the Rights of the Child concerning, in particular, children deported from Ceuta and Melilla.

Here, however, *the problem is not so much the inadequacy of the law as the absence of suitable facilities for caring for such children. Such care should be organised at the level of the border guards to whom children are handed, by social workers able to find and implement appropriate reception measures adapted to each such child. As for prosecution for irregular emigration, the prosecuting authorities may decide not to prosecute, if this is in the child's interest, on the basis of the principle of discretionary prosecution provided for in the Moroccan Code of Criminal Procedure.*

The Memorandum of Understanding between Morocco and Spain on the assisted repatriation of unaccompanied minors, signed on 23 December 2004, provides that Spain may deport Moroccan minors once they have been identified and their family has been located. Where this is not the case, the children are handed over to the Moroccan authorities who are responsible for finding their families. The repatriation procedure does not take into account the best interests of the child.

3. Rights of unaccompanied minors

According to the Convention on the Rights of the Child (Articles 2, 3, 6 12, 20, 22) and the Office of the UN High Commissioner for Refugees (Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997), because of their vulnerability, unaccompanied minors:

- should not be refused access to the territory
- have the right to special assistance and protection
- have the right to healthy living conditions
- have the right to education that recognises their culture, language and need for integration
- have the right to necessary health care
- should not be placed in detention centres

- should be speedily identified
- should be legally represented (guardian or responsible person familiar with the principles of assisting children in order to see that their best interests are served)
- should be informed of their rights in their own language
- may be questioned only by professionally qualified persons in the presence of professional interpreters
- have the right to express their opinions, which must be heard and taken into account.
- All subsequent decisions should be taken in the child's best interests.

However, while all these principles are clearly stated in the legislation of the various host countries, they are not fully applied and are applied to varying degrees in different countries. The degree of respect for the rights of unaccompanied minors also varies within any given country, from region to region, town to town, even one care structure to another.

4. Links with Families

In compliance with the conventions referred to above, States Parties have undertaken to make every effort to find the families of these children. Since the children fear deportation, however, they do not give their identity initially, although the first thing they do when they arrive is contact their parents and particularly their mother in order to reassure her.

Many of them do not carry papers or hide them and will only reveal their true identity when they feel they can trust those with whom they are speaking.

In some reception structures for unaccompanied children the right to telephone their parents or receive phone calls from their families is respected.

In order to renew or maintain family ties, some centres allow such children to stay with their families during the holidays, accompanied by their educator. Return to the centre is of course ensured (Arco Iris, Spain Young Itinerants, Marseille).

Moroccan Embassies and Consulates are also asked to help to identify and locate families, but the attempts are often fruitless. A process of revitalising and rehabilitating the diplomatic and consular services available has been started by accrediting economic and social advisers, simplifying administrative procedures and strengthening legal assistance services.

Agreements between European reception bodies (Spain, Italy, France) and Moroccan NGOs (BAYTI, AFVIC, DARNA) have enabled families to be identified and located, but above all the family situation to be analysed in socio-economic, affective and educational terms, and this has had tangible results. Family reunification has often been doomed to failure because neither the child nor the family wanted it. In such circumstances, the return is forced and the child's one aim is to go back to Europe.

Family reunification is provided for in countries' national legislation in the form of assisted repatriation. Unfortunately, this often means forced return that does not take into account either the child's consent or the approval of the family, which is frequently not notified.

5. Interpretation of the best interests of the child in the practice of host countries

While all legislation on children is permeated with “best interests”, in practice, the principle is only waveringly applied.

There is a conflict between the child’s interests and those of the host country’s authorities or policies.

The concepts of vulnerable child, child at risk, are also variously interpreted, resulting in contradictory approaches, now favouring the selective aspect, now the protective. Children are therefore not systematically placed in the care of a guardian, although it is this that allows the steps “decisive” for the child’s future to be taken.

The “distrust” provoked by unaccompanied children and their possible mendacity about their past also has to be taken into account. Foreign unaccompanied children are far from being perceived as “children like any others”, so much so that the “*childhood*” dimension is blurred and diluted by the “*immigration*” dimension. Educational teams are therefore faced with a sort of contradictory injunction that can be encapsulated as follows: “*Integrate them temporally or as little as possible*”.

The rights of the child should in any case always be taken into account. It is imperative to be able to show that they have been examined, have been at the centre of concerns and that the consequences for the child of the various options have been analysed before any decisions have been taken.

CHAPTER 4

ANALYSIS OF RECEPTION AND CARE METHODS

1. Interception by host country authorities

a) First contact with services

First contacts with host country authorities differ according to mode of transport: by sea in flimsy craft (*pateras*) or unregistered dinghies, or in cargo boats, freight lorries or cars; by air or land.

With the improvement of the technical means of detecting clandestine emigration (infrared cameras, thermal detectors, watchtowers, dogs, sophisticated patrol units, galvanised steel railings with electronic detectors of human presence, strengthened passport and visa control), many unaccompanied minors are being intercepted:

- at sea, either by the Moroccan authorities, in which case they are repatriated to Morocco, or by European authorities. As an example, the Spanish Civil Guard announced the interception off Calahonda (Mortil, south) of 66 Moroccan illegal migrants, including two women and five minors, on the night of 9 to 10 October 2005;
- on arrival in ports or airports or at the land border (Ceuta and Melilla) by customs officials or border police.

