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Master Thesis (128 Credits)

An Application of Rosenau's Systemic Approach to African
Migration Into South Africa From 1994 to May 2008

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DECLARATION

Submitted in fulfilment / partial fulfilment of the requirements for the degree of
..... , in the Graduate Programme in , University of
KwaZulu-Natal,
Durban, South Africa.

I declare that this dissertation is my own unaided work. All citations, references and borrowed ideas have been duly acknowledged. It is being submitted for the degree of ...
..... in the Faculty of Humanities, Development and Social Science, University of KwaZulu-Natal, Durban, South Africa. None of the present work has been submitted previously for any degree or examination in any other University.

Student name

Date

ACRONYMS

ANC: African National Congress
CORMSA: Consortium for Refugees and Migrants in South Africa
DHA: Department of Home Affairs
DRC: Democratic Republic of Congo
EEC: European Economic Community
EU: European Union
EU 15: European Union when it had 15 members
HRW: Human Rights Watch
HSRC: Human Sciences Research Council
ICCPR: International Covenant on Civil and Political Rights
ID: Identification Document
IDP: Internally Displaced Person
IFP: Inkhata Freedom Party
IOM: International Organisation for Migration
LHR: Lawyers for Human Rights
NGO: Non-Governmental Organisation
OAU: Organisation of African Unity
OECD: Organisation for Economic Cooperation and Development
IO: International Organisation
SAMP: Southern Africa Migration Project
SAPS: South African Police Services
UAWA: United Asian Workers' Association
UN: United Nations
UNDP: United Nations Development Program
UNHCR: United Nations High Commissioner for Refugees
USA: United States of America
USSR: Union of Soviet Socialist Republics

ABSTRACT

With the end of Apartheid, the South African regime completely changed. This had implications for African migration into the country. The migration situation became a concern with the appearance of what has been referred to as xenophobia. But except for some particularities, the case of South Africa is not so very singular.

Systemic approaches in the field of International Relations have proved to be an interesting analytical tool, and Rosenau's ideas provide the opportunity to use those approaches at different levels, applying them to different case of studies.

The goal of this thesis is first to build a system of analysis for migration issues, explaining the interactions between the different actors of the system. The system thus created should be able to be applied to many case of migration in different regions of the world. The second chapter seeks to apply this system to the case of South Africa, for a clear understanding of the phenomenon of African migration to that country. It explains the interests, roles and modes of interaction of the different actors such as the state, external actors and migrants.

INTRODUCTION:

South Africa experienced a racial discriminatory regime for decades. Apartheid was supposed to ensure security for the white population by giving lesser rights to non-whites and by forcing them to live in different areas. The idea was to not mix the different races. But the regime changed in 1994. South Africa became a non-racial democracy. This had many impacts on internal aspects of the country but also on immigration and African migration. All South Africans had the same rights under a new regime, but these did not apply to African migrants. Of course, there is a difference between South African citizens and non-South African citizens. This occurs in all the countries of the world. But this differentiation led to a specific type of xenophobia. South African blacks and other non-whites got their rights back, but the situation has been different for African migrants. For this reason, many studies have focused on immigration in South Africa. South Africa is an attractive country for African migrants as a result of its economic and political welfare compared to the global political and economic instability in the rest of Africa. For this reason, more migrants came at the end of apartheid. But they did not find what they were expecting. Once they entered South Africa, they faced many difficulties because of being foreigners.

In as much as there are many studies about immigration in South Africa, there are different approaches. Some focused on the impacts on development, some on the life of immigrants in the country, some on the ways to enter South Africa, some on state policies against foreigners, some on human rights abuses. However, it seems that in fact, very few changed between 1994 and 2008 despite different approaches. Migrants still face many human rights abuses. They seek to enter South Africa and the state seeks to expel them. It seems that this political phenomenon has been stable for fourteen years. Thus, this thesis seeks to explain the phenomenon as a system including different actors which try to influence others in order to guarantee their interests.

In the field of International Relations, many systemic approaches have successfully been used to explain state behaviour. Rosenau built a framework of analysis of systems. He explained how they function, how to delimit them and therefore how systemic approaches can be applied to different political case studies. The systemic approach can then be applied to immigration cases. This is the purpose of this thesis. In order to do so, this thesis will draw a model of an immigration system from different empirical cases in Europe and North America in the first chapter. Then, it will be applied to the case of South Africa. Even if South Africa is a very particular type of country, state interaction with African migrants goes through the same process as in other similar cases. Also, the systemic approach will include external organisations as a group of actors because they have more influence in the International system than they did at one time.

I/ South Africa as a country of immigration

South Africa has always been a country of migration. The issue of identity has always been a major one in the constitution of the country, of the state. It has been very complex in a country where many ethnic groups and races, with a “divided history”¹ and culture share the same land. When the whites arrived in this land, they could not escape the fact that they were foreigners, like the Indians who came to work in the sugar cane fields. Their colour was obviously a sign of their immigration. Therefore, the whites tried to limit it by treating Africans as foreigners as well. According to the official history, blacks would have arrived at almost the same time or even later than Europeans in South Africa². But some scientific studies demonstrated that in fact, if black South Africans are the descendents of the people of the *bantu* language who migrated to the south of the continent, they would have been on this land from the third century in the south of Limpopo³. This is why “South Africa seems like a country where everybody would be a foreigner for someone else: the English and the Bantu for the Afrikaners, the Afrikaners and the English for the blacks, Indians and others for the whites and the blacks”⁴. In this context, the coloureds have an identity that is necessarily shared with a foreigner. The Blacks that come from different ethnic groups could also consider other ethnic groups as foreigners.

After wars over the conquest of the country, between English, Afrikaners, Zulus or others, and the complex history of South Africa, the whites finally created a country together. They used this power to control immigration, to control citizenship, to control the non-white population of South Africa during apartheid. The South African Union built in 1910, “organised progressively its immigration policies: the recruiting of African workers needed for mine industry extended to neighbouring countries under British or Portuguese domination”⁵. Later the government Hertzog-Smuts adopted the Aliens Control Act to prohibit any non-white immigration and to control the influx of Jewish immigrants, considered as low type migrants. At the same time, the state was looking for Europeans migrants and immigrants. In the 1950's, the regime intensified its efforts to recruit qualified immigrants. This population was coming from Europe. The laws for permanent residence and citizenship for European migrants were liberal to make sure that qualified immigrants would stay. The Department of Home Affairs even placed advertisements in Europe to influence workers to come to South Africa. In the meantime, African workers were only used on temporary

1 *Ibid.*, p. 29

2 The Bantu arrived after the Dutch and English according to the Minister of Information, C. P. Mulder, in 1975 In Comevin M., *L'apartheid: pouvoir et falsification historique*, Unesco, Paris, 1979, p. 79

3 *Ibid.*, p. 83-95

4 Bouillon A., “Immigration and Immigrants in South Africa”, *European Review of International Migrations*, Vol. 14. No. 1, 1998, p. 194

5 Bouillon A., “Immigration and Immigrants in South Africa”, *Op. Cit.*, p. 195

contracts. Africans could not be immigrants but only migrants. “Black immigration officially did not exist”⁶. The project of the apartheid system was to make the black South Africans only transitory migrants, with the only reason to be in a white area to work there with a contract. Dr Connie Mulder, Minister of Black Affairs, said in 1978 that if the apartheid regime followed its policies until their logical conclusions, not a single black would be a South African citizen⁷. There was a total control on black movement and migration with the pass-book in the system of influx control. Foreigners were considered as the same as rural illegals.

The regime and the control of non-white populations could not last. Protests against the regime were getting more intense particularly from the mid-1980s to the beginning of the 1990s. Some people considered terrorists by the apartheid regime and freedom fighters by the major part of the population sought refuge in other countries of Southern Africa and came back after the regime change in 1994 led and won by the ANC. Of course, this important change in South Africa had an impact on issues of identity, citizenship and therefore immigration. “The reinvention of South Africa following the 1994 election has been shaped by the state's construction of a new South African identity”⁸. “The main modification (about immigration) caused by the transition is structural: it is the erasing of internal borders traced by apartheid and the regional structure for a consolidation of the external borders”⁹. In 1994, South Africa re-entered the international community and signed the 1951 UN Refugee Convention. Refugees were then allowed to come to South Africa and to obtain a temporary residence permit. New spaces were opened, new movements were happening. Whilst South Africa used to be a closed and controlled society, it has now become an open one. Even though South Africa did not want African migrants to enter, its economic welfare became an attraction for many African migrants. But a new paradox occurred. “Despite the overall legal framework offering migrants in general more rights and guarantees than ever before, their situation in terms of human rights abuses, economic and social rights and day-to-day interactions remains a source of concern”¹⁰. “Even the anti-immigrants impulse of South Africa's first ever democratic state is strongly reminiscent of its undemocratic predecessor (but) South Africa is increasingly host to a truly pan-African and global constituency of legal and undocumented migrants”¹¹.

6 *Ibid.*, p. 197

7 In Reitzes M., “Insiders and outsiders: The reconstruction of citizenship in South Africa”, CPS, Social Policy Series, vol. 8 No 1, february 1995, p. 6

8 Peberdy S., “Imagining Immigration: Inclusive Identities and Exclusive Policies in Post-1994 South Africa”, *Africa Today*, Vol. 48, No. 3, Evaluating South African Immigration Policy after Apartheid, Indiana University Press, Autumn 2001, p. 29

9 Bouillon A., “Immigration and Immigrants in South Africa”, *Op. Cit.*, p. 201

10 Wa Kabwe-Segatti A. & Landau L. (directed by), *Migrations in post-apartheid South Africa, Challenges and questions to policy makers*, FASOPO (Fond d'Analyse des Sociétés Politiques), November 2006, Paris, p. 18

11 Crush J. & McDonald D. A., “Transnationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Canadian Journal of African Studies*, Vol. 34 No 1, Canadian Association of African Studies, 2000, p.

Following this contradiction, in the 1990's, the Aliens control Act, Apartheid's last Act, became the “cornerstone of South African immigration policy”¹². The ten-year period between 1994 and 2004 has been crucial in shaping positions and structuring networks on migration issues. “Three diverging routes were then followed by various clusters of actors: a Home Affairs rather neo-liberal agenda (...) favouring State withdrawal, the sub-contracting of administrative processing of control to employers, incentives to highly skilled labour and investors and accelerated policy reform simplifying administrative procedures; an interventionist approach in favour of balanced migration control (...); a security and sovereignty-centred agenda favoured both by part of the ANC and the departments’ medium to lower bureaucratic strata”¹³. Despite changes in the conceptions of the ANC on immigration issues in the last years, three elements have characterised post-apartheid immigration policy implementation: the persistence of coercive practices, the hardening of entry and control as well as of access to South African citizenship and the failure to transform the Department of Home Affairs and other public services in charge of immigrants¹⁴.

African migrants still come to South Africa and the South African state, despite a commitment to democracy and human rights, treats them in contradiction with those principles and seeks to send them back to their home countries. South Africa considers African migrants as a threat. South Africa imposes an unfavourable system on them. Some would consider that South African leaders should have a “moral responsibility”¹⁵ for migrants who fled from neighbouring countries to South Africa because of their help during apartheid. But the ANC prefers to favour nationals. If South Africa was referred to as the 'Rainbow Nation' in the beginning of democracy, the ANC seeks to favour the non-white population through different processes such as Black Economic Empowerment or Affirmative Action. The purpose is to balance the injustices of the past. Instead of helping foreigners who gave help before, the ANC seeks to create a system in favour of only a particular part of the South African population which of course does not include African migrants.

14

12 Wa Kabwe-Segatti A. & Landau L. (directed by), *Migrations in post-apartheid South Africa, Challenges and questions to policy makers*, *Op. Cit.*, p. 19

13 *Ibid.*, p. 19

14 *Ibid.*, p. 20

15 Renu Modi considers that South Africa should have a moral responsibility with other neighbouring countries and their migrants in South Africa because of their help during apartheid. During this regime, many opponents fled out of South Africa to find a refuge in neighbouring countries.

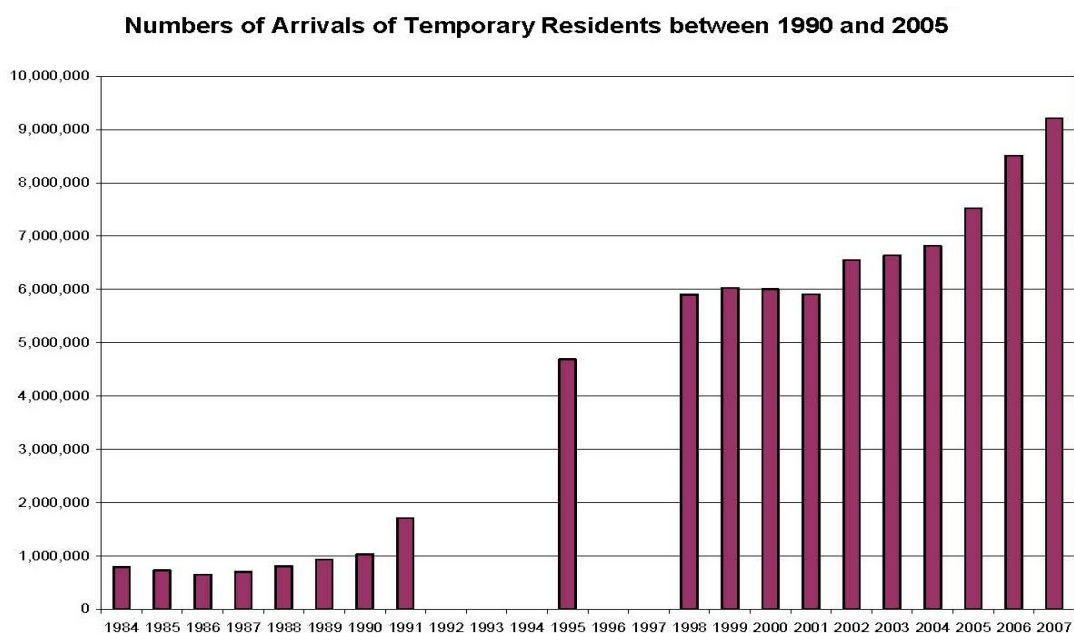
Modi R., “Migration to Democratic South Africa”, *Economic and Political weekly*, Vol. 38, No. 18, Published by: Economic and Political Weekly, (May 3-9, 2003), p. 1760

II/ African migrants in South Africa

There are of course different types of immigrants and migrants in South Africa, even within the African ones. In general, one can identify five types of immigrants in the world: legally admitted immigrants, contract labour immigrants, illegal immigrants, asylum seekers and refugees¹⁶. In South Africa, it is difficult to ascertain the number of migrants of different categories. Different surveys have different statistics, and the state always enlarges the number of migrants in order to make it being a bigger issue than it actually is. Therefore, one can only make approximations on the different categories of African migrants in South Africa. The immigrant population in South Africa is now clearly dominated by Africans¹⁷

The legally admitted immigrants have to be distinguished from legal migrants. The legal migrants come for a short term in the country. They mainly come for tourism or business reasons. As can be seen on the following graph, the number of temporary residents in South Africa has increased strongly from the beginning of the regime change until now. In the same time, permanent immigration permits went from 14,000 per year in 1990 to 4,000 at the end of the 1990s¹⁸.