If minors are in poor health (dehydration, hypothermia, malnourishment, exhaustion), they have the right to emergency medical treatment.

The first contact with the police is not always gentle: several children have reported police violence against such minors: blows, insults, ill-treatment (Human Rights Watch, 2001; OMCT, World Organisation against Torture, alternative report Morocco, 2004).

Once they have been apprehended, unaccompanied minors are placed in “waiting areas” or detention centres, according to the facilities available for the purpose in host countries.

b) Analysis of the various age determination methods

The following points emerge from the various studies and analyses of methods for determining the age of unaccompanied minors conducted by the French National Committee on Ethics for Life Sciences and Health, France Terre d'Asile, Anafé and many other NGOs.

The most commonly used age evaluation method is based on an x-ray of the left hand and wrist which is compared with reference plates in tables on an American group “of Caucasian origin” described in the 1930s and 40s in Greulich and Pyle’s atlas, or a middle-class British group in the 1950s according to Tanner and Whitehouse’s method. In outline, these plates analyse the presence and size of the ossification point (sesamoid bone of the thumb) and the degree of epiphysis in the phalanges. The plates in the atlas give statistical information but no individual information. The original purpose of those x-rays was not legal, but purely medical - so that the risk of a medical intervention (the use of hormonal treatment, for example) hindering growth could be taken into account before treatment. It can only be a matter of concern that collective data with a medical purpose is being used as an individual truth for legal purposes.

Such references also carry a major risk factor with respect to non-Caucasian children from Africa or Asia whose osseous development may be quite different from the Anglo-American

reference groups and may be profoundly affected by deficiencies or pathologies unknown in the reference populations.

The technique has a margin of error of plus or minus eighteen months, which is especially problematic if the hope is to gather precise data on an adolescent aged 16 to 18, an age group particularly well-represented in waiting areas. Unaccompanied minors are seldom given the benefit of the doubt.

For this reason, other evaluation methods have long been used:

- panoramic dental x-ray to examine dental development. Such x-rays are normally used only in the context of orthodontic treatment in order to establish whether or not dental intervention is possible according to the stage of development;
- clinical examination of signs of puberty.

Neither such x-rays nor such clinical examination avoids the pitfalls already mentioned, however. Not only do dental development and the manifestation of signs of puberty vary widely from one individual to another, but the age at which they appear is also very variable, linked to a number of environmental factors, making interpretation and the establishment of actual chronological age increasingly uncertain in individual cases.

Therefore, in the current state of knowledge and techniques, the determination of a child's or adolescent's age is a procedure involving a significant degree of inaccuracy. On the basis of clinical examination of puberty, adolescents may be declared to be older or younger than they in fact are. Indeed, the uncertainty is at its greatest between the ages of 15 and 20, the ages in relation to which examinations are most often requested. Whether taken in isolation or combined, these methods do not at present provide the precise scientific information the application of legislation requires, and it is understandable that *in June 2004 the Committee on the Rights of the Child at the Office of the United Nations High Commissioner for Human Rights recommended to France that it should adopt other methods for determining the age of foreign minors*. The problem is that such methods do not exist. It is therefore essential that research be undertaken to determine whether it is possible to develop precise evaluation criteria based on physiological, biological and psychological methods.

The interview is in theory the first phase of examination before clinical examination. It is, however, difficult to interview a child to establish as quickly as possible whether or not he/she is a minor, when he/she often does not speak the language of the host country and arrives disorientated and in handcuffs.

From the legal point of view, in France for example, the judge may not accept the validity of such examinations and therefore will not take them into account. The Court of Cassation has stressed that judges have unfettered discretion to assess minority which means that they may rely on any means to reach a conclusion and are not required systematically to base their decision on an expert opinion on skeletal age. This is now the trend in the courts, and it was welcomed by the Children's Advocate in her 2003 report. On 12 May 2004, for example, the Limoges Court of Appeal handed down the following decision: "In the instant case, if the margin of error of 18 months is applied to the expert's conclusions indicating that the accused is over 18 years of age, one arrives at the age of 16 and a half years he himself claims Consequently, taking into account both the inadequacies of the medical examination and the apparent regularity of the identity paper produced ... majority has not been proven".

It is also important to emphasise that when they are able to present civil status documents the minority of young foreigners should not be disputed, as stipulated by Article 47 of the French Civil Code which establishes a presumption of authenticity with respect to foreign documents. The administrative or judicial authority therefore has to accept it in principle and may only make an exception where it is able to demonstrate that the document presented is not in order or is forged. It is

hard to see how, where the fraudulent nature of a foreign civil status document cannot be proven, it can be called into question by expert opinions on skeletal age. The Paris Court of Appeal shares this view: an expert medical opinion is not sufficient to contradict a birth certificate establishing a young foreigner's minority.

The UNHCR's follow-up committee for the Convention on the Rights of the Child recommended to France in 2004 that it should abandon any reference to age, a technique that was highly suspect.

c) Situation of unaccompanied minors at borders and in the “transit areas” of ports and airports

Arrested minors are placed in waiting areas (Algeciras, Fuerteventura, Lanzarote, Roissy, etc) for a maximum of 20 days (France) and 40 days (Canaries). The waiting area is defined as a place situated between the disembarkation point and the border control post.

As an example, according to the French Interior Ministry, 728 lone foreign minors who arrived at Roissy-Charles de Gaulle Airport were placed in a waiting area in 2004. Only 165 of them were subsequently allowed to enter French territory. In two out of three cases, by the time an ad hoc representative arrived, the child had already been deported. The percentage of Moroccan minors is not given (Amnesty, 2004).

Children describe the waiting areas as overcrowded prisons (because of the increasing number of illegal migrants) in which adults and children are held together. The living conditions are poor. Brutality and violence against minors are reported. Children feel isolated, are not speedily informed of their fate and await the verdict which will be delivered after the usual investigations: determination of minority, determination of identity.

The waiting area in Roissy is described as “cramped” and “gloomy”, the bedding as “deplorable”, there is “an awful smell”, “crowding”, “inhumane” detention conditions: a sombre picture drawn by elected representatives, NGOs (Anafé, France Terre d’Asile) and some of the French media.

Unaccompanied minors held in airport facilities at Fuerteventura and Lanzarote in the Canary Isles live with no fresh air, light or physical exercise, cut off from the outside world (telephone calls, visits and sending and receiving mail are all forbidden), in dilapidated, overcrowded premises without access to information in their own languages, health care or legal representation (Human Rights Watch, 2001).

The time spent in these waiting areas, on average for a renewable period of 48 hours, may be much longer, going from 20 days in France to 40 days (Canary Isles, Spain).

“*Outside observers*” (parliamentarians, NGO representatives, etc) are not allowed in most such centres. Furthermore, in many cases NGOs are not permitted to give humanitarian or legal assistance but are only allowed a limited presence, intermittent visits with the sole mission of observing the general working of waiting areas. Such visits have certainly not been entirely useless. They have even made it possible to assess the areas visited, report failure to apply the law in stations and most provincial ports and airports, the frequent violation of foreigners’ rights and the often inadequate or even scandalous material conditions in which they are held.

Professional interpreters are not provided in all centres; foreign minors are not informed of their rights or of asylum application procedures.

Legal representation of foreign minors by a guardian or responsible person in order to help them is randomly available. In some countries an ad hoc statutory representative is appointed

(France), but more often than not foreign minors have to manage alone or are assisted by an adult serving as an interpreter who has no training in child assistance.

The legal examination required by national and international legislation is often superficial. Judges should check the regularity of the administrative procedure and the referral of the case to them, then check that the conditions that allow the child to be kept in a waiting area obtain and lastly that this is necessary. In fact none of these things is done properly. Considering themselves to be bound by the decisions of the administration, judges do not perform their role as protectors of individual freedom and usually confirm the detention without discussion.

Decisions on the detention and deportation of unaccompanied minors are often arbitrary and contravene both the national legislation in force and the international conventions the host country has ratified.

No remedies are available to unaccompanied minors in the event of violations of their rights or if the decisions taken run counter to their interests (deportation).

The functioning of waiting or transit areas, whatever name they are given, should be reviewed. Such a review should include at least the introduction of the possibility of appeal against decisions to refuse entry, limiting the length of time a person may be held in a waiting area, setting a time-limit within which the judge should conduct the investigation, and freedom of access to the areas for NGOs so they can provide legal aid to the foreigners held in them.

2. Analysis of care procedures in countries of destination and return (Morocco)

a) Detention

Scores of children and adolescents have been and are still placed in closed detention centres for foreigners. They have not committed any offence likely to threaten public order and their presence in the territory does not in any way constitute a threat to our fellow citizens. They are deprived of their liberty for varying periods, sometimes as long as five months, only because of their or their parents' administrative situation.

The infrastructure and management of the closed centres are not adapted even to their most elementary needs. However well-meaning the staff may be, it is not their job to assist such minors in difficulty and not all of them are trained to do so. There is no education or activities programme in the centres, and the medical services provided are not geared to working with young people. The communal living system that obtains does not guarantee children's privacy and may seriously disturb their private life. *The experience of being detained without understanding why causes children great suffering. This trauma usually has lasting effects harmful to their development.*

Several reports by national and international organisations describe a particularly difficult atmosphere in the centres, one of anxiety and sometimes violence. Such tensions still further disturb children who are already disorientated by the very fact of being locked up.

The decision to lock up a foreign minor for administrative reasons minimises the duty to protect and respect the child, leaving only the foreigner liable to deportation. This approach is contrary to the requirements of the Convention on the Rights of the Child.

Under Article 2 of the Convention, "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. States Parties shall take all appropriate measures to ensure that the child is protected against all forms

of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members".

The resolution of the European Union Council of 26 June 1997 on unaccompanied minors who are nationals of third countries gave guidelines for the conditions of their reception, stay and possible return and, for asylum-seekers, the procedure applicable to them.

It came into force on 1 January 1999 and also encouraged member states to take the necessary measures to ensure minors were represented by a legal guardian or another appropriate representative and to treat asylum applications by unaccompanied minors as matters of urgency.

In many countries the waiting or transit areas intended to be only temporary are in fact becoming virtual medium to long-term detention centres as a result of the massive influx of illegal migrants from different countries, cumbersome procedures, inadequate staffing and unsuitable infrastructure.