Table 1



Source: Wa Kabwe Segatti A. & Landau L., "Human Development Report 2009; Human Development Impacts on Migration, Case study: South Africa", Forced Migration Study Programme, For the United Nations Development Programme, January 2009, p. 10
from Statistics South Africa, Tourism and Migration, 1984-2007

16 Meissner D., "Managing Migrations", *Foreign Policy*, No. 86, Carnegie Endowment for International Peace, 1992, p. 67

17 In Bouillon A., "Immigration and Immigrants in South Africa", *Op. Cit.*, p. 214

18 Wa Kabwe Segatti A. & Landau L., "Human Development Report 2009; Human Development Impacts on Migration, Case study: South Africa", Forced Migration Study Programme, For the United Nations Development Programme, January 2009, p. 11

African migrants that follow the way to be legal immigrants rarely get as much as the permanent permits give. But there are many who use the temporary visit permits to get the opportunity to enter the country and then stay illegally or leave the country and cross the border again. “Visits to South Africa are often strategic and temporary”¹⁹ for African migrants.

The category of contract labour immigrants is an important one within the African migrants. But the South African state ensures that these migrants are not immigrants. The labour contracts are generally for a set period of time. Therefore, the applicants cannot stay in the country after the end of their contract. It is in a way the same process which was created by the Chamber of Mines during the colonial period and used during apartheid for African workers. There were many African migrants working in the mines with temporary permits in the 1970's²⁰. This number decreased strongly because of the mining industry's decline and the preference for nationals. The workers' associations managed to get better wages. Therefore, this type of work was more attractive for nationals. According to research in 2002 “The mine contract labour system seems as entrenched as ever, thousands of migrant labourers have been sent home in the last decade”²¹. Now, the number of African migrants working in mines is very low. They are hired with “short term contracts and few (if any) benefits”²².

Illegal immigration remains a concern for an analysis of African migration in South Africa. There are many statistics with as many different results. We can however consider that nearly all of them come from African countries. There are different types of illegal immigrants in South Africa. The ‘stay-overs’ are immigrants who entered the country legally but did not ask for or did not get the extension of their permit. Some entered the country illegally with fake permits or by crossing borders clandestinely. Mangosuthu Buthelezi, Minister of Home Affairs, declared in parliament that there were two million “illegal aliens” in 1994. This number was over estimated. The HSRC did the same and declared that they were between three and nine million²³. There is no way to be sure today of the exact number of illegal migrants in the country because of their illegality. In January 1999, Oucho and Crush considered that there were 850,000 illegal immigrants in South Africa²⁴. It seems a more realistic number. A “SAMP research has demonstrated that the vast majority of people from neighbouring countries who have visited South Africa in the past, as well as those who are currently

19 Crush J. & McDonald D. A., “Transnationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Op. Cit.*, p. 7

20 80% of the mine workers were foreigners in 1970 according to the South African Labour Commission In Bouillon A., “Immigration and Immigrants in South Africa”, *Op. Cit.*, p. 206

21 Crush J. & McDonald D. A., “Transnationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Op. Cit.*, p. 5

22 *Ibid.*, p. 5

23 Bouillon A., “Immigration and Immigrants in South Africa”, *Op. Cit.*, p. 203

24 Crush J. & McDonald D. A., “Transnationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Op. Cit.*, p. 6

in the country, entered legally through official border posts with the necessary documentation”²⁵. Therefore, one could believe that South African state institutions give an overestimation of illegal migrants. It brings a confusion between legal and illegal migrants. It can be in the interest of the state to pretend that there are more illegal migrants than in reality to expel more of them and use draconian measures for deportation.

The last types of immigrants are refugees and asylum seekers. They were new for South Africa after the signing of the 1951 UN refugee convention and the refugee Convention of the OAU. As can be seen on the following table²⁶, the number of refugees and asylum seekers has increased greatly during the post-apartheid period. There have been many more refugees and asylum seekers seeking refuge in South Africa. The political instability that exists often in African countries and the commitment of South Africa to human rights and democracy created a new destination for refugees and asylum seekers in Africa. But there is a very fine line between the status of refugees (and even more so for asylum seekers) and illegal immigrants. Asylum seekers are often considered illegal according to the aliens Control Act while waiting for their application to be processed. It will be seen that the DHA takes more time than it should be to process the asylum seekers’ applications. Therefore, the applicants are treated like illegal immigrants for longer. The refugee is more solid in the sense that there is a longer temporary permit which can be legally extended. The majority of asylum seekers and refugees are Africans. Their country of origin depends on the different wars or other types of political instability and insecurity which happens in Africa. They will be considered as part of the same group because of their common interests in coming to South Africa, and because of the same conditions of application despite different origins. The same is done with other types of African migrants in this study.

Table 2

Refugees and Asylum Seekers in South Africa

1. Population of concern to UNHCR, end of year

Category	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Refugees	22,645	6,819	8,388	14,538	15,063	18,605	23,344	26,558	27,683	29,714
Asylum-seekers	14,390	21,791	20,207	17,325	15,138	11,417	52,451	84,085	115,224	140,095
Returned refugees*	132	22	47	-	-	-	-	-	-	-
Internally displaced	-	-	-	-	-	-	-	-	-	-
Returned IDPs	..	-	-	-	-	-	-	-	-	-
Stateless persons	-	-
Others of concern	..	-	-	-	-	-	-	-	-	-
Total	..	28,632	28,642	31,863	30,201	30,022	75,795	110,643	142,907	169,809

* Based on country of asylum and origin reports.

Source: UNHCR, “Country Operation Plan”, Country: South Africa, Year: 2006, 6p.

25 Crush J. & McDonald D. A., “Transnationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Op. Cit.*, p. 6

26 Source: UNHCR, “Country Operation Plan”, Country: South Africa, Year: 2006, p. 2

III/ The appearance of Xenophobia²⁷

Facing such an inflow of migrants, South Africa chose to use radical measures. By defining its identity in opposition with foreigners, the state sought to expel African migrants in different ways. If they could not all be deported, the state built a system which does not encourage them to come into or to stay in the country. Despite human rights commitments and the application of international refugee conventions in the South African legal system, the attitude of the South African state can be considered as xenophobic towards migrants and immigrants. This attitude has been particularly directed at African migrants. The South African state and other related public institutions such as the Department of Home Affairs or the SAPS have been unable to manage the inflow of African migrants. Their solution is to treat them in a way that does not encourage them to enter the country or to stay, including many human rights abuses. This attitude led to a crisis situation in 2008 usually referred to as the 'xenophobic attacks'. The South African let such attacks happen.

According to a study by the forced migration studies programme of the University of Witwatersrand²⁸, the violence started in Gauteng with violent attacks on foreigners in Alexandra, Johannesburg, on May 11 2008. It quickly spread to northern Johannesburg, Ekurhuleni (eastern Gauteng), then to central and western Johannesburg and to Randfontein in western Gauteng. On May 17 2007, the attacks spread to Durban, in Kwazulu-Natal. In quick succession, incidents were reported in Free State, North West and Limpopo provinces on May 20, 21 and 22. On May 22, as the violence in Gauteng and Kwazulu-Natal was beginning to subside, attacks against foreigners commenced in the Western Cape at DuNoon, Cape Town. In the next four days, "threatened and actual violence caused foreign nationals to flee from various communities in Cape Town and further afield (including from the townships of Knysna, Mossel Bay, Somerset West, Strand, Hermanus and Paarl)"²⁹. On May 26, The Safety and Security Minister, Charles Nqakula, declared that "xenophobic violence had been brought under control, although isolated attacks continued into the subsequent months"³⁰. The key characteristic of the violence was the attacks or threats of attacks on non-nationals living in townships and informal settlements in the main urban settlements of Gauteng, Western Cape and Kwazulu-Natal.

27 The word *xenophobia* has been widely used in many journalistic or academic articles, NGO reports. Even the UNHCR uses it when writing on South Africa. It literally means the of from people other countries.

28 Monson T., Igglesden V. & Polzer T., *Humanitarian Assistance to Internally Displaced Persons in South Africa: lessons learned following attacks on foreign nationals in May 2008*, Forced Migration Studies Programme, University of the Witwatersrand, Oxfam, Johannesburg, January 2009, 187p.

29 *Ibid.*, p. 19

30 *Ibid.*, p. 19

The victims were people from Bangladesh, Burundi, DRC, Kenya, Malawi, Mozambique, Nigeria, Pakistan, Somali and Zimbabwe “as well as South Africans from minority language groups”³¹. Some South African citizens who were perceived to be foreigners or some spouses of foreigners were attacked as well. But “the vast majority of persons displaced were of African origin”³². There were only isolated cases where migrants of Asian origin were attacked. In the end, 62 deaths were reported, mostly in Gauteng, of which a third were South African citizens³³. A total of 342 shops were reported to have been looted, and 213 burnt down. The estimated total number of people displaced range between 80,000 and 200,000. “The range is large due to limited records of the numbers of people who left South Africa for their home countries, of those who moved with friends and family or found alternative private accommodation, or those who returned to their communities in the first two weeks of the disaster”³⁴. The Mozambican state estimated that 40,000 of their citizens returned home as a result of the violence. The maximum statistics stated that, there were 24,000 people in Gauteng and 20,000 in the Western Cape who had to stay in shelters. People had been directly threatened and were told to leave the communities in which they were living if they did not want to be violated. In the initial phase of displacement, foreigners sought safety in police stations, churches, mosques and other private and faith-based facilities. When those facilities became overcrowded, the government authorities made available community halls, disused school buildings, and other public buildings. Then, the government announced that centralised Centres of Safe Shelter would be established by local and provincial government.

The South African authorities reacted late to this crisis situation. And then, they just left the provincial authorities alone to manage it. But they were not able to do so. The help of International and civil society organisations was crucial for the safety of the internally displaced foreigners and to manage the situation. The South African state allowed xenophobic, non-legitimated³⁵ and high intensity violence towards African migrants. Some violence resembled what might have been done to non-whites during apartheid such as letting a human burn in its blanket. This extreme reaction of some of the South African population, not blamed by the South African authorities, demonstrated a poorly managed immigration inflow and loss of the state power in its control of legitimate violence. Such a situation is a proof of dysfunction in the South African state which needs to be understood. African migration to South Africa is an issue that needs clear analysis to understand it as phenomenon with different actors intervening with their sets of interests and way of action. If the

31 Monson T., Igglesden V. & Polzer T., *Humanitarian Assistance to Internally Displaced Persons in South Africa: lessons learned following attacks on foreign nationals in May 2008*, Op. Cit., p; 19

32 *Ibid.*, p. 20

33 *Ibid.*, p. 20

34 *Ibid.*, p. 20

35 The attacks of May 2008 were not necessarily directed to illegal migrants.

situation of African migrants is the way it is now, it is surely and partly due to the South African state consideration on immigration.

METHODOLOGY

In migration, there are different approaches. There are different perspectives and analytic frameworks for the studies of migration. In a migration issue, there are populations moving to other places, other countries, from different places. Some studies focus on the reasons why a particular population moves, others focus on the types of migrants, others seek to understand the integration of these populations in their new 'homes'. Migration is an issue that can be studied from various different points of view. Meyers³⁶, from the Centre of Migration Studies in New York, suggested a comparative approach for the different studies.

Meyers considers the immigration issue as an interdisciplinary subject which he divides into two parts: immigration control policy (rules and procedures governing the selection and admission of foreign citizens) and the immigration policy (conditions provided to resident immigrants). The approaches he compares are from different fields of studies such as political science or international relations.

The Marxists and neo-Marxists argue that “economic factors and class-based political process shape immigration policies”³⁷. If the society is divided into two classes (capitalist and proletarian), immigration serves the ruling class in a variety of ways, used like a reserve army to “force down working class wages”³⁸. This is how Marxists and neo-Marxists explain migration. But if they correctly predict the short term correlation between the economic cycle and immigration policy, if they explain foreign worker policies and a part of the accepted illegal immigration which benefits employers, there are some limits in their conceptions of immigration. Marxists predict a “long term growth of immigration as a structural part of capitalism”³⁹. But labour migration has been stopped in Europe and the number of immigrants in the US has not yet reached the level expected by the Marxists. They also fail to explain policies on immigration of dissimilar ethnic origin. If the Marxists focus on economic factors of migration, they cannot explain refugee issues as migrations related to wars and political pressures.

36 Meyers E., “Theories of International Immigration Policy – A Comparative Analysis”, *International Migration Review*, Vol. 34, No. 4, Center for the Migration Studies of New York, 2000, pp. 1245-12

37 *Ibid.*, p. 1247

38 *Ibid.*, p. 1248

39 *Ibid.*, p. 1250

The 'national identity' approach⁴⁰ argues that the unique history of each country, its conception of citizenship and nationality, (...) shape its immigration policy⁴¹. This approach works in the field of historical sociology or political sociology. It has particularly been used for the case of South Africa because of its specificity as a nation. In America as an example, some could argue that social cleavages, social unrest and industrial unrest within American society foster fears of losing national identity and of a national breakdown can “produce nationalism and nativism (xenophobia)”⁴². The 'national identity' approach explains the variations in immigration and citizenship policies between countries of destination on the basis of their different conceptions of national identity. It makes three types of distinctions: between settler societies, between homogeneous and heterogeneous countries, between countries whose citizenship laws lean towards *jus sanguinis* and those countries whose citizenship laws lean towards *jus soli*⁴³. The 'national identity' approach “contributes to our understanding of immigration policies in several ways”⁴⁴. It explores the cultural idioms and traditions that shape policies. It explains why some countries prefer permanent immigration when some others prefer temporary immigration. It explains how major racial, ethnic and religious conflicts within a society influence the attitude of the state towards the composition of immigration. But “the major weakness of the national identity approach is its inability to explain the fact that various countries have adopted similar immigration policies at the same time”⁴⁵. This theory can be used to explain why a country is particular in its immigration policy. But even though South Africa has a very distinctive history of immigration, racial issues and nation building, its position on African migration is not necessarily so distinctive.

The domestic politics approach⁴⁶ has been widely employed. “Empirically, it seems evident that economic and social factors have a greater impact on immigration policies than do security and strategic considerations, which are highlighted by the realist approach”⁴⁷. But these studies lack a general theory. They mostly examine the policy of a single country in a certain period of time and therefore are not useful for comparison. It does not explain immigration policies and refugee policies adopted despite domestic opposition. Because of its dogmas, it seems inadequate to explain the situation of South Africa where the democracy is led by a single dominant party.

40 The name of this approach comes from Meyers considerations. It might include different approaches with other names. Meyers generalise the different types of approaches focusing on identity issues.

41 Meyers E., “Theories of International Immigration Policy – A Comparative Analysis”, *Op. Cit.*, p. 1251

42 *Ibid.*, p. 1253

43 The distinction between the *jus sanguinis* and the *jus soli* can be considered as the difference between the rights of the filiations of the right of the land. In other terms, the *jus sanguinis* defines citizenship rules through the filiations which is of parental or ancestral descent. In other words, when the *jus soli* is place-bound.

44 Meyers E., “Theories of International Immigration Policy – A Comparative Analysis”, *Op. Cit.*, p. 1255

45 *Ibid.*, p. 1255

46 The domestic politics approach consists of the understanding of the relation between interest groups and partisan politics. It seeks to explain how those groups get to power, negotiate, interact and lead a country. It assumes that the state serves as a neutral arena for societal interests: interest groups and parties. Policy making is the result of bargaining as well as compromises between these interests.

47 Meyers E., “Theories of International Immigration Policy – A Comparative Analysis”, *Op. Cit.*, p. 1259

Institutional and bureaucratic approaches still focus on state level interactions. They argue that political institutions can be autonomous: “they can form public policy according to the interests of the state and remain unaffected by societal or interest group pressures”⁴⁸. But the distinction between the weak state and the strong state is very vague. Political institutions vary from country to country, sector to sector and thus, cannot be generalized. However, such conceptions can be useful in the case of South Africa to explain interactions within the state and a dysfunctional immigration policy implementation process, mainly implemented by the Department of Home Affairs.

Realism and neo-realism empirically shows that issues of struggle and security deeply influenced immigration policies. There are different examples such as: passports introduced during the First World War, fear of German invasion in France influencing immigration policy, Australia and the fear of Asian string immigration after the Japanese invasion, and Jewish immigration in Israel. During the Cold War many western countries favoured refugees from communist countries to demonstrate their anti-communist commitment. But “the emphasis on national security and military conflicts formerly caused most scholars of the realist school to neglect the issue of immigration”⁴⁹. The focus of the realist approach on sovereign self-interest of states seems a good starting point for a discussion on immigration policy. States follow their own interests when they restrict labour migration and permanent migration during recession. But “realism has contributed only marginally to the study of immigration policy”⁵⁰ except for refugees. The state is selfish. But is it rational like the realists claim? It will be seen that there are different reasons why the state does not always work for its own interest. If the realists see the state as a 'black box', it will be an important limit to the understanding of the situation of African migrants in South Africa.

An interesting point of view of liberalism is that it does not consider the state as the only actor which intervenes in the immigration system. International organisations have an influence in immigration policy. Individuals and communities can play their role as well.

Globalisation theory⁵¹ challenges the sovereignty of the state “as well as its capacity to control its economic and welfare politics”⁵². There is an emergence of human rights as a part of the migration process. “The globalization literature contributes more to our understanding of the causes of immigration and to immigrant and citizenship policies than to the study of immigration control policy”⁵³. Globalization theories neglect the influence of politics in comparison to their excessive reliance on economic and social forces.

48 Meyers E., “Theories of International Immigration Policy – A Comparative Analysis”, *Op. Cit.*, p. 1261

49 *Ibid.*, p. 1264

50 *Ibid.*, p. 1265

51 Meyers considers the globalisation theory as a combination between liberalism and world system theories.

52 *Ibid.*, p. 1267

53 *Ibid.*, p. 1268

Many approaches have been provided in the analysis of migration cases. All of these approaches have both advantages and limits. Some explain reasons for migration, whereas others will explain reactions of a host state towards immigration. Some explain state immigration control policy, others explain state immigration policy. Some explain through historical and sociological approaches why some societies react in one way toward immigration when others react differently. But African migration to South Africa seems a more complicated process than just issues of state policies or identity conceptions. Immigration can be seen as a phenomenon in which different actors interact with different needs and interests. A state might not be able to control its immigration and therefore a study on African migration in South Africa cannot only emphasise the reaction of the South African state towards African migrants. A state might seek to evict immigrants and this strategy can work in some ways. But a country can be an attractive destination despite state control on immigration. Immigrants can still find ways to come into a country, through illegal or legal processes. The issue of African migration in South Africa cannot be seen from a single point of view.

If systemic analyses proved to be able to explain many interactions in the world system, could a systemic analysis be applied to the case of African migration in South Africa to explain needs, interests, ways of action and influence, results and the organisation of the different actors who take part of the immigration issue? World systems analyses cannot explain this issue with a full understanding because its perspective is too broad. A systemic analysis cannot be used from a globalised point of view. But as Rosenau understood, systemic analyses do not necessarily have to be made from a globalised point of view. There are different systems in the world system. From his understanding and conceptions on the systemic approach and the functioning of systems, we can apply a systemic approach to different issues. Therefore, it becomes possible for the issue of African migration to South Africa. The first need to apply this approach to this issue is to draw a model of the functioning of such a system. The first chapter of this thesis will build a general system on the immigration issue and explain the different interactions between and within the actors who are active in this 'issue-area'. Different cases of immigration around the world will be considered for empirical and comparative support. The second chapter will apply this system to the case of South Africa. This application will give a chance to conclude whether the systemic approach should be considered as an explanatory analytic tool for migration issues. The advantage of the systemic approach seems to be that it gives an understanding of the entire phenomenon. The conceptions of the stability of the system will give an explanation for possible changes in immigration in a certain area. It will explain how actors interact and therefore influence others as it is the base of any change or continuity.

Chapter 1

From the conceptions of Rosenau:

The construction of an analytic system for migration

The purpose of this chapter is to understand where systemic approaches come from and how they can be used. It includes a look at the different systemic approaches used in the field of International Relations. From this beginning, this thesis will try to explain the functioning of a political system according to the conceptions of Rosenau. After that, it will seek to build a particular system for the purpose of analysing migration issues. It will include two approaches; the horizontal one will look at actors as unit to explain their interactions as a whole, and the vertical one will seek to open the 'black box' and look inside the actors. By knowing the composition of an actor, its functioning, its capacity of influence in the system can be clarified.

Section 1 - Conceptualization and model of a system: Rosenau's approach

The systemic analysis presents many advantages as an analytic tool. It has been used specifically in the field of international relations in order to explain state behaviour in the international system. It is because of such advantages that we will apply it to the field of immigration. With regards to systemic approaches, Rosenau applies this analytical tool to studies other than international relations. Rosenau widens the use of systems for different fields and levels. It thus could be interesting to look at its stance on international relations before explaining the functioning of a system. Since Rosenau studies international relations, he provides an opportunity to apply a systemic analysis to the issue of immigration or other fields by proposing a method to delimit a system and understand its interactions and rules.

I/ Theories of International Relations:

The analytic advantages of the systemic approach

In the study of International Relations, the issue of systems is a major one from an analytic perspective. One of the first major authors theorising it was Raymond Aron. He called an international system “the ensemble constituted by political units that maintain regular relations with each other and that are all capable of being implicated in a generalized war”⁵⁴. If “a political system is defined by an organization, by the reciprocal relations of the parties, by the cooperation of elements, by the rules of government, to what degree do we find the equivalent in the case of an international system?”⁵⁵ He tried to apply those systemic conceptions to the cases of international relations in which the number of states/actors can be over one hundred. His systemic analysis takes into consideration different systems during world history. He often takes examples of the Greek city-states, and considers that since 1945 the international system “includes the entire planet”⁵⁶. Then, there are different characteristics in an international system. The first one according to Aron, is the configuration of the relation of forces which is defined mainly by politico-military participation. Then, it would be the homogeneous or heterogeneous characteristic of the system. This is a particular conception of Aron's. He explains that “the distinction between homogeneous

54 Aron R., *Peace and War: A theory of International Relations*, Calmann-Lévy, Paris, 1962, p. 94

55 *Ibid.*, p. 94

56 *Ibid.*, p. 95

and heterogeneous systems seems (...) fundamental”⁵⁷. With this distinction, he explains the reasons for stability and use of military force within the system. Another characteristic of an international system is the distinction between a Transnational Society and International Systems. Some actors can be part of the same system without having commercial exchanges for example, which is a feature of transnational societies. Finally, the last characteristic includes knowing if the system is legalized or not (rules applied without laws).

Once those concepts have been developed by Aron, he focuses on two different types of international systems to explain states' foreign policies, *multipolar systems* and *bipolar systems*. In each of them, the rules of interaction between the actors are different in terms of relations of power and force as well as the balance of power, the equilibrium of the system. He considers that because of the International system (the environment of the state), states' foreign policies are created in a certain way. Therefore, the system has a direct influence on the actors. One of the major issues of systemic approaches is to know which type of system influences which type of policies, and therefore, which system creates stability.

The issue of stability of systems is particularly important in the realists' conceptions as well. Solomon considers realism “as the best suited tool to understand the turbulent world in which we live”⁵⁸. Realists consider the state as the “primary actor in world politics”⁵⁹. The state is struggling for its own survival as it lives in an anarchic environment. It will try to get the necessary military force to ensure its security. Balance of power then becomes the favoured realist technique for conflict management. The stability of the world system partly depends in this balance of power. There is a dual relation between the state and the system. The structural realists like K. Waltz consider the system as a determinant of state behaviour. R. Gilpin, a realist who adds economic perspectives to the realist's theories, recognises the principle of K. Waltz's anarchic system. This system is anarchic because there is no organ superior to the sovereignty of the states. It is systemically like the *state of nature* in Rousseau's theories. Individuals are alone in an anarchic system. According to R. Gilpin, “individual behavior is explained by the nature of the system” which is “the primary determinant”⁶⁰. The system explains the behaviour of the state for realists. And the state will seek the stability of the system for its own security or will try to change the system if it has an interest in doing so.

Then, a massive debate between the realists has been the issue of the stability of the system. Which type of system is the most stable, creating less wars and more security for states and which

57 *Ibid.*, p. 99

58 Solomon H., “In Defense of Realism: Confession of a Fallen Idealist”, *African Security Review*, Vol. 5, No. 2, 1996, p. 1

59 *Ibid.*, p. 2

60 Gilpin R., *War and Change in World Politics*, Cambridge University Press, New York, 1981, p. ix

types of states? They posed those questions. Waltz considers that the most stable system is bipolar. Using the example of the two superpowers during the Cold War, he explains that it is very stable because they both deter the other from making war. They both control the other. From an empirical perspective, he justifies it by the fact that the USSR and the USA did not fight directly together and did not lead to another global war. Gilpin considers the hegemonic position as the most stable system. Looking at the cycles of hegemony in *War and Changes in World Politics*, he explains that a state will change the system if it has an interest doing so, to get a better position. Once the hegemonic position has been reached by a state, it will organize the system according to its own interest and guarantee in return, the stability and security of the system. Therefore, the hegemony should be the most stable. But some others consider the multipolar or oligopolistic systems as the most stable and most pragmatic. It consists of a few poles of power in the system that control one another. With there only being a few, it is easier to create rules and laws on how to behave within the system.

Even with this debate, realism has been considered as a paradigm in the field of International Relations, the master in the realm of World Politics. It is because their scientific approach of the International Relations gave a better understanding and a clear analytic framework. If they were able to explain states behaviours, such as the Cold War, it is because of their systemic approach. And is political analysis not about understanding the behaviour of actors in a specific way?

Buzan and Little pursued the systemic analysis in International Relations. But they went further. In *International Systems in World History: Remaking the study of International Relations*, they attempt to explain World History through a systemic analysis. They explain that their “central idea was that international system was the key to the whole subject of International Relations”⁶¹. When writing about International Relations, they state what Aron could have done. They consider that international systems are not necessarily global. The systemic analysis does not only have to be applied to the global world. It can also explain behaviours of political actors before the 20th century. This is what Buzan and Little attempted to do. They adapted the units, the modes of interaction, the process and the structure to a different period of history, to make the framework general and adaptable. They can thus use a systemic approach to explain the interactions, the rise and falls and the stability of civilizations through history, from the City-States and Empires of Europe, the nomadic tribes and their empires, to the new international system post Cold War.

If the systemic approaches have been so successful in the studies of international relations, it is because they present some clear advantages. If the realists' theories were considered as a dogma

61 Buzan B. & Little R., *International Systems in World History: Remaking the study of International Relations*, Oxford University Press, New York, 2000, p. vii

in the International Relations studies, it is partly because of their systemic approach, a well recognized analytic framework. The systemic frameworks objectively analyse the behaviour of different units/actors through power relations. Therefore, they give a clear view of interests, possibilities and interactions between the different actors. Like Buzan and Little or Aron did, the systemic approach can be applied to different units other than states in a modern international system. It gives the opportunity to keep the advantages of the systemic approach for other studies. Rosenau takes cognisance of this point when he builds a framework on the functioning of systems which can be applied to different cases.

II/ Conceptions and changes in International Relations studies proposed by J. N. Rosenau

James N. Rosenau appears to be hard to classify in the realm of International Relations. However, his work is close to the realists in the systemic approach. But throughout his work, he continuously tries to modify their framework and conceptions in general in International Relations in order to build a better analytic framework. As an example, Fukuyama explains that once again, Rosenau considers that the way politics is studied has to change “due to a number of long-term shifts in underlying conditions”⁶². Rosenau personally involves himself in order to improve the quality of world politics studies. From a systemic approach, he tries to modify the systems, their actors, their participation and interaction. He offers a different approach about systems which is more flexible and realistic.

First, he considers that Foreign policy is an adaptation to the environment⁶³. A state will adapt its policy according to the international system. But as an actor, it can also be influenced by the system. Changes can occur. They can be in an internal, personal, political or socioeconomic manner, depending on external factors. The influences and changes can also happen to different actors. An important point in Rosenau's work is that the state has less power than it used to have. It is because of “cascading interdependence”. The process consists “in those dynamics that conduce to systemic integration on the one hand and systemic disintegration on the other, to centripetal forces that today are making groups and nations more and more interdependent even as centrifugal forces are increasingly fragmented them into subgroups and subnations”⁶⁴. He considers that there is an

62 Fukuyama F., *review work* about J. N. Rosenau, *Along the Domestic-foreign frontier, Exploring Governance in a turbulent world*, In *Foreign Affairs* Vol. 77 No. 2, (March-April 1998), Council on Foreign Relations, p. 143

63 Rosenau J. N., “Foreign policy as adaptive behavior: Some preliminary notes for a theoretical model”, *Comparative Politics*, Vol. 2, No. 3 (April 1970), City University of New York, p. 365

64 Rosenau J. N., “A Pre-Theory Revisited: World Politics in an era of Cascading Interdependence”, *International*

increasing complexity of global interdependence. The international system is more complex than just a bipolar or multipolar form. Throughout the evolution of the system, interactions occur not only between states: some subgroups and subnations interact in what he calls subsystems. Because of that as well as the rise of other actors, states have less power in World Politics. He draws a model of the systems, subsystems and their interaction pre and post interdependence⁶⁵. In this new system, the redistribution of power which gives the opportunity to influence, goes through the same process as when a hegemon declines⁶⁶. The interdependence might be partly due to the decline of the USA.