For example, in Belgium, detention in centres 127 and 127bis near the airport, now suspended by the courts, was described in the annual report (2004) of a network of European experts set up by the European Commission as "incompatible with a state governed by the Rule of Law". The European experts considered detention in the area to be a violation of the European Convention on Human Rights, stressing that "a court finding that detention is illegal does not allow it to continue, even in another place". Belgium is not the only country to have the finger pointed at it by this report, which condemns the same practice in several other EU countries.

Eleven organisations have joined forces to call for an end to the detention of minors and launched a debate on alternatives to it. Recalling the scale of the "psychological ill-treatment" "explicable by the living conditions in closed centres alone" (detailed by psychologists and child psychiatrists), they recalled the commitment made by the Verhofstadt II government when it took power in June 2003 not to place unaccompanied minors applying for asylum in closed centres at the border. They then observed that, two years later and despite the fact that the guardianship system had entered into force on 1 May 2004, such children were still being detained, sometimes for several weeks, in Centre 127 and the two closed centres near Brussels-National Airport. In Centre 127bis in Steenokkerzeel alone, 39 children were being held in mid-April and 17 in late May (*Le Libre Belgique*, 23.05.2005).

Under the national legislation in force in nearly all host countries, unaccompanied minors are considered "children in danger" and should not therefore be locked up but, on the contrary, speedily referred to child protection authorities which should interview them and provide them with security, assistance, protection, accommodation and health care, pending the decision of the juvenile judge responsible for the legal protection of decisions concerning unaccompanied minors.

Guardianship: being an unaccompanied foreign minor means the absence in the territory of persons (usually parents) exercising parental authority. By the very fact of their minority, such children do not have legal capacity, but the complex process of obtaining a residence permit means that they have to be represented.

An Act establishing a guardianship service to protect the rights of foreign unaccompanied minors was passed in Belgium in 2003 and recently came into force.

Some countries have developed other alternatives based on protecting the child's interests. For example, in Italy, "unaccompanied" illegal minors are placed in the care of local social services pending a decision to allow them to remain in Italy or deport them to their country of origin.

Under Act 184/1983, public service officials are required to inform the Committee for Foreign Minors of the presence of unaccompanied minors so that it can take charge of them. The Committee is composed of members from the Department of Social Affairs, the Ministries of the

Interior, Foreign Affairs and Justice and the Office of the High Commissioner for Refugees. The Committee's work is principally financed by the Italian Government. Its purpose is to find solutions for minors.

In emergency situations the Committee is required to inform the Juvenile Court. Before the Court intervenes, the Committee has 60 days in which to gather as much information as possible about the child and works in collaboration with seven NGOs for this purpose.

Since 1997, the Committee has signed agreements with the International Social Service (ISS) exclusively concerning children from Albania, Morocco, Romania and Moldova), the Italian Solidarity Consortium, AIBI (Children's Friends Association), CEFA (European Committee for Agricultural Training), ENGIM (Vocational Training and Cooperation for Development), LVIA (Lay Volunteers Association) and VIS (International Development Volunteers). The collaboration has enabled a network to be established and information on minors to be found more speedily.

Through the network and collaboration with NGOs, social workers examine the family and socio-economic background of each child and in particular the reasons they left home. The family's involvement in the process is a fundamental element in all cases.

If the investigation finds against return, the child is placed in a host family or children's home.

At the end of the 60 days, the guardianship judge decides either to appoint a guardian or order accompanied repatriation.

There are still many disparities between countries and between regions of the same country. The dichotomy between legislation, which in most cases is intended to protect, and politicians, who emphasise security, underlies many violations of the rights of the child, the scale of which is difficult to gauge because of the lack of precise data and failure to follow up on what happens to the minors later.

b) Placement in institutions

The courts order unaccompanied minors to be placed in reception centres managed either by state-subsidised NGOs or state social services responsible for children.

They may be placed in an emergency reception centre under the protection procedures in force in the host country.

These centres are often overcrowded and the educational assistance they provide is frequently inadequate: teams work above all to return children to their families and re-establish the links between children and parents. More than often than not, however, the foreign minors' parents are not in the country and the children do not want to return.

The length of stay in emergency reception centres may not exceed a certain time. Once that period has elapsed, the child is sent to another centre. Thus begins the shunting around from centre to centre with no real coordination, no clear plan and no follow-up.

The services these facilities offer vary and depend mainly on the quality and multidisciplinary skills of the staff:

- someone to talk to, individual interviews, focus groups
- language lessons
- health care
- hygiene and nutrition

- accommodation
- assistance with administrative procedures
- legal representation at hearings with the juvenile judge
- cultural and sports activities
- schooling
- vocational training
- psychological support
- contact with families

These services are not provided in all centres: either only some are offered or they are reduced to the bare minimum.

The nature of the centres varies from one country to another: day centres, night shelters or closed centres.

The accommodation also varies: reception centres, flats rented by NGOs or hotel rooms.

In some countries unaccompanied minors stay with host families or are sponsored by families, often from the same country.

Staffing varies from centre to centre in terms of both numbers and quality. Through agreements with Moroccan NGOs, European NGOs working with unaccompanied minors have forged partnerships, above all in relation to identifying and locating families, obtaining identity papers and, less often, plans for the child's return taking account of his/her approval.

Some centres look after young people until they come of age in the framework of a life plan – residence permit, integration on the job market, higher education –, but such cases are rare and little reported.