“In this context, governments are posited as increasingly ineffective as international actors and individuals as increasingly skilled in their public roles”⁶⁷. Therefore, theories must adapt themselves to this new situation, including a consideration of “multi-actor situations (and) encompass the dynamics whereby roles and their scenarios get aggregated into collectivities and the process whereby the collectivities then adapt to threats and challenges”⁶⁸. Collectivities should be considered as actors influencing the interdependence in the world system. And Rosenau goes further in this idea. He even considers himself, as a scholar, and his work as being interactive with the system. Observers influence in one way. Observers can be from different types like some of the UN, of the EU or human rights organisations. He explains that even individuals take part in the interaction in the international system. In *A new dynamism in world politics: increasingly skillful individuals*, Rosenau and Fagen explain that “(their) inquiry is to explore systematically whether individuals are becoming more equipped to play a central role in world affairs”⁶⁹. At different levels, individuals become more capable when they become more skilled. And throughout the 20th century, individuals became more skilled therefore more capable of acting in world affairs. Their systemic influence takes place in foreign affairs, international trade and human rights. But it also includes the “skill revolution”⁷⁰ that makes the “public around the world much more resistant to authority and better able to organize, (...) the explosion of non-governmental actors, the erosion of

Studies Quarterly, Vol. 28, No. 3 (sept. 1984), Blackwell, p. 256

65 Rosenau is building a model of the 'Waning system' and the 'Emerging system'. They display world politics in terms of two national systems, their governments and two of their nongovernmental subsystems. Both figures indicate together state to state diplomatic relations and those that occurs through bureaucratic agencies, together economic aid, propaganda and other programs directed at public and nongovernmental institutions, the interactions between systems and their subsystems and the transnational dimension of intersocietal relations. But in the 'Emerging system', tensions between a system and its subsystem, interaction between sets of interactions rather than actors, occur. Those new interactions in the second figure become part of the internal and international systems and therefore change the structure of international relations. They are part of the interdependence between the different actors.

In Rosenau J. N., “A Pre-Theory Revisited: World Politics in an era of Cascading Interdependence”, *Op. Cit.*, p. 260

66 *Ibid.*, p. 248

67 *Ibid.*, p. 245

68 *Ibid.*, p. 281

69 Rosenau J. N. & Fagen W. M., “A new dynamism in World Politics: Increasingly skillful individuals”, *International Studies Quarterly*, Vol. 41, No. 4 (December 1997), Blackwell, p. 655

70 Rosenau J. N., *Along the Domestic-foreign frontier, Exploring Governance in a turbulent world*, Cambridge University Press, New York, 1997, p. 275

sovereignty, and the break down of clear boundaries between domestic and foreign”⁷¹. Fukuyama considers that “the most interesting argument of Rosenau (in *Along the Domestic-foreign frontier, Exploring Governance in a turbulent world*) is that international governance no longer necessarily centres on nation-states hammering out broad international agreements but can bubble up from below, where private-sector and nongovernmental players have a large role”⁷².

Agreeing with Fukuyama, the systemic approach of Rosenau is more realistic than others and the complexity of his system concords with the complexity of modern world politics. His conceptions give an opportunity to apply a systemic approach to a different level other than world systems. Including actors such as population, International organisations, departments and ministries, Rosenau gives us the chance of using a systemic approach to studies other than global systems and international relations. As we saw before, the systemic approach is a brilliant analytic framework. It explains the interaction between different actors and hence, their behaviour. But before that, it is necessary to know how a system functions and how to delimit it.

III/ The functioning of international systems

The theory of Rosenau

By trying again to improve the quality of political science in the domain of International Relations, Rosenau in *The functioning of international systems*⁷³, explains that there are different malpractices made by scientists. Hence, he tries specifically to understand and modify the conception of a system. Rosenau has a particular vision of a system, which is wider than different approaches.

The first malpractice is the tendency to treat international systems as all-encompassing rather than a political system which is socially larger. Rosenau considers that the “kind-of-interaction” mode is more relevant to study than the “kind-of-actors” mode to build a system. Thus, it can include different actors, not necessarily states, like nations, governments or other units of action. Considering that politics is an attempt to modify behaviour, he explains that a political system would be considered as existing when two or more actors are trying to modify each others’

71 Fukuyama F., Review work, *Op. Cit.*, p. 143

72 *Ibid.*, p. 143

73 Rosenau J. N., “The functioning of International Systems”, *Background*, Vol. 7, No 3 (November 1963), Published by Blackwell, pp. 111-117

behaviour. Research could work on communities as states. And this is exactly the point of the systemic study of immigration. We could consider communities of immigrants as an actor, a part of the system, because of their interactions with others. This is because immigrant communities do interact with the receiving state. Even if they are submitted to the laws of the state more than they influence policies, they are still in a direct relation with the state as subjects. Also, demonstrations are an attempt to influence the state and the democratic system. Then, in a system like the one Rosenau conceptualises, any actor which gives us a broad perspective of the system we could build to analyze the phenomenon of immigration in a political sense, can be studied.

The second 'malpractice' in International Relations according to Rosenau, is due to "the unclear distinction between political and non-political forms of interaction"⁷⁴. If actors tend to modify behaviour of others, it brings about changes in the systems: social ones (and thus international), which are about to collapse to become different systems. Those non-political interactions mean that a system can include such relations done by actors that are not considered as necessarily political. It could be a population, whose goals could be social. It widens the study of systems. And if this system is on the verge of collapsing, it does not necessarily mean that it wouldn't be followed by another one in the same issue-area. A new system can appear with the same actors but with new rules, interactions and power relations. There are always adjustments and changes "that occur both within systems and within their environment"⁷⁵. Inside one system, for example the global world, there are different systems, with different rules. Remaining with Rosenau's examples, the relation between the USA and the old Yugoslavia is different from that of China and the UN. There are different rules even if they are part of the same international system. The rules can be codified in some issue-areas but not necessarily. If some rules are codified for example by international laws, we have to look at the implementation of those rules. Are they implemented? To what extent? Are there procedures to check their implementation and pressures in order to ensure their application? The state as a sovereign actor will seek to follow the freedom of its sovereignty. Thus, the rules will be applied through a power relation where actors try to modify the behaviour of others. This will be carried out to suit their goals and interests using their way of action and pressure.

One can thus question the particularity of South Africa and Southern Africa. When it comes to immigration, does the system include South Africa, immigrants and external actors that are different from other parts of the world? Rosenau considers then that the system should be delimited "in terms of either the types of actors that participate or the types of interaction in which they are

⁷⁴ Rosenau J. N., "The functioning of International Systems", *Op. Cit.*, p. 114

⁷⁵ *Ibid.*, p. 115

engaged”⁷⁶. The area of our system would be immigration. Thus, we could compare the situation of South Africa with other cases in the same issue area. The rules might be the same in a similar situation. And this is why, from a comparative perspective of the global world, the systemic approach seems to be the best.

Rosenau provides a list of key questions to delimit the system⁷⁷:

- “When an international system is viewed from the perspective of X issue-area (immigration in our study), are all of its members active?” This means that some actors might not be active in a way. If we consider immigrants as an actor, they might be considered as inactive because of their lack of unity, organisation and political possibilities of influence. Also inside the external actor, a part of it depends on the existence of organisations working in the issue-area. If they do not exist, they can not be active. Otherwise, the other actors will be active. We will consider three types of actors: state, external actors (IOs and NGOs) and immigrants.
- “Does the number of participating members remain constant each time the issue-area is activated?” In the issue-area of immigration, it appears that all actors remain constant. However, some new NGOs or IOs can appear. For example, an IO working in Human Rights protection that was not allowed to work in the country of the case study. If the State gives it the authorization to work inside its borders, a new actor enters the system, but as part of the same group. This could also occur if the state opens its relations with another state to negotiate a treaty or a protocol about the issue-area.
- “If not, what determines which members precipitate and sustain interaction in the area?” The actors that are participating in our system will remain constant because they are working on an issue that continuously exists even if it can occur at different levels. However, the immigration process can change. If a state opens its borders then, new immigrants will enter and be another actor.
- “Does it elicit the participation of a bloc of actors?” A bloc of actors in the immigration issue-area would be SADC or other states' unions as a bloc of state/actors.
- “What role do international organizations play in the issue-area?” This study will examine their role as an actor, which tries to influence the behaviour of others, and that is in line with the goals and interests of the 'international community'. This role is generally linked to the conception of Human Security and protection of Human Rights.
- “Can they (International Organisations) activate the area?” They can in the issue of immigration. If for example, a massive migration happens in a political context of crisis,

⁷⁶ Rosenau J. N., “The functioning of International Systems”, *Op. Cit.*, p. 116

⁷⁷ *Ibid.*, p. 116-117

International Organizations can activate the area in the sense that they will try to protect the migrants/refugees, by building facilities, ensuring their safety and negotiating with states or actors. Their appearance in the system and their expectations can activate the area even if it does not change the process.

- “Do they ever precipitate its de-activation?” In the issue-area of immigration, it does not seem to be in the interest of an IO to de-activate the system. They try to activate it to have an influence on it according to their goals.
- “Do particular types of action such as public speeches, quiet consultations, or shows of force, characterize the interaction pattern of which comprises the area?” There are certain types of actions in immigration systems which would not necessarily be used in other systems. Similarly, there are actions in those other systems which would not be used in the immigration issue- area either. If the display of force is to be used as an example, one could say that this is an action that would not be used in the military sense. The use of force would be done by the state. In this case, it would not be used like it would be in a war situation. But it can be useful as a security process and to organise border control and registration. The immigration issue-area does not appear to have one type of action which characterises the system. There exist different ones: the use of police, public speeches, reports, protests, implementation of policies and legal process and threats.
- “Are the participating actors in X issue-area responsive to non-governmental opinion and pressures?” Yes. The state actor will be responsive to international organizations such as the UN adhering to different treaties and engagements that it signed.
- “If so, to what extent?” This answer will depend on the nature of the treaties, the engagement relevant and the potential pressure to implement the treaty.
- “Or do they give paramount opinion to external factors?” In a system involving a state and other actors, the state will necessarily try to act in relation to its sovereignty and take the least amount of consideration possible for external factors.
- “Do the individuals or agencies who act on behalf of system actors on X issue-area also represent the actors in other issue-areas?” Yes. This is the case for some of the actors like international organisations and some individuals or agencies of states/actors such as a representative of a government.
- “Do military agencies play a role in the decisions and action through which system members participate in the area?” No, except in an extreme crisis situation (internal instability, war, immigration as a major threat). In the issue-area of immigration, the issues of security are not in the traditional security framework, including the use of force. The military as an actor is not a determinant in the stability of the system and the interactions between the other actors.

- “Or is the identity of the participants dependent on variables other than the nature of the system?” The actors of the system are pre-existent to this system. They are involved in other systems and particularly the state actor and the IO and NGOs. But in the case of the immigration issue-area, it is because of the nature of the system that they are getting involved in it.
- “Does the stability of the system in X issue-area undergo continuous fluctuations? If so, how much? And why?” In the immigration issue-area, fluctuations can appear. If for example, the state concludes a new international treaty, the kind of interaction between it and other states and/or IO can change. It can also bring another actor in the system who will try to influence the others according to its goals and expectations. But those fluctuations are not continuous. It is usually a system which remains stable.
- “To what extent are the integrative potentials of the system realized in X issue-area?” The integration of new actors relies mainly on the state, apart from immigrants that might intervene in the system by crossing frontiers illegally, despite restrictive policies.
- “Is the functioning of the system in the area self-contained? Or are its operations and stability affected by the processes and outcomes of interactions in other issue-areas?” The immigration phenomenon can change according to situations in other countries like war, political instability or economic crisis. But in fact, it will only change the amount of immigrants. Then, if this number becomes too important for the receiving country, it can have influences on the state policies related to immigration and immigrants.

Those questions and answers delimitating the system give us part of the rules and conditions of the system studied in the issue-area. “Equipped to analyze”⁷⁸, the systemic approach will give us an understanding of the immigration phenomenon as Rosenau's 'issue-area'.

The third malpractice is the tendency to overlook non-violent systems processes and to confine analysis to those involving the use and restraint of force. The question in our system will be to know if there is use of force. It is clear that the state as an actor benefits from the “monopoly of legitimate violence” according to Weber's expression. Thus, it can use force against immigrants. And this happens with forced deportation and detentions. But a system in the immigration issue-area is not necessarily a violent system. Force is used to guarantee state security. But there is no conflict between two or more military forces.

Lastly, the question of stability is essential in the systemic studies. Is the system being studied a stable one? If yes, it is going to remain stable? Rosenau explains that it is wrong to consider that most of the systems are stable when he considers that most of them are on the verge of collapsing. Then, if the system studied collapses, it would mean that the type-of-interaction between

78 Rosenau J. N., “The functioning of International Systems”, *Op. Cit.*, p. 117

the actors will change. If one considers the use of violence by the South African state against immigrants as being opposed to international engagements (e.g. the convention of 1951 about refugees), the change of interaction could be a positive one for the security of immigrants. But if the interactions change, and thus the system collapses, it does not mean that the system will disappear. It would just mean that new types, interactions and rules would become part of the system, according to Rosenau's key questions.

The conception of Rosenau helps to delimit the system. Using those concepts, we will have a delimited system of study in which we will apply two approaches. There will be a horizontal one looking at the interaction of actors as an entity and a vertical one focusing on their organisation and thus their possibilities of action. If the Horizontal approach could be an application of realists' theories in terms of considering actors like units, we have to explain the rules. If there are interactions between the different actors, what are their possibilities, and options to influence the others? What can they do? What are their responsibilities if there are any (e.g. UN trying to impose a system, Human security...)?

Then, another part of the systemic analysis will be to understand the organisation of each actor. How does the UN work? How, as a single actor, does the state organize and implement policies. Is it unified? The same question can be applied to immigrants: are they unified? Those questions will be studied in the 'vertical approach'.

Section 2 – The Horizontal Approach:

Interaction between actors as units in the immigration system

The 'Horizontal approach' consists of looking at the interaction between the different actors in the system. Rosenau explains that the interaction mode is more relevant than the actor mode. Thus we will try to explain the different types of interaction between the different actors of the system who try to influence each other. In this part, the aim is not to focus on subsystems and the organisation of the actors. Instead, we will look at the actors one by one, as units of analysis: the state, the external actor and the immigrants.

I/ The state or group of states: The major actor and its complex interaction with immigrants

The host state, that which immigrants enter, is the major actor of the immigration system. It decides on rules of immigration and the conditions under which immigrants can enter or not. It is directly concerned with immigrants through issues of security, employment, the need for workers or intelligence, and national identity. When dealing with immigrants, the host state is usually the main actor deciding on their situation. It can do the same for external actors. At first, the state decides whether or not it wants to interact with external actors due to the principle of sovereignty in International Relations. According to our systemic approach, we will have to answer those questions concerning the state/actor: what is the interest of the state? Does it have the power to guarantee its interest? How could it do so and with what kind of interaction with immigrants?

Firstly, the interest of the state in the immigration issue is to keep its skilled population and attract those of other countries. It can be done through regional integration. This is what the EU did, as a successful example. Solomon notices that “countries of Southern Europe (Italy, Greece, Spain and Portugal) ceased to export their “surplus labour” to the more affluent countries of Northern Europe as a direct result of EU regional integration”⁷⁹. “This effectively decreased wage

⁷⁹ Solomon H., “Strategic perspectives on illegal immigration into South Africa”, *African Security Review*, Vol. 5, No. 4, 1996, p. 11

differentials and generally increased economic and social homogeneity within the EU”⁸⁰. And even if the states are still playing a major role within the EU concerning strategies of keeping skilled workers and getting foreign ones, the EU could be playing a bigger one. “The EU 15 immigrants have a weaker average qualification than immigrants in the rest of the OECD”⁸¹. The great minds of Europe often leave for better wages to the great nations of immigration like the USA, Canada or Australia. Therefore, the EU has to compensate for this brain-drain by getting skilled workers from other countries. This is often done through skilled Africans. But at the end, “the net effect is very small compared to those great immigration nations”⁸². The EU in this competition is a “potentially important actor”⁸³ because it has restrictive immigration policies and its role regarding immigration of skilled workers can be crucial for the state members. Building a group of state organisations can resolve an emigration issue and help getting skilled workers as an immigration strategy for the state/actor.

Most of the time, states prefer to fully use their sovereignty, the concept of freedom for individuals applied to states in the international system. As selfish actors, they do not feel it necessary give a part of their sovereignty to another institution and so they try to resolve immigration problems alone. Even inside the EU, states have their own immigration policies due to different requirements and relating to varying societal considerations. If the EU is seen as a useful organisation for attracting skilled workers, the organisational requirements and different needs of each state makes it too complicated to be the primary actor dealing with the immigration process⁸⁴. It could happen that a state needs workers and then it will open its borders. But also, it could confront the problem where it receives too many immigrants that are not needed. To be sure of getting immigrants that are in keeping with its needs only and therefore its interests, the state will seek to control the immigration process.

This is what France and Germany tried to do. After the Second World War, they both needed workers to build the country. But before the oil shock of 1973, they both, “in order to avoid xenophobic reactions, attempted to regain control of the migratory process”⁸⁵. As a response to the

80 Solomon H., “Strategic perspectives on illegal immigration into South Africa”, *Op. Cit.*, p. 11

81 Docquier F., Lohest O., Marfouk A., “Union Européenne et migrations internationales: l'UE 15 contribue-t-elle à l'exode des travailleurs qualifiés?”, (“The Contribution of the EU 15 to the international mobility of skilled workers”), *Revue Economique*, Vol. 56, No. 6: Localisation, Migrations et Institutions, Sciences Po University Press, Paris, p. 1304

82 Docquier F., Lohest O. & Marfouk A., “Union Européenne et migrations internationales: l'UE 15 contribue-t-elle à l'exode des travailleurs qualifiés?”, *Op. Cit.*, p. 1302

83 *Ibid.*, p. 1303

84 See Ireland P., “Demander la lune: La participation politique des immigrés dans la communauté européenne” (“Asking for the Moon: The Political Participation of Immigrants in the European Community”), *Revue Européenne des Migrations Internationales*, Vol. 10, No. 1, 1994, pp. 127-144

85 Hollifield J. F., “Immigration Policy in France and Germany: Outputs versus Outcomes”, *Annals of the American Academy of Political and Social Science*, Vol. 485, From Foreign “Workers to Settlers? Transnational Migration and the Emergence of New Minorities”, Sage Publications, May 1986, p. 117

political-economic climate change, France and Germany's governments suspended immigration and the recruitment of foreign workers (a decision welcomed by the employers' association). They even encouraged workers to return to their home country and attempted to integrate into the host society those workers and their family who had been working and living in the country for a specified period of time. In 1976, the French government applied a policy which paid foreign workers so that they could afford to return to their home country. Between 1977 and 1979, 76 000 foreigners used this policy. Some states would deport immigrants using their military or police forces. But in both countries, the number of foreign workers and the foreign population continued to increase strongly. Policies had the opposite effect to what was expected because they "created new inflows of family members and, in the case of France, seasonal workers"⁸⁶. Using the cases of France and Germany, Hollifield explains that there is a strong gap between outputs (immigration policies) and outcomes (results of those policies). The migratory process is too complex for regulation "primarily because of misconceptions about the conjunctural role of foreign labour and a misunderstanding of the dynamics of the migratory process"⁸⁷.

Hollifield considers that "immigration policy is a measure of the strength of the state"⁸⁸. But Germany and France are not weak states. And if they cannot control the immigration process, we can hypothetically consider that they might have an interest in immigration. Indeed, they are looking for skilled immigrants. In response to this paradox, Joppke, when he recognised the gap between immigration policies and real immigration, explains that liberal states benefit from immigration⁸⁹. And it is maybe what Italy understood when it created this policy: the liberal Martelli law in 1990⁹⁰. This is also why Canada developed a voluntaristic policy on immigration⁹¹. And even if Joppke recognises that there is a gap between policies and their outputs, he considers that liberal states like the U.S.A. have the power to control their borders.

In the USA, the immigration from Mexico, specifically of illegal migrants, has been

86 Hollifield J. F., "Immigration Policy in France and Germany: Outputs versus Outcomes", *Op. Cit.*, p. 126

87 *Ibid.*, p. 127

88 *Ibid.*, p. 115

89 Joppke C., "Why Liberal States Accept Unwanted Immigration", *World Politics*, Vol. 50 No. 2, John Hopkins University Press, 1998, pp. 266-293

90 The liberal Martelli law gave the opportunity for illegal immigrant to regularize their presence irrespective of their employment status. It has been considered as a success bringing immigrants back to a legal status. Therefore, they could get employed through the same process as Italians, and get through the tax system. States deciding such policies are rare. It seems like letting immigrants obtaining a legal status when they were illegal.

See Knights M., "Bangladeshi Immigrants in Italy: From Geopolitics to Micropolitics", *Transactions of the institute of British Geographers*, New Series, Vol. 21 No 1, Blackwell, 1996, pp. 107-109

91 Canada developed a voluntarist immigration policy in terms that it is looking for immigrants, controlling as much as possible the process, but giving the opportunity for immigrants to come according to the special needs of Canada recalculated every years. Then, the interpretation of the criteria is left to the immigration agents who apply a wide interpretation.

See Crepeau F., "Classes of Immigrants and Immigration Levels in Canada: a Policy", *European Revue on International Migrations*, Vol. 2, No. 2, 1986, pp. 145-164

immense. It has provided many advantages for the American economy, despite the defensive attitude of the USA. "Immigration contributes clearly to make the USA more competitive"⁹². According to economic literature, Mexican immigrants adapt in a positive way in the labour market. Immigration has more advantages than disadvantages for the state and the economy⁹³. "Immigration and particularly illegal immigration help to maintain the rate of profit for those agricultural and non-monopoly sectors of capital which are incapable of drawing on the mechanisms open to monopoly capital for maintaining an adequate level of surplus"⁹⁴. Migrant workers work hard and if they are illegal, they are fearful. The employer benefits to increase productivity and maintain a low cost of labour. Furthermore "the state ensures submissiveness by dealing with undocumented migrants as criminals"⁹⁵. In other words, it is in the interest of the state to act repressively towards immigrants for the good of the economy and particularly for the agricultural sector. But immigrants create employment not only in the agricultural sector but in three other categories: the public sector, small businesses and production of goods and services linked to migrants. And the nationals progress in terms of employment to better jobs such as bureaucrats or managers. Immigrants "increase the wages and possibilities for diverse categories of Americans"⁹⁶. They are an advantage for the American economy, particularly in a situation of growth⁹⁷.

If the state seeks to control immigration, and even if it is a complex process, it can try to close its borders. It requires an efficient policing of borders, which is affordable for most modern states. If the foreign population in France and Germany has kept increasing, it is also because of different factors, such as the foreign population having higher birth rates and lower mortality rates, and thus they have been growing naturally. Workers within the E.U. have had freedom of movement; a large percentage of workers who entered both countries were political refugees. Clandestine immigration has been a problem both before and after the closing of borders. An important part of the European immigration is family reunification. The legal constraints "in combination with moral obligations toward historically particular immigrant population (...) account

92 Papademetriou D. G., "Les effets des Migrations internationales sur les pays d'accueil, les pays d'origine et les immigrants" (The effects of International Migrations on Receiving Countries, the Countries of Origin and the Immigrants), *Politique Etrangère*, Vol. 59 No. 3, 1994, p. 673

93 This type of immigration gives advantages to the state and the economy. But those advantages are not global. They concern mainly employers and private companies. The state benefits from this immigration through taxes and economic development.

94 Bach R. L., "Mexican Immigration and the American State", *International Migration Review*, Vol. 12 No. 4, Special Issue: Illegal Mexican Immigrants to the United States, The center for the Migration Studies of New York, Winter 1978, p. 537

95 Bach R. L., "Mexican Immigration and the American State", *Op. Cit.*, p. 537

96 Papademetriou D. G., "Les effets des Migrations internationales sur les pays d'accueil, les pays d'origine et les immigrants", *Op. Cit.*, p. 673

97 When the economy is in recession phase, immigration loses some its advantages. Employment needs to be directed to nationals.

for continuing (family) immigration despite general zero-immigration policies”⁹⁸. Therefore, if immigration continues, some will say it is because of the decline of sovereignty⁹⁹ but it is surely and partly caused by external actors, particularly for refugees.

II/ External Actors: Challenge to state sovereignty

According to Rosenau, the state in modern international politics has less power than before. This is due to two main reasons: interdependence, because the complexity of international relations gives less freedom to the state, and the rise of other actors. The external actors in the system are International Organisations and NGOs. The major IO dealing with the issue of migration depends on the UN, the UNHCR. According to Sodako Ogata, the United Nations High Commissioner for Refugees, migration should be treated not only as a matter for the UN humanitarian agencies but also as a political problem which must be placed in the mainstream of the international agenda. It should be seen as a potential threat to international peace and security”¹⁰⁰. Rosenau uses the example of having different rules between USA and China relations, and the relations between the USA and the old Yugoslavia in order to justify that there are different systems within the international system. One actor can have different interactions with two different actors of the same type. Logically, the interaction between the UN and different states can differ. The interactions will differ when dealing with immigration and when dealing with atomic weapons. The fact that Sodako Ogata had to ask for the migration issue to be added into the international security agenda, proves that there exists a distinction between UN relations on different topics such as nuclear weapons or immigration.

The addition of those external actors (external to the state) to a political system brings us to Aristotle's questions, also a scholar of the political system. He asks the question as to who rules and who benefits, even if this question was internal to the city-state. Looking at the UNHCR, between 23 and 25% of its budget comes from the USA¹⁰¹. Of course, the main part of the budget of the UN in general comes from OECD countries. One could consider that OECD countries rule the UN. But if the independence of the UN Security Council is not effective, we can consider that the UNHCR is independent from its financing states. The UNHCR like other IOs and NGOs in a way have the same interest. This is to provide security to the migrants. The migrants benefit directly from those organisations. In this sense, Sodako Ogata was right to consider migration as a security issue.

98 Joppke C., “Why Liberal States Accept Unwanted Immigration”, *Op. Cit.*, p. 292

99 As examples: Cornelius, Martin and Hollifield

In Joppke C., “Why Liberal States Accept Unwanted Immigration”, *Op. Cit.*, p. 292

100Sodako Ogata, In Meissner D., “Managing Migrations”, *Op. Cit.*, p. 71

101UNHCR Country Operation Plan 2008-2009, Country: United States of America and Caribbean
<http://www.unhcr.org/home/PROTECTION/47060a552.pdf>,

Security is an important part of migration: whether they are legal, illegal or migrating for political or economic reasons, migrants are treated in a contradictory way to what the principles of human security and human rights stipulate. External actors share this interest of implementation of such principles.

Human security is a political theory which comes directly from the UN and more precisely the UNDP. It goes hand in hand with international human rights¹⁰². This is because human rights are a tool for human security principles. But human security can also be a political justification for international human rights. Human security consists of having two simultaneous sovereignties, where one depends on the state and the second on the individual¹⁰³. The latter ensures a responsibility of the state for the individual. Human rights can then be a tool for the international community or the IOs and NGOs such as Human Rights Watch to pressurise states to apply human security principles. This includes economic, nutritional, health, environmental, personal and political security. The IOs will use them specifically for refugees. Some of the illegal immigrants are trying to apply for a refugee status. They would not be excluded from the principles of Human Security. The distinction can be complex. However, this notion of security challenges state sovereignty.

This external actor will interact with the state in two ways. The first interaction, which occurs mainly with IOs will happen through political and legal international engagements. The best example for the migration issue is the UN Refugee Convention of 1951. It recognises a certain amount of rights for refugees and political immigrants. It legally protects persons who feared persecution because of their civil or political status. Then, if a state signs this convention, it becomes legally bound to the legal act and therefore has to apply it to its legal system. In a way, the convention can be considered as a transfer of sovereignty because the state gives some of its prerogatives to the international community and the UNHCR to deal with a certain type of migrants in its territory. And even if the state accepts the convention at first, it can then be a way of pressurising the state to ensure the application of the convention. The state is then obliged to take responsibility. "State responsibility seeks to prevent recourse to illegal acts which give rise to a multitude of undesirable consequences on the international plane, including the forced displacement of populations"¹⁰⁴. The second type of interaction between the external actor and the state could be

102See Leboucher Q., "Sécurité humaine et droit international des droits de l'homme: le cas des Hmongs" ("Human Security and International Human Rights: the case of the Hmong"), Master Thesis, University Jean-Moulin Lyon3, Directed by Professor Jean-Paul Joubert, 2008, 104p.

Or La sécurité humaine maintenant, Rapport de la commission sur la sécurité humaine, Presse de la fondation Nationale de sciences politiques, Paris, 2003, p. 27

103See Kofi Annan, Speech on the 20th of September 1999 for the United Nations Millennium Assembly

104Beyani C., "State Responsibility for the Prevention and Resolution of Forced Population Displacements in International Law", *International Journal of Refugee Law* (Special issue), 1995, pp. 131-137

In Chimni B. S., *International Refugee Law: A Reader*, United Nations High Commissioner for Refugees, Sage

called soft diplomacy. For an NGO to work in the territory of a state, it needs to be in accordance with the laws of the state. In some states such as Laos, an NGO needs a special authorisation by the representatives of the single party. But most western countries let NGOs settle freely, because of the right to associate. But nevertheless, NGOs have to adapt to state laws. Then, diplomacy starts. If an NGO is protecting human rights in the immigration field, it will try to influence the state in relation to its power. There are also influences that an NGO cannot exert. It cannot force a state to take legal responsibility. Therefore, if the NGO wants to continue its work, it has to be diplomatic in its relations with the state¹⁰⁵. A perfect example of this type of interaction is the recommendations that the NGO can make to the state in public reports¹⁰⁶.