Centres taking a comprehensive, systematic, rights-based approach, offering the full range of services unaccompanied minors need, are virtually non-existent.

Living conditions also vary from centre to centre depending on the country, but also in different cities in the same country.

Some centres are virtual prisons into which children are herded with no access to schooling, health care or vocational training (from the age of 16).

Children are subjected to all kinds of ill-treatment: blows, insults, racist remarks, humiliation, prohibition of any contact with the outside world, threats of deportation, locking-up in punishment cells, sexual abuse (Human Rights Watch, Canary Isles, Ceuta and Melilla, 2001).

The reception centres lose sight of some unaccompanied minors: a study of 255 minors who had disappeared conducted in Belgium by Child Focus in April 2002 found that 64, in other words one in four, were the victims of some form of trafficking in human beings. 48 of those 64 had been exploited for prostitution, while the others were victims of economic exploitation in the footballing world, bakeries or as fruit-pickers. Of the 64 victims of trafficking in human beings, 22 were of African origin, 6 from Asia, while the majority – 36 – were from central and east European countries. Of the 22 African victims, 20 were exploited for prostitution. Eighteen of the 20 were girls. Of the six victims from Asia and the Middle East, three were victims of economic exploitation and three of sexual exploitation. Eleven (17%) of the victims of trafficking in human beings were 13 or under. 25 children in this age bracket were victims of trafficking in human beings. Most of the victims of trafficking, 53 children, were between 14 and 17 years old; 28 were 16.

Intra-European migration (from country to country and city to city) is the fate of many children, constantly in search of a legal, economically profitable situation.

For many of them disillusion is not slow in coming: Europe is not the El Dorado they imagined, deportation is imminent. Disillusion, despair and a sense of failure lead to:

- violence (self-mutilation, violence, attempted suicide)
- absconding, rootlessness
- delinquency
- marginalisation and a life on the streets of Europe

There are no mechanisms for monitoring what happens to unaccompanied minors nor any impact studies of programmes: What becomes of them? Where are they now? How many children's life plans have been carried through? And what happens once they are 18?

c) Deportation, forced return and repatriation

Arbitrary deportation and forced return are the fate of many unaccompanied minors, even before the age of 18. Their rights are flouted and they are deported from the host country with no guarantees whatsoever, although the law guarantees children the right for investigations to be conducted to identify their parents and the host country is required to ensure the best possible reception conditions for them if it is decided to send them back to their country, Morocco.

It is rare for assisted repatriation to be well-prepared, have the child's consent and involve an appropriate life plan.

There have been complaints of aggressive deportations of Moroccan minors aged between 14 and 18, with no guarantee and against their will since 2000 after the first *patera* arrived in Tarifa with 24 children on board. In 2004, 28 minors were deported from Spain to Morocco in violation of the rights of the child and Spanish legislation (Federation SOS Racismo, General Lawyers' Council of Spain, 2005).

d) Reception and care of minors returned to Morocco

When they arrive in Morocco they are arrested by the Moroccan police; they are then either simply released, because they seem capable of looking after themselves, or are taken before a court which places them in state centres supervised by the State Secretariat for Youth while waiting to be handed over to their families.

Neither the police nor the judicial system has a social wing able to assist returned children, find their families and take them back to them. Furthermore, the educational services provided by such centres (cf. Chapter 1) are not geared to dealing with them.

Such children stay for a short time with their families and abscond at the first opportunity. For some, this is their sixth attempt and they join the other children living in Moroccan ports, left to themselves, waiting for the next departure.

Morocco's European partners conduct a migration policy based principally on control and exert pressure on Morocco to establish reception centres and strengthen border controls. *Morocco thus plays the role of the policeman of Europe, which is outsourcing its waiting areas.*

At the same time as trying to tackle the socio-economic factors that have pushed young Moroccans to emigrate to Europe, *Morocco is also having to deal with a substantial flow of adult migrants from sub-Saharan Africa* (Nigeria, Mali, Senegal, Guinea, Congo, etc).

The living conditions and fundamental rights violations of which sub-Saharan migrants are victim living in the forests of Bel Younes and Gourougou near the Spanish enclaves, are consequences of the restrictive European immigration policy (Cimade, 2004).

The management of migratory flows should be dealt with in the framework of socio-economic development and respect for human rights, and partnership needs to be based on cooperation strategies through technical assistance and sustainable co-development programmes.

e) “The best interests of the child” in reception and care procedures

While the best interests of the child are present in much national legislation and procedure, they are diluted to the point of invisibility in their implementation.

In order to evaluate the extent to which the child’s best interests are taken into account in the reception and care of unaccompanied minors, the questions listed below need to be answered.

Have the following been considered:

- *Informing unaccompanied minors of their rights under the country’s legislation and of asylum application procedure (leaflets in Arabic, availability of interpreters for those who cannot read) immediately they are intercepted?*
- *Authorising NGOs, humanitarian organisations and representatives of migrants’ groups to visit unaccompanied minors detained in waiting areas or detention centres in order to give them humanitarian and legal assistance and to monitor the conditions in which they are being held?*
- *Remedying overcrowding in centres?*
- *Creating alternatives to detention (accountability or guarantor)?*
- *Ending the prohibition on contact with the outside imposed on detainees: access to a telephone and personal visits?*
- *Putting up notices in detention centres in several languages describing the rights of unaccompanied minors and giving telephone numbers of organisations that may be able to help them (lawyers, local services, etc)?*
- *Promptly giving unaccompanied minors the opportunity to challenge the lawfulness of their detention and/or deportation?*
- *Facilitating access to free legal advice?*
- *Setting up a complaints procedure on conditions of detention?*
- *Establishing remedies for ill-treatment, violence and torture suffered by unaccompanied minors?*
- *Providing satisfactory living conditions: hygiene, nutrition, accommodation?*
- *Providing access to necessary medical care?*
- *Providing appropriate education?*
- *Seeing that unaccompanied minors, whether or not they are seeking asylum, have the practical means to do so, without any hindrance from the authorities?*
- *Training everyone working with unaccompanied minors in the latter’s rights and asylum?*

- *Ensuring regular monitoring* of waiting areas and detention centres by administrative procedure judges?
- *Appointing a legal guardian* or representative for minors?
- *Reviewing age determination methods* by giving unaccompanied minors the benefit of the doubt and not immediately questioning the validity of documents presented?
- *Regularly inspecting* reception centres and producing public reports on the conditions of care?
- *Investigating police abuse* on the basis of complaints?
- *Investigating illegal deportations*?
- *Guaranteeing that no unaccompanied minor is repatriated or deported* without prior guarantees: family located and prepared to care for the child or an appropriate social services body found?
- *Issuing temporary residence documents* and, if possible, work permits to unaccompanied minors of working age?
- *Acting on applications for permanent residence*, giving priority treatment to unaccompanied minors nearing the age of majority?
- *Ensuring special care for unaccompanied minors* who are victims of trafficking?
- *Listening to and taking into account unaccompanied minors' opinions* before any decision is taken?
- *Developing co-ordination and follow-up mechanisms with respect to unaccompanied minors* among the various agencies involved?
- *Ensuring that minors returned to Morocco are followed up regularly*?

Implementing the principle of the best interests of the child would mean developing a coherent European socio-economic policy based on respect of the rights of the child.

At present security considerations and the control of migratory flows predominate.

The socio-economic and human aspects of managing migratory flows boil down to hasty responses often connected with election campaigns.

CONCLUSIONS

The migration of unaccompanied minors is now a Europe-wide problem experienced by almost all Council of Europe member states. It can be explained in part by the fact that it is more difficult for adults to immigrate to Europe. It is generally thought that children have a far greater chance of staying in Europe, even if they enter illegally. Smuggling networks have been very quick to exploit this heaven-sent opportunity. The result is that many children are subjected to ill-treatment and serious abuse.

Such children are in an insecure situation and need the help and protection host country authorities can provide.

The best interests of unaccompanied minors should be the cornerstone of national policies on unaccompanied children without papers. The United Nations Convention is a good reference as regards protection of the rights of the child. It is therefore important constantly to reassess host country policies on such minors in order to avoid any ill-treatment.

Reception centres could become a firm basis on which to develop “life plans” for the children. Various programmes could be implemented in them to encourage children to build on their assets and acquire skills that will be useful whether they remain in the host country or return to their country of origin.

However, the effectiveness of such programmes depends on the adoption of an integrated approach supplemented by co-operation with countries of origin. The latter is particularly important since “life plans” should not be restricted to measures taken in destination countries, but also offer attractive prospects for personal development in countries of origin. They should in particular include the possibility for children to go abroad temporarily to acquire vocational skills and attend training programmes.

The implementation of programmes designed to offer a range of attractive “life plans” should be linked with co-development initiatives. This would make it possible to treat the fundamental cause of the clandestine migration of minors, namely the unfavourable economic situation in the country of origin. Children often carry the burden of having to support their families by looking for work abroad and sending money home.

Various “life plans” developed for and with the children should be set up in order to enable them either to build their lives in the host country or to become reintegrated in the society of their countries of origin. “Life plans” should be conceived from an overall perspective incorporating the various issues of cooperation between countries of origin, transit and destination. In order for them to be implemented successfully, it is important that European countries accept that not all migrant children will return to their countries of origin.

It is now imperative to adopt a comprehensive, balanced approach to the management of migratory flows.

A common migratory policy needs to be established by two continents, Africa and Europe, as the countries on the southern shores of the Mediterranean are becoming countries of transit.

This socio-economic policy based on respect for human rights, should include:

- upstream (in Africa), treatment of the fundamental causes of the migration of unaccompanied minors. This means, in particular, developing national policies to strengthen families, but above all putting in place sustainable co-development policies.

- downstream (European Union), European migration policies need to be re-assessed, taking into account the best interests and protection of unaccompanied minors and the development and implementation of their life plans.

Let us never forget that these are minors who have put their lives at risk – and sometimes paid with their lives – in order to fulfil their migration plan.

Migration policies for once need to be reviewed from the point of view of the human cost: How many youngsters have died? How many have ruined their lives? How many have disappeared? How many have become successfully integrated?

Illegal immigrants, but above all children!

MIGRATORY PATHS

OMAR

Born in a village in the Nador region (northern Morocco), he arrived in Bastia, Corsica, with his twin brother, Youssef, at the age of 15.

They entered French territory legally since they were on their father's passport; he had been living in Bastia for some time.

Since their father had no income, the two boys were placed in a reception centre in Bastia when they were 16, on the order of the juvenile court.