Furthermore, IOs and NGOs interact directly with immigrants in their field work. For most of the NGOs, specifically humanitarian ones, this is their major role in the immigration issue-area. The UNHCR is clearly participating in this type of field work. It has offices in most countries that signed the 1951 refugee convention, which help immigrants with their legal status. The UNHCR deals with asylum demands and refugee applications. This type of interaction is done through direct contact with immigrants. External actors try to guarantee the rights of immigrants in practice as well as trying to influence the state to build a system in accordance with human rights and human security. This interaction is done through practical help: building facilities, legal help and administration, which is useful for migrants.

III/ Migrants and their potential attempt to influence

As seen earlier, Rosenau's first key question around building and delimitating a system, centers around whether actors in the system are active. This implies that some actors could be part of the system without being active in terms of interactions with other actors. This is precisely the main question regarding immigrants in the immigration system. Can they be active in the system? Can they influence? Basically, immigrants in a country fall under the legal system of the state. They have to comply with certain conditions when entering a country. If they do not, they will be

Publications, London, 2000, p. 296

105See the case of MSF (Médecins Sans Frontières/ Doctors Without Borders) in Thailand which has to negotiate permanently with the army and the state institutions to continue their work with the Hmong ethnic groups even if they blame the policies. In Leboucher Q., "Sécurité humaine et droit international des droits de l'homme: le cas des Hmongs" ("Human Security and International Human Rights: the case of the Hmong"), *Op. Cit.*

106As an example, recommendations of Human Rights Watch to the state of South Africa
Human Rights Watch Report, "Keep your head down: Unprotected migrants in South Africa", Vol. 19 No. 3(A), February 2007, HRW, New York, p. 13-14

considered as illegal; they will lose aspects of legal protection and would not be taken into consideration by society from various angles. This type of immigrants would be living on the fringe of society. The question is to know whether or not they can influence policies. They would not have an interest in influencing the external actor because it already works on their behalf. What could they do to guarantee themselves benefits from security, from immigration as well as the right to be legally considered as humans?

There are different ways for a population to influence state policies. Fukuyama notices that one of Rosenau's most important arguments is considering individuals and populations as active in International Relations. This occurs specifically through the concept of a 'skill revolution'¹⁰⁷. Rosenau understood that populations are able to fight more effectively than previously against a state. They are capable of influencing a political system, and through the same principle, they are capable of influencing policies. Lipsky gives us key points which look at protests as political resources. He builds an analytic framework for protest using the example of the Black minority in the USA and the civil rights movement¹⁰⁸. Lipsky recognises that "relatively powerless protest groups cannot use protest with a high probability of success. They lack organizational resources by definition"¹⁰⁹. But it remains as a way to interact with political power if there is no alternative. Lipsky gives strategies for successful protests. Protests need "leaders which must nurture and sustain an organisation comprised of people with whom they may or may not share common values"¹¹⁰. They must have goals and strategies and maximize their public exposure through the media. If the protest group is heard, the opposition (officials), will have to make as much noise or accept the situation. Because group protests are weak organisations, they need strong leaders in their position. Cohesion is particularly important and ideological leadership will give strength to the organisation. Fear is also important, as it is a manner in which to give strength to the protests. Protestors also need allies, like the media to strengthen them. The courage of the protestors will strengthen the idea and will gain favour of the media, who is "extremely powerful in city politics"¹¹¹. Some writers consider that the success of a protest directly depends on the amount of publicity provided by media communication. But help can also come from lawyers and the judicial process. Hiring a lawyer depends on one's financial situation. In the case of immigrants, they might not have the money to pay for lawyer's fees. If the protests are heard, make enough noise and target

107J. N. Rosenau, *Along the Domestic-foreign frontier, Exploring Governance in a turbulent world*, *Op. Cit.*, p. 275

108The analysis of Lipsky comes from a particular movement. He used an empirical situation in a political and historical context to build a general theory on protest. However, his general theory seems a good starting point for the understanding of the protest as a political resource of populations.

109Lipsky M., "Protest as a political resource", *The American political review*, Vol. 62, No. 4, The American Political Science Association, December 1968, p. 1157

110Lipsky M., "Protest as a political resource", *Op. Cit.*, p. 1144

111*Ibid.*, p. 1151

groups make enough of a statement, usually state institutions can use different strategies to fight against the potential influence of the protests. Lipsky considers six different strategies:

- “Target groups may dispense symbolic satisfaction”;
- “Target groups may dispense token material satisfaction”;
- “Target groups may organize and innovate internally in order to blunt the impetus of protest efforts”;
- “Target groups may appear to be constrained in their ability to grant protest goals”;
- “Target groups may use their extensive resources to discredit protest leaders and organizations”;
- “Target groups may postpone action”¹¹².

Those strategies might make the protest useless. And there is an important chance that a protest would not lead to a success. But in the case of immigrants, it might be their only choice to influence state policies according to their interest of legal security, admission to the status of refugee, civil rights, work opportunities, for legal and illegal immigrants.

In some countries, protests have been a way for immigrants to be heard and influenced. The first issue is to know if immigrants have the right to form associations. It is usually recognised in liberal democracies of Europe or North America. As an example, in France and Germany, foreigners “have been allowed to form associations to promote their interests and to consult with national and local authorities on policy questions that affect them”¹¹³. Thus, foreign workers became able to be militants. This has been the case in Italy in the 1990's with Bangladeshi and other immigrant communities. The first political association in which Bangladeshis were involved was the United Asian Workers' Association. The UAWA was an alliance made up of Italians along with Bangladeshis, Pakistanis, Indians, Chinese, Filipinos and Sri Lankans immigrants. “In protest, the UAWA organized a hunger strike in order to pressurize the police authorities to recognize the requests for legal residence made by UAWA members”¹¹⁴. “The police authorities capitulated and agreed to grant residence permits to UAWA members”¹¹⁵. The protest was a success. It had two main influences on the Italian state: “the capitulation of the Rome police authorities made the capital a focus for residence-permit requests from all parts of Italy” and “a whole series of associations representing specific ethnic groups were established (...) following the example of the UAWA”¹¹⁶. This example shows that protests can be a useful tool for immigrants to influence the state and that the creation of a cross-ethnic political organisation is possible. Nonetheless, this political representation is impossible at an EU level for the moment. The technocracy of Europe has

112 *Ibid.*, p. 1155

113 Hollifield J. F., “Immigration Policy in France and Germany: Outputs versus Outcomes”, *Op. Cit.*, p. 120

114 Knights M., “Bangladeshi Immigrants in Italy: From Geopolitics to Micropolitics”, *Op. Cit.*, p. 111

115 *Ibid.*, p. 111

116 *Ibid.*, p. 111

brought about a system that is not in touch with the citizen, and even less in touch with the immigrant¹¹⁷.

Another way for immigrants to interact and influence the state is through legal claims, particularly in human rights protection. But claims can depend on different situations that the immigrants find themselves in with the host country. As Lipsky noted, the problem for immigrants would be whether they would be able to afford a lawyer as well as to make the claim. Therefore, their possibilities in this interaction will depend on the legal help that is available in the country or the legal aid offered by external actors. The influence will be limited to the singularity of the claim. It will influence the situation of the person who is claiming. The influence can grow if there are many claims in the same field, or if the case is considered as an authoritative precedent, depending on the legal system of the state.

¹¹⁷Ireland P., “Demander la lune: La participation politique des immigrés dans la communauté européenne” (“Asking for the Moon: The Political Participation of Immigrants in the European Community”), *Op. Cit.*, p. 130

Section 3 - 'The Vertical Approach': Organisation of actors and subsystem interactions

The vertical approach basically consists of looking at the composition of the actors. Because of their structures, organisation, bureaucracy, divisions into different groups, lack thereof, their possibilities of influence change. Consequently, it is crucial to understand their composition. If the composition limits the actor in its opportunities of influence, the nature of interactions will change. Even inside a system, there are subsystems within actors. There are interactions in the subsystems that have to be understood and clarified.

I/ The state: Policies and implementation.

Realists study international relations with the state being considered as the major actor as well as a single unit. They do not focus on internal aspects of the state. State policies in foreign affairs are most of the time homogenous. For example, it is rare to see speeches between a president and a Prime Minister that differ. Thus, it would signify a lack of coordination. But in the immigration system, there are internal factors that have to be considered. State policies do not always centre on foreign affairs. There exist different actors interacting inside the state such as ministries or bureaucrats. The question is to know the nature of their interactions. The pluralist conception of the state explains that policies depend on the “ability of the government to achieve agreement between competing groups”¹¹⁸. Outside of the state, there are different interest groups in a country who try to influence policies. In the case of immigration, employer's associations are a particularly strong influence that allow us to know whether the economy needs workers or not¹¹⁹ and what type of workers. They influence the state policy through negotiation.

But it is not only interest groups who influence policies. Their implementation might not be exactly what the state had planned. To explain this process, Lipsky looks at street level bureaucracy.

¹¹⁸Hollifield J. F., *“Immigration Policy in France and Germany: Outputs versus Outcomes”*, *Op. Cit.*, p. 114

¹¹⁹See the case of France and Germany where employers' association were in favor of the immigration control and stop of inflows. The employers could continue to count on immigration labor due to the increase of family immigration and the second and third generations of immigrants. Trade unions were agreeing on promoting the state control on immigration.

Ibid., p. 121

This is the kind of bureaucracy that is directly in contact with the public or bureaucrats at a lower level of administration. They can be at the reception or in different offices. He explains that other theories do not consider that citizens and the public are affected by actions of street level bureaucracy. His viewpoint looks at implementation of policies through street level bureaucracy. We can consider two levels, the policies formulation level and the implementation level. Lipsky argues that organisations often perform inversely to their own rules and favour some clients. He considers that “decisions of street-level bureaucrats (...) effectively become the public policies they carry out”¹²⁰. Ideally, street-level bureaucrats respond to individual needs for the people they serve or confront. But in reality, because they deal with clients on a mass basis, they lose their ideals. Workers develop conceptions of their work and of their clients that narrow the gap between their personal and work limitations as well as their ideal service. They face a dilemma on how to implement their service, particularly “if their clients are poor, and racially, ethnically, or linguistically different from most of the public employees”¹²¹. In the case of immigration, the interaction between immigrants and the state will depend on street level bureaucrats. Policies formulated by the state will be implemented by the street level bureaucrats. The interaction between migrants and the state will go through street level bureaucracy.

From another point of view, P. Degeling and H. Coleback analyse the policy implementation by looking at the structure of organisations¹²². Lipsky adds that bureaucrats and their routine also changes policies and that they influence efficiency in administration and public service. It is a two way process of influence. The structure of the administration system will change the work of bureaucrats and therefore the implementation of policies. But also, the work of bureaucrats will change policies through their implementation.

The policies that the state decides to implement can be changed by administration when applied. If the Legislator decides to create a law about the situation and the rights of immigrants, it cannot be sure that this law will be implemented as conceived. Furthermore, some principles of the law could be changed in their application by bureaucrats. Lipsky demonstrates that the bureaucrats have more power than they should have. This is a result of the system in which they work. He also affirms that the power of making laws and the implementation of policies become restrained because of the process. Therefore, good management in the administration is particularly important in the state subsystem in order to achieve a coherent legal system and the application thereof. It is likely to be a bigger difference between policies and their implementation in developing countries where administration resources are porous.

120M. Lipsky, “Street level bureaucracy”, in M. Hill, *The Policy Process. A Reader*, Prentice Hall, London, 1997, p. 389

121M. Lipsky, “Street level bureaucracy”, *Op. Cit.*, p. 398

122In P. Degeling and H. Coleback, “Structure and action as constructs in the practice of public administration”, in M. Hill, *The Policy Process. A Reader*, Prentice Hall, London, 1997

With immigration, policies that the state wishes to implement eventually get modified as a result of the way in which bureaucrats carry them out. Immigrants will be mainly in contact with street level bureaucrats in their interaction with the state. A state might decide on a policy which allows immigrants to attain legal status. Policies would not be applied correctly if bureaucrats are badly equipped in terms of resources and also if they misinterpret the conditions of the law. They might not be pushed by the system to correctly apply the law. Adepaju notices that African countries lack resources to control borders and implement immigration policies.¹²³ Because of this lack of resources, illegal immigrants are easily able to clandestinely cross borders. This implementation is a limit to state control in practical terms. It is a process to consider in the interaction between the state and immigrants. An immigrant will have to face state bureaucracy in order to attain the right to stay. This system could be for or against immigration inflow. If a state promotes the right for foreigners to settle in its country, as does Canada in its voluntaristic policy¹²⁴, and protection of immigrants through human rights, such policies might not be applied by the administration. The interaction between the state and immigrants is not direct. It goes through a process and different parts of state actors such as administration, ministry of Home Affairs, etc. Therefore, it has to be considered in the systemic approach on immigration.

II/ External Actors: Organisation and Cooperation

There are also interactions within the external actors. Of course, this is not specifically a single institution. It is constituted by different organisations. There are different external actors. A first distinction between IOs and NGOs, which is a major one, has already been made. But there are still rules and interactions between them. If they work on the same field and same issue, which for the purposes of this study is immigration, they can cooperate and then coordinate their actions. All those organisations do not necessarily have the same objectives or ways of functioning .

The first interaction that external actors (IOs and NGOs) have is cooperation. The UNHCR is an example of one of the major IO's dealing with immigrants (even if they specialize with the refugee issue), "no element has been more vital to the successful conduct of the programmes of the UNHCR than the close partnership between UNHCR and non-governmental organisations. For

¹²³Adepaju A., "Illegal and Expulsion in Africa: The Nigerian Experience", *International Migration Review*, Vol. 18 No 3, Special Issue: Irregular Migration: An International Perspective, Autumn 1984, New York, Center for Migration Perspectives of New York, p. 426

¹²⁴Crepeau F., "Classes of Immigrants and Immigration Levels in Canada: a Policy", *Op. Cit.*, p. 145

while the UNHCR is the symbol and manifestation of the concern of the international community for the problem of refugees, the voluntary agencies (...) permit this concern to be translated into effective measures of aid”¹²⁵. The UNHCR was mandated in its statute adopted by the UN General Assembly in December 1950 to work with NGOs. The High Commissioner was allowed “to receive and disburse funds through governments and NGOs”¹²⁶. “This relationship with NGOs became fundamental to the success of the UNHCR”¹²⁷. The UNHCR has been using NGOs, in a close partnership, to implement its work and objective. It used their staff, volunteers or workers, their network, their relation with the hosting state, and gave a financial support in return for the purpose of a global cooperation. There are several conditions for NGOs to work with the UNHCR. They have to: be legally registered at the location of their headquarters and/or where they operate; have the authority to operate a bank account and keep separate records of expenditures incurred on UNHCR's behalf; demonstrate, via official audit statements, financial audit statements, financial reliability. Even if those conditions are easy to achieve, they are there to protect the UNHCR from dealing with an unsecured and financially unsafe organisation. The UNHCR wants to be guaranteed that they are spending funds in an organisation that would be in keeping with their objectives.