There was only one contact with the father throughout the placement period. The father repeatedly promised the centre staff that he would find a job in France that would enable him to reunify the whole family, his wife and four other children having stayed in the village.

During his time in the centre, Omar, who had a primary level education (acquired in Morocco), served an apprenticeship that included work experience. When this was finished he obtained an apprenticeship contract in a patisserie.

When he reached 18 and had no residence permit, however, he had to go back to Morocco. In order to be able to legalise his employment and residence, his employer and the reception centre undertook to take the necessary administrative steps for reception and legal residence with the immigration office and other relevant departments.

The Bastia centre then contacted the Moroccan NGO BAYTI to ask them to take care of him temporarily (four months) while the necessary steps were taken.

Omar, confident that he would soon be able to return to Bastia with a residence permit and an employment contract, accepted the deal.

The deadline passed; the procedure was never completed and the French reception centre broke off all contact with the young man and the NGO.

The steps BAYTI took with Omar's family were unsuccessful: because he felt he had failed, Omar refused to face his family and village, while his elder brother would not accept his return. Great disillusion!

After a period of instability and depression, Omar, who was being cared for by BAYTI, began training as a pastry-cook.

OTHMAN

His father was dead and he lived with his mother and four brothers and sisters in the medina of Casablanca. Under pressure from his friends, when he was only 16 he suddenly decided to drop out of school (3rd year secondary) and leave Morocco clandestinely with three other youngsters in a boat leaving Casablanca for Marseille.

After ten days wandering round Marseille he was picked up by the association Jeunes Errants with which he stayed for four months.

Finding it difficult to adapt and realising that he had absolutely no prospects, a return plan was negotiated with him: the French association undertook to pay for a training course in accountancy, while in Morocco he would be followed up by BAYTI.

However, as he did not have the necessary educational background, despite a special remedial programme, he dropped out of the course.

A year after his return he was full of regrets and bitter: return to zero:

- No work.
- No money to help his family or provide for himself.

He has no self-esteem and an overwhelming feeling of failure and disillusion.

Paradoxically, his plans for the future are still directed towards Europe, at whatever cost. It is a real obsession.

RASHID

When he was 15, living in a shantytown in Meknès, never having been to school, from a poor family (the father received a monthly pension of 1200 dirhams, ie €120) with many children (seven brothers and sisters), he decided to go to Spain, helped by a trafficker in return for 10,000 dirhams (€1000).

He wandered the streets of Andalusia for a few months, suffered the cold of winter, fell seriously ill and found himself in hospital. When he recovered, he was sent back to Morocco.

He has returned to his shantytown, disillusioned and having lost all hope.

KARIM

He arrived in Spain at the age of 14 and has suffered three violent deportations, all of them followed by a return to Spain. The last occasion was particularly violent: his hands and feet were tied, he was handcuffed and violently beaten by the police when he resisted deportation.

Once more in Spain, Karim was placed in an adult prison by the prosecuting authorities, despite the fact that he was a minor, the reason given being “offence against security” because of his violence.

YOUSSEF

14 years old, has been violently deported (blows and insults) from Cordoba to Ceuta many times. Back again after being beaten and sexually assaulted by the police, then placed in a closed centre.

AHMED

15, has suffered unimaginable violence: when he refused to cooperate, the Civil Guard fired in the air to stop him. Once he was in their hands, he was beaten on the head and face with a rifle butt until he lost consciousness. When he appeared in court he was found guilty and immediately deported to Morocco. The judge did not order an investigation into the police brutality.

RASHID

14, left his village in southern Morocco with two other boys of the same age, paid smugglers who hid them for 12 days in the neighbouring mountains with other would-be emigrants: 67 in all, including five minors and a pregnant woman. They left at night. A three-hour walk to the beach where they boarded a dinghy which drifted for 18 hours until it was spotted by an air patrol which accompanied it to the port of Motril (Spain).

They spent the night in a police station with the adults. Next day Rashid and the four other minors, their hands tied with rope, were taken to Granada police station and from there to the airport en route to Melilla.

Once in Melilla, the five minors were escorted to the Moroccan border at Beni Anzar and handed over to the Moroccan police. After 24 hours in custody, packed into a room with no facilities and no food, they were taken before the court in Nador and released. Rashid had to borrow money from another child in order to get home.

BIBLIOGRAPHY

ABOU EL FARAH, T.

« Près de 300 clandestins sont morts noyés en 2004 »

Libération Maroc 7/5/2005

AMERM : Association Marocaine d'Etudes et de Recherches sur les migrations

La migration clandestine : enjeux et perspectives

Actes du colloque organisé à la Faculté de Droit-Agdal

Rabat les 29-30 Avril 1999

AMNESTY INTERNATIONAL

Note mensuelle sur l'actualité en matière d'asile -Août 2004

AMNESTY INTERNATIONAL

Amnesty dénonce le traitement des mineurs marocains clandestins

Source Lematin.ma

<http://www.bladi.net/infos/article-2561.html>

BERL ALI, A.