The same type of cooperation exists with the ICRC. The ICRC is a hybrid humanitarian organisation. The fourth Geneva Convention protects refugees and expects a favourable treatment for them. The ICRC “considers itself to be directly concerned by the fate of refugees who are civilian victims of armed conflicts or disturbances”¹²⁸. The refugee situation is complex in international migration. When the ICRC or the UNHCR write about refugees, they are not necessarily talking about migrants who have refugee status. Some of them will seek to attain refugee status. The UNHCR will attribute it depending on the definition that was created in the 1951 UN convention. These immigrants could be given legal status, even if the host state does not¹²⁹. Therefore the help given to refugees is part of help given to international migrants. The UNHCR will help immigrants to proceed with their application. It will organise the requirements, offices, finance bureaucrats and control the all process. And in this situation, the UNHCR and the ICRC work in cooperation, as could be the case with NGO's.

125Holborn L. W., *Refugees – A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951-1972* (Scarecrow Press Inc., Metuchen, 1975), Vol. 1, pp. 119-120

In Chimni B. S., *International Refugee Law: A Reader, Op. Cit.*, p. 257

126Romero-Perez S., “Partnership in Action”, *Refugees* No. 97, 1994, pp. 8-9

In Chimni B. S., *International Refugee Law: A Reader, Op. Cit.*, p. 258

127*Ibid.*, p. 259

128Lavoyer J-P., “Refugees and Internally Displaced Persons: International Humanitarian Law and the Role of the ICRC”, *International Review of the Red Cross*, No. 305, March-April 1995, pp. 167-170

In Chimni B. S., *International Refugee Law: A Reader, Op. Cit.*, p. 263

129See the case of the Hmongs in Thailand where the state does not recognise them the statute of refugees but the UNHCR does. This contradiction is due to the fact that Thailand did not sign the 1951 refugee convention and therefore is not obliged by it.

In, Leboucher Q., “Human Security and International Human Rights: the case of the Hmong”, *Op. Cit.*

In the field of international migrations, as is the case for humanitarian assistance, the role of organisations is crucial. “The concept of rescuing victims of persecution and violence is central to (the) motivation”¹³⁰ of NGOs. This is why most of the NGOs' work is on a volunteer basis. They rely on civil society and therefore, can have a significant amount of presence in some areas and can be non-existent in others. Their presence can be seen in a wide scope of agendas, which includes both domestic resettlement of refugees and services to asylum seekers, advocacy, public education, legal services, development aid or to provide medical, logistical and relief services. Their style and reasons for these agendas vary in as much as there are numerous NGOs. If they work with the UNHCR, they implement goals for the IO through different programmes.

The UNHCR first tries to establish itself in the country. In liberal democracies, its roles and objectives lean more towards consolidating assistance given to refugees and its position in the country¹³¹. But those countries accept and support the UNHCR. They are usually its main founders. But this is not the case in all countries. In some countries like Thailand, the UNHCR has an agreement with the state. It organised the repatriation of refugees and migrants after the Vietnam War and during the 1970s. But this only occurred with the consent of the state. The UNHCR thus has to negotiate with the state in order for it to carry out its role. The interaction conditions vary according to the particular state involved.

Coordination is the second type of interaction that external actors have. Because of the high number of IOs and NGOs working in the field of migration, coordination is needed so that one organisation does not do the work of another. As already seen, the UNHCR and other IOs can financially support some NGOs working in selected specialist areas. Furthermore, those NGOs will then be active in the system depending on the agreements that were made. But also, NGOs working on a volunteer basis choose their role and way of functioning. They would decide what they want to do depending on the state authorisation. Their interactions and negotiations will be done for the purpose of coordination. Therefore, some will specialise in different fields. Some types of interaction can be carried out by only one NGO and not by all the external actors, as they have been previously defined. This is why distinctions have to be made within the system. If one NGO concentrates on legal aid to immigrants, another could specialise in medical aid. Their interaction with immigrants is not necessarily homogeneous and can be made for different types of immigrants as well. The UNHCR specialises in working with refugees but other IOs or NGOs might not. The

¹³⁰Winter R. P., *Assisting the World's Unprotected People: The Unique Role of Non-governmental Agencies*, Danish Center for Human Rights, Copenhagen, 1993, pp. 105-110

In Chimni B. S., *International Refugee Law: A Reader*, *Op. Cit.*, p. 255

¹³¹See for example: UNHCR Country Operation plan 2008-2009, Country: United States of America and the Caribbean, *Op. Cit.*

Or UNHCR Country Operation Plan 2006, Country: France
<http://www.unhcr.org/home/PROTECTION/4337e2292.pdf>

distinction of the type of migrants for which NGOs work can be made through their country of origin as well as was the case in Italy with the UAWA.

In a study on immigration, the different programmes of NGOs and IOs have to be understood. From a systemic approach, even with very different programmes, the interactions between external actors stay the same type: cooperation and coordination. They will be activated as soon as external actors are active in the system.

III/ Immigrants in a host society: organisation and integration

In an immigration system, migrants will all seek to integrate into the society, at least to a certain level. The state concerned might treat immigrants differently, depending on their country of origin and their legal status. This is what EU countries do with immigrants from within the EU. The EU states discriminate between EU and non-EU migrants and this distinction will have impacts on the integration of migrants. The state can influence their opportunities of integration. But civil society also, has a “crucial role in the incorporation of immigrants into the society of their adopted country”¹³². This incorporation is fundamental in terms of the immigration issue. It can change the lives of immigrants as well as perceptions of immigration by the host society. If the incorporation does not work, it could be a source of xenophobia. Even if immigrants do not seek to settle definitively in a chosen host country, even if they do not seek complete incorporation, it is nonetheless a necessary process. “This process usually follows four distinct, although not mutually exclusive, phases: survival, organisation, consolidation and integration, all of which are facilitated by civil society organisations”¹³³. But they can all be separated into two groups. Survival is often achieved through organisation, at least to a certain level and consolidation is processed with the integration.

The self-organisation of immigrants is a way to ensure survival¹³⁴. Any migrant self-organisation will first provide help for new arrivals. As part of the same community, migrants help their fellow-men. In the case of Bangladeshi immigrants in Italy, Knights notices that the community was the first step of organisation. Having a community is very useful for new arrivals.

¹³²Reitzes M. & Bam S., “Citizenship, Immigration and Identity in Winterveld, South Africa”, *Canadian Journal of African Studies/Revue Canadienne des Etudes Africaines*, Vol. 34 No. 1, Special Issue: Transnationalism, African Immigration and New Migrants Spaces in South Africa, Canadian Association of African Studies, 2000, p. 80

¹³³*Ibid.*, p. 80

¹³⁴See the case of Congolese immigrants in South Africa

In Amisi B. & Ballard R., “In the Absence of citizenship: Congolese refugee struggle and organisation in South Africa”, *School of development studies and center for civil society*, University of Kwazulu-Natal, 2005, 33p.

It provides familiarity. It can assist in finding food, accommodation and work. In Italy, the community had been constructed via a client-patron relationship, pushed for by Italian organisations¹³⁵. Those who have been in the country for a longer period will be the patrons of the new arrivals. This type of relationship provided a hierarchy between immigrants of the same community.

Beyond survival, there is political organisation at another level. The first step would be a togetherness that gets created for cultural reasons as well as for survival. Sometimes this is the only step that occurs. In this case, the creation of solidarity through political organisations would not be necessary in order for survival. Lipsky's argues that political organisations are necessary for political influence. During this process, immigrants of different communities might begin to interact. One of Rosenau's key questions was to know if all the actors are active in the system. If immigrants do not create political organisations, they will be less 'active' in terms of opportunities of influence. Immigrants are dependent on the host country and its interests for satisfying their needs. A way to satisfy their needs better is to influence the host state. But to get a chance of such an influence, they need to be politically organised. Staying with the example of Bangladeshi immigrants in Italy, this process happened successfully for different immigrant communities within the political organisation UAWA. In this organisation, immigrants from different communities and origins interacted to form a political organisation and therefore, assembled more power in order to influence state policies. Afterwards, other immigrant organisations were created on the same basis as UAWA. One was created only by Bangladeshis¹³⁶. It seems that naturally, immigrants stick to their community. But they surely have an interest in regrouping themselves for political reasons. Those interactions between different communities of same or different types of immigrants are therefore, not always activated in the system even if they can be an important advantage for the immigrants.

Another part of the process of incorporation is integration between immigrants and the host society. Even though the political organisation of immigrants depended on themselves (and liberal laws about the right of association), their integration also depends on the society itself. For example, in the USA, it would be normal to be part of a community. There are Italian-Americans, Irish-Americans, etc. Minorities can be recognised and organise themselves. But in France, "the model of immigration is based on the individual and not the group"¹³⁷. Therefore in France, constituting a community might be considered as a threat to the nationality and allegiance to the

¹³⁵Knight M., "Bangladeshi Immigrants in Italy: From Geopolitics to Micropolitics", *Op. Cit.*, p. 110

¹³⁶*Ibid.*, p. 110

¹³⁷Hodeir C., Ma Mung E. & Body-Gendrot S., "Essai de définitions en matière de comparaisons internationales" ("Tentative Definition Regarding International Comparisons"), *European Revue of International Migrations / Revue Européenne de Migrations Internationales*, Vol. 8, No. 1, 1992, p. 12

Republic whereas this is not the case in the USA. Some modes of integration will depend on the type and history of the host society. In countries of the EU, it seems too early for citizens to consider being part of a European space sharing the same fears and values¹³⁸. Therefore, it is not possible for immigrants to integrate into the European society because there is not a clear European society. When their political representation is already complicated by the technocracy of the EU, their integration has to be made through national societies. In France, United Kingdom, Germany, Spain and Italy, more than a quarter of the populations consider the phenomenon of immigration with anxiety¹³⁹ (one third in Italy). Although European citizens do not feel part of a same single space; sixty percent of them consider that migration issues should be dealt with at a European level¹⁴⁰. But it is not happening so far. Immigrants have to integrate at a national level even if a part of the population is not in favour of immigration.

The integration of immigrants can be mainly made through labour. In the USA, immigrants integrate well in the labour market¹⁴¹. Legal immigrants, like others, come from the same type of society which makes some people want to leave, who follow the immigration route used by their family or their community. “Legal and illegal immigrants share (...) the same human and demographic characteristics and are therefore in the same situation in the American labor market”¹⁴². But “national origin is relevant to the economic integration of new immigrants”¹⁴³. In Europe, it would be legally easier for an EU citizen to find a job in another EU country. EU citizens are trusted more easily in terms of immigration and work than non-EU citizens¹⁴⁴.

The integration form of interaction will be necessarily active in the system, at least to a certain level because it is a necessary process of immigration, even if the immigrants do not seek to settle in the host country.

138Diamanti I., “Immigration et citoyenneté en Europe: une Enquête”, *Critique Internationale*, Vol. 8 No. 8, 2000, p. 75

139*Ibid.*, p. 76

140*Ibid.*, p. 84

141Papademetriou D. G., “Les effets des Migrations internationales sur les pays d'accueil, les pays d'origine et les immigrants”, *Op. Cit.*, p. 673

142*Ibid.*, p. 674

143Piché V., Renaud J. & Gingras L., “Economic Integration of New Immigrants in the Montreal Labor Market: a Longitudinal Approach”, *Population*, Vol. 57, No. 1, 2002, p. 78

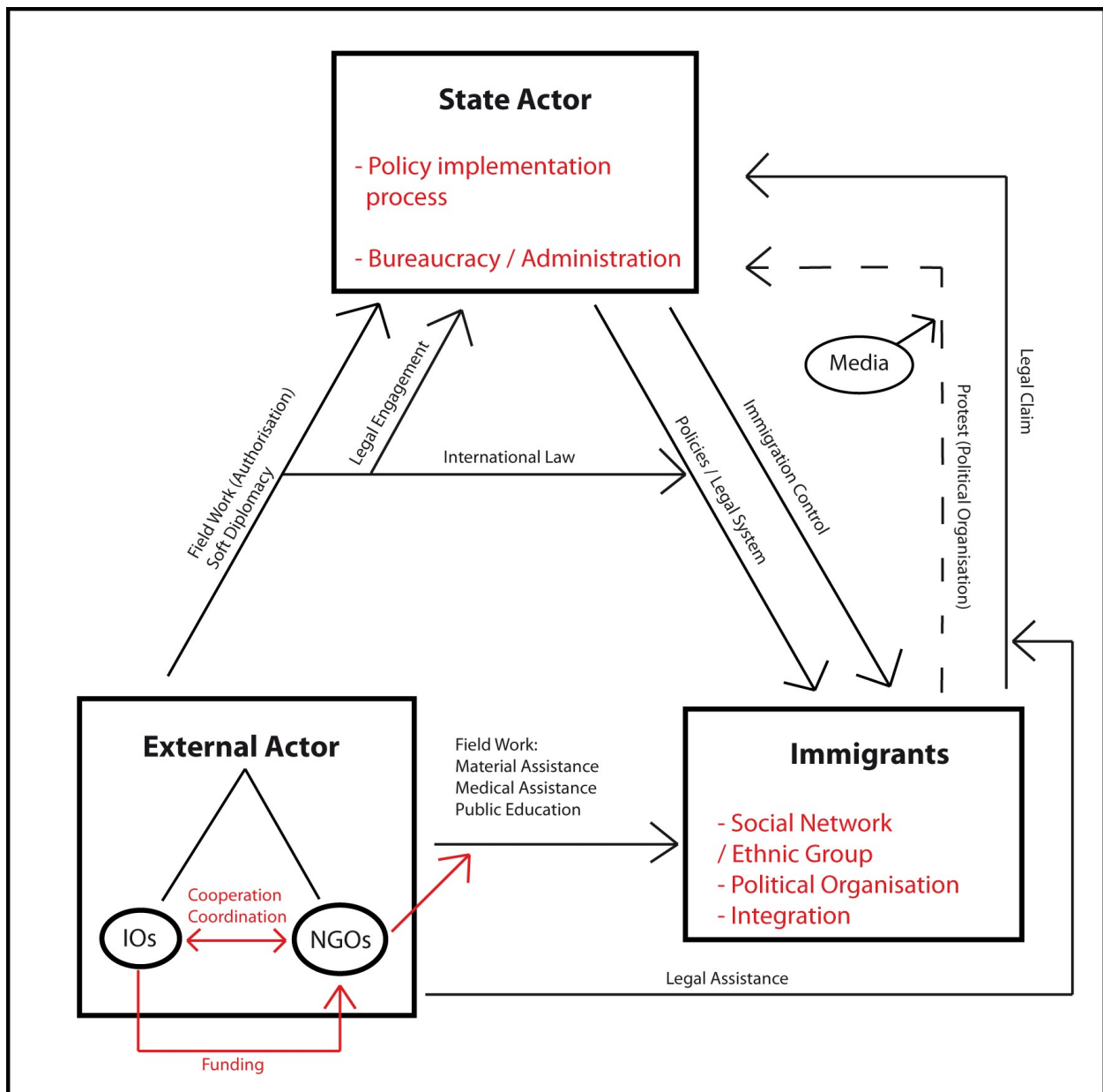
144Papademetriou D. G., “Les effets des Migrations internationales sur les pays d'accueil, les pays d'origine et les immigrants”, *Op. Cit.*, p. 675

Conclusion

In conclusion, it seems logical to illustrate a model of the system that could be built. After explaining the different interactions between the actors, a model could be used as an analytic tool in order to clarify the situation. In the figure below, the arrows represent the different interactions and modes of influence used by the different actors. Red text is used to denote interactions within subsystems.