« Sauve qui peut »

<http://www.sozoala.com>

BROZ , I

« Le flot de clandestins ne tarit pas »

http://www.rfi.fr/articles/036/article_18421.asp

CHILD FOCUS

La disparition de mineurs non accompagnés et de mineurs victimes de la traite des êtres humains

Dossier du département Etudes et développement

CHILD FOCUS

L'accueil en Belgique des mineurs étrangers non accompagnés victimes d'exploitations sexuelles. Recommandations pour de bonnes pratiques

CONSEIL DE L'EUROPE

Réunion préparatoire à la conférence régionale sur la migration des mineurs accompagnés
Strasbourg, Palais de l'Europe 11 Février 2005

CONVENTIONS INTERNATIONALES

- Relative aux Droits de l'Enfant + ses deux protocoles facultatifs
- contre la torture et autres peines ou autres traitements cruels inhumains ou dégradants
- relative au statut de réfugiés + son protocole facultatif
- 138 et 182 de l'OIT
- relative aux Droits des travailleurs migrants

DAHBI, O

« Les subventions de l'UE pour lutter contre l'immigration clandestine

La grande escroquerie espagnole »

5/9/2002

<http://partenaires.casanet.net.ma/lindependant/details.asp>

DECAMPS , M.C

Des centaines de clandestins rejoignent les Canaries dans des embarcations de fortune

http://www.fsa.ulaval.ca/personnel/vernag/EH/F/manif/lectures/Canaries_clandestins.htm

DE TAPIA.S.

Les migrants dans les pays de transit :partage des responsabilités en matière de gestion et de protection.

Conclusions du rapporteur général de la Conférence régionale du Conseil de l'Europe.
Istanbul 1/10/2004

DUMOULIN,F.

Zones d'attente pour les étrangers : "horreur" de la République française

14 novembre 2000 ([AFP](#))

ELMADMAD,K.

La nouvelle loi marocaine du 11 Novembre 2003 relative à l'entrée et au séjour des étrangers au Maroc, et à l'émigration et l'immigration irrégulières

2004 Institut universitaire , européen RSCAS.

ETIEMBLE, A

Quelle protection pour les mineurs isolés en France ?

H et M n°1251-Septembre-Octobre 2004

ENCYCLOPEDIE LIBRE ,WIKIPEDIA

Tetouan, Tanger

<http://fr.wikipedia.org>

FADIGA, L.

« Mineurs étrangers isolés, un défi à relever »

Colloque organisé par l'association Louis Chatin pour la défense des droits de l'enfant Paris,
28 au 31 Janvier 2005 , à la première Chambre de la cour de cassation

Un aperçu sur la situation et sur la législation italienne

FEDERATION SOS RACISMO

« Mineurs en frontières : expulsion des mineurs marocains sans garantie et violation des droits. »

HAMDAOUI

Ceuta , porte du paradis européen

Jeune Afrique- L'intelligent 12/12/2004

HAUT COMMISSARIAT AU PLAN –Royaume du Maroc

Les résultats de la population légale issue du recensement général de la population et de l'habitat (RGPH) de 2004

<http://www.recensement.hcp.ma>

JEMMAH ,K.

« Même les enfants prennent le large » 27/4/2005

Publié dans « Migration enfance »

JULINET, S

« Dans les zones d'attente : atteinte aux libertés et inefficacité »
Plein droits n°44, décembre 1999

LAHLOU, M.

Le Maghreb : lieux de transits
La pensée de midi P 35 à 45

LOI N°02-03 relative à l'entrée et au séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulières, 11 Novembre 2003.

MIGREUROP

1992-2004 la coopération maroco-espagnole en matière de politique migratoire
Publié en Janvier 2005

MAP

« Espagne :des ONG dénoncent l'expulsion des mineurs marocains sans garanties »
Article publié sur Yabiladi.com le 7/5/2005
<http://www.yabiladi.com/rubrik/print.php?cat=societe&id=550>

NAJIB, A

« Le Maroc a dit oui »
La Gazette du Maroc n° 357-01 Mars 2004

NOVOPRESS .INFO France

Afflux de mineurs à Madrid
21 Juillet 2005- Source Le Figaro
<http://fr.novopress.info/?p=2291>

OMCT (World Organisation against Torture)
Genève, Avril 2004

REMI (Réseau Euroméditerranéen Mineurs Isolés)
Fiches provisoires pays (les contextes nationaux)

RODRIGUEZ PIZZABORO,G.

Rapport soumis par la Rapportuse spéciale sur les droits de l'homme des migrants
Nations Unies – Conseil économique et social
E/CN.4/2004/76/Add.3
15 Janvier 2004

SITES consultés

- Amnesty
- France Terre d'asile
- HCR
- Anafé
- Conseil de l'Europe
- UNICEF
- UNESCO

- Cimade
- REMI
- GISTI

UNICEF

Manuel d'application de la Convention relative aux droits de l'enfant
Juillet 1999

VAN THIIN, M.Ed

CONSEIL DE L'EUROPE

Protection et assistance pour les enfants séparés demandeurs d'asile

Doc. 10477 22 Mars 2005-08-18 Rapporteur : M.Ed van Thiin, Pays-Bas, Groupe socialiste

VIDALIES M.A.

Rapport d'information à l'Assemblée Nationale, déposé en application 145 du règlement par la mission d'information commune sur les diverses formes de l'esclavage moderne. N° 3459

WENDER, A.S.

„la situation alarmante des migrants subsahariens en transit au Maroc et les conséquences des politiques de l'UE »

Octobre 2004

Cimade-<http://www.cimade.org>