With different interactions possible in the system, the actual influence will depend on the distribution of power, of 'forces', in Aron's terminology. The actors' capacity to influence will depend on its power in the system. An interaction by itself does not necessarily involve influence. This is what we will examine in the case of South Africa. This model can be applied to any immigration system. The question for all the different cases is then to know whether those interaction are active or not and if they are used to influence the behaviour of actors. In a situation where the state does not interact with external actors, they will not be able to influence its policies and legal system. Such is the case when a state closes its borders to external actors, when it does not interact with the international community. This is not the case in South Africa, and it will be seen that all those interactions are active. The main issue will be to understand the specificities of South Africa and to look at the organisation of immigrants to understand their ability of interaction. By looking at this special case, we will study the influences that occurred. If the external actor interacts with the state, did this interaction lead to changes? Was its work implemented to support immigrants in their migration to South Africa? Are the migrants able to interact? What are the interests of the state? Did it act in relation to its interests? If not, what did it provoke?

Immigration System Model



Chapter 2

African migration into South Africa: application of the systemic approach

Now that the systemic analysis has been prepared for the purpose of migration study, it will be applied to the case of South Africa. It will be argued that African migration into South Africa can be studied like any other similar case. Indeed, the systemic approach permits this advantage of being a flexible analytic tool. However, the major limit of the comparison between European or North American cases of migration and that of South Africa is the fact that the states are different. Being the major actors ruling most of the system, differences between states will be accompanied by differences in the system. The interactions are of the same type, but the conditions can be different. For example, the state will still interact with external actors despite its type. But the manner and the disputes on which they will negotiate will be different.

Section 1- The South African Specificity

In a public speech on the 20th of June 1997, Mangosuthu Buthelezi, the “famously xenophobic minister of Home affairs”¹⁴⁵, declared: “the question can justly be asked: what is the future of foreign migrants in South Africa? We just cannot allow these people to remain in South Africa, especially as their presence acts to the detriment of the local population... If we are, therefore, to take the matter seriously, the flood of illegal immigrants must be stopped forthwith. Furthermore, those in South Africa must be removed”¹⁴⁶. South Africa has its own specificity especially with regards to its xenophobic attitude toward foreigners, African immigrants in particular. But African migration into South Africa can be studied like other similar cases with a systemic approach. To understand South Africa’s case, its political situation has to be explained. Once this is done, we will focus on the sub-systemic interaction inside the South African state/actor. This will be done in order to explain the lack of organisation and functionality in policy implementation and different administrations. Thereafter, the actual interaction of the South African state with African migrants can be explained.

I/ The transition to democracy

The South African regime changed after the end of apartheid to become a non-racial democracy. Rosenau differentiates between internal personnel change and internal political change. South Africa’s change of regime does not only concern personnel. It is not only the “identity of the people who occupy the governmental and nongovernmental leadership roles of the society”¹⁴⁷ that has changed. Rosenau defines political changes as involving “changes not only in the personnel of the governmental and political institutions; but also in the requirements, capabilities, and limitations of their role in relation to each other and to the citizenry”¹⁴⁸. In the case of South African, a completely new regime was created. In 1970, Rosenau asked about South Africa: “If the Republic of South Africa failed to resist the external pressures to end apartheid and the white minority thereby lost its

145Landau L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, In *The promise of freedom and its practice: Global perspectives on South Africa's decade democracy*, Forced Migration Studies working paper series University of Witwatersrand, Johannesburg, May 2004, p. 6

146In Sinclair M. R., “Community, identity and gender in migrants societies of Southern Africa: Emerging Epistemological challenges”, *International Affairs (Royal institute of International Affairs 1944-)*, Vol. 74, No. 2, April 1998, Blackwell, p. 340

147Rosenau J. N., “Foreign Policy as adaptive behaviour”, *Op. Cit.*, p. 373

148*Ibid.*, p. 373

control over the black majority, would the Republic of South Africa thereafter be treated as having been transformed through adaptation to the external pressure or as having been replaced by a new actor because of extreme maladaptation to the foreign demands for basic changes in its social structure?”¹⁴⁹. It seems clear today that Rosenau’s second option is more accurate. The new South Africa can be considered as a new actor in international relations because of its full change of regime, even if the changes in its social structure did not necessarily come from foreign demand or international pressure. Rosenau wrote this in 1970. But the situation in South Africa changed in 1976. The change in regime was not only a result of external pressures but actually from internal ones. However the case of South Africa is not a miracle. Maybe the only miracle is that the regime change happened with a relatively small amount of violence. This is why de Klerk and Mandela received the Nobel Prize. As a political transformation, the best theory to explain the change of South Africa seems to be transition theory.

The transition theory starts with a truism “that those who rule authoritarian societies do not voluntarily surrender their power and thus, do not willingly renounce control over the political system in which that power is located”¹⁵⁰. Power holders are then drawn into a sustained and intensifying confrontation with a democratic opposition that gains popular support. Because of this confrontation, a negotiation will be achieved between the two parties for a new democratic order. A revolutionary rupture can happen. This leads to two assumptions: firstly, the negotiation cannot be made by the masses but rather by leadership, and secondly not all the members of the opposition agree with the negotiation reached. There will be tensions in the opposition party. A problem can then arise: The opposition becomes divided and disagrees on the type of democracy that should be built. This new democracy could be of a political, economic, liberal or other type¹⁵¹.

The above theory can be applied to the South African transition. First, its transition began with an increase of power from the people. The low intensity civil war that occurred in the townships was a transposition of a growing idea of democracy, which helped the creation of rudimentary organs of power from the people. Since a solution could not be imposed unilaterally, a negotiation took place between the party in power and the opposition. The government recognised the futility of efforts to reform the apartheid system. The successor of the regime had to be a non-racial Democracy. Also, those who were pro-democracy had to accept the fact that a solution would not be found through an armed struggle. Thus a negotiation had to be made. The conflicts brewing in opposing parties called for a common leadership in order to maintain calmness. The ANC played that role. According to Willem Van Vuuren, the result of transition consisted of a mix of strategic

149Rosenau J. N., “Foreign Policy as adaptive behaviour”, *Op. Cit.*, p. 384

150Ginsburg, D. “The democratisation of South Africa, Transition Theory tested”, *Transformation*, 29, 1996, p. 74

151*Ibid.*, p. 76

elite coercion and mass violence¹⁵². The elite's aim was to influence the process of change. But their attempts were not effective enough to allow any elites to unilaterally impose a change of regime. The masses were also needed to support the multilateral negotiation.

At the end of this negotiation, a limited form of democracy appeared. It was limited because the "government (was) strong enough to govern but weak enough not to be able to govern against important interest"¹⁵³. The government was able to create and/or maintain a level of social order that was sufficient enough to allow the majority of citizens to go about their daily lives and routine. But, it was not able "to entrench power holders in those situations where the interest of the masses should take precedence over those of the few"¹⁵⁴. South Africa's new regime was not able to guarantee people's interests through democratic processes like the redistribution of wealth or the dissolution of oligopolistic and monopolistic practices¹⁵⁵.

After the transition comes consolidation. This is precisely the process that South Africa is undergoing. Consolidation can be defined "as the process by which the structures and norms of democracy have been firmly established and supported by the general public so that the regime gains persistence and the capability to overcome possible challenges and crises"¹⁵⁶. The first step for consolidation is legitimization. It can be limited or totally legitimised. In some situations, legitimization can be partial and take time to be total, as in the case of Italy. This legitimization has an impact on the structures of elites, their control on the regime and its stability. According to Morlino, when legitimization is restricted, a crisis will occur if elite stabilisation or the party organisation is not clearly achieved. When there is widespread democratic legitimacy, less party control of society is necessary to achieve consolidation of democracy. And when there is a widespread legitimacy, the partisan control of society will not be decisive for the consolidation¹⁵⁷.

According to the work of G. Lowell Field, John Higley and Mihael G. Burton¹⁵⁸, in different circumstances, three types of elites can be considered. These elites coincide with different types of political regimes. The first type of elites is the disunified elite. It appears when structural integration and value consensus are minimal in the society. The communication and influence network do not then cross fractional lines between the elites. The fractions disagree on rules and codes of political conduct. The second type is called the consensually unified elite. "It exists when the structural

152 Van Vuuren, W., "Transition Politics and the prospects of Democratic Consolidation in South Africa", in *Politikon*, Vol. 22, No. 1, June 1995

153 Ginsburg, D., *op. cit.*, p. 80

154 *Ibid.*, p. 81

155 *Ibid.*, p. 81

156 Morlino, L., "Party Elites and Democratic Consolidation in Southern Europe", in Etzioni-Halevy, E., *Classes and Elites in Democracy and Democratisation*, Garland, London and New York, 1997, p. 206

157 *Ibid.*, p. 208

158 Lowell Field, G., Higley, J., Burton, M. G., "National Elite Configuration and transition to Democracy", in Etzioni-Halevy, E., *Classes and Elites in Democracy and Democratisation*, Garland, London and New York, 1997,

integration is inclusive in the sense that overlapping and interconnected communication and influence networks encompass all elite fractions”¹⁵⁹. There is no single fraction dominating. The last type is the Ideologically unified elite. It is the same as the second type, except that a dominant fraction leads.

The Disunified Elite brings about an unstable regime, with *coup d'états*. This could have been the case in some monarchies in Europe. The Consensually Unified Elite brings about a representative regime, with some variations in the degree of representation. Lastly, the Ideologically Unified Elite leads to a stable, unrepresentative regime. Roger Southall uses records of elections to show that the ANC had between sixty and seventy percent of political party support from October 1992 to November 1998¹⁶⁰. The last national elections confirm that this is still the case in South Africa today. Therefore we can consider that the type of elite in South Africa is Ideologically Unified at the moment, with the ANC as the dominant fraction. Even if elites in South Africa include different groups such as economic elites, it seems that the ANC leads political elites and the population behind the ideal of liberation. We can consider the actual regime in South Africa as being stable, but unrepresentative of the different interests. And if a democracy is supposed to bring a representative part of the population to power, we can consider that the South African regime is not a Democracy. Democratic consolidation is a process that takes time.

The political situation of South Africa influences the immigration issue. Hollifield considered that “immigration policy is a measure of the strength of the state”¹⁶¹. With South Africa still being a weak democracy, there will surely be implications for immigration policies. Regarding immigration, even if “not much (has) changed since the 1913 Immigration Regulation Act”¹⁶², the transition and regime change “directly influenced the inflow of immigrants”¹⁶³.

159 *Ibid.*, p. 176

160 Southall, R. “The 1999 Elections Consolidating Democracy or Foreshadowing Decline?” in *Indicator South Africa*, Vol. 16, No. 1, Autumn 1999

161 Hollifield J. F., “Immigration Policy in France and Germany: Outputs versus Outcomes”, *Op. Cit.*, p. 115

162 Klotz A., “Migration after Apartheid: Deracialising South Africa foreign policy”, *Third World Quarterly*, Vol. 21, No. 5 (October 2000), Taylor and Francis LTD., p. 832

163 *Ibid.*, p. 834

II/ Organisation of the South African State and its influences on African Migration: Interaction inside the state actor

The consolidation and economic development phase of South Africa's democratic transition cannot be as strong as the liberal modern democracies of Western Europe and North America. Because South Africa re-entered the international system after apartheid, the flow of immigrants (legal and illegal) is simply "a very visible reminder of these new global realities"¹⁶⁴. But the South African state is possibly not equipped to face those realities. Hollifield states that "the smaller the gap between policy outputs and outcomes, the greater the ability of the state to control employers' hiring practices and change market outcomes"¹⁶⁵. This is a question that could be asked when considering South Africa's case. Is the South African state able to apply its immigration policies and control employers' hiring practices¹⁶⁶? In attempting to answer this question, one has to consider that South Africa's challenge in controlling immigration does not only centre on employers' hiring practices or changing market incomes. The system is also dysfunctional. Interactions inside the actors and subsystems have already been studied. Those interactions have a particularly great importance in African Migration to South Africa.

Two types of dysfunctions in the South African state actor can be considered with regards to immigration. Firstly, there were political dysfunctions. When Mangosuthu Buthelezi was the minister of Home Affairs, from 1995 to 2004, since he was the leader of the IFP, "the ANC practised obstruction, attacking and sabotaging the legislation process without developing another clear alternative"¹⁶⁷. It provoked a constant decline in the DHA. The problems of communication between the elites in power and the bureaucrats became more and more important. "The minister's bureaucrats revealed their lack of competence to face their responsibilities or simply fill their professional basic duty"¹⁶⁸. This bureaucratic absence enforced a vision of clandestine immigration which proved to be problematic. The SAPS thus tried to solve the problem unilaterally. This is the result of a dysfunction in the organisation of the state: between the legislative process, the different

164 *Ibid.*, p. 834

165 Hollifield J. F., "Immigration Policy in France and Germany: Outputs versus Outcomes", *Op. Cit.*, p. 115

166 The South African economy is different from the ones in Europe or North America. In South Africa, many migrants work in informal trade market. Therefore, employers have less impact and interest in immigration in South Africa. They might still use African migrants as a cheap labour, but it is not sure that their interest is to employ them legally. If migrants do not have a legal status, they are more vulnerable and therefore cheaper. Employers still have to be considered in the need of workers and immigration policies, but their influence is less important in South Africa than in other states studied in the first chapter.

167 Wa Kabwe-Segatti A. & Landau L. (directed by), *Migrations in post-apartheid South Africa, Challenges and questions to policy makers*, *Op. Cit.*, p. 10

168 *Ibid.*, p. 10

ministries, different branches of administration and police forces. This why the HRW recommend amongst other things, to “increase coordination and cooperation between DHA and other government departments to facilitate access to social services”¹⁶⁹. A clear cooperation is needed between the different organs of the South African state.

The second dysfunction in the South African state is mainly due to the implementation of policies. As Lispky explained, the policy implementation process and the potential differences between policies and their application that occur is exactly the case of what happens in South Africa. There is always a difference between policies and their implementation by street level bureaucrats. But the bigger the lack of organisation, the bigger the difference between policies and implementation will be. There is a dysfunction in different levels

One of the major problems is clearly the South African Department of Home Affairs. There is an “incapacity of the DHA and other public services to reform efficiently the administration of immigration in the post-apartheid period”¹⁷⁰. But if the DHA did not try to reform the system, “the South African Department of Home Affairs has (also) shown little interest or ability in developing and implementing sound and effective migration policy”¹⁷¹. There is an important difference between policies and their implementation. Landau considers the DHA is the “most corrupted”¹⁷² department of South Africa. Therefore, if asylum seekers that have the right to be in South Africa according to International and National laws, they have to pay extra fees. This sum is unofficial, illegal and is extracted by private security guards, who sometimes ask to be paid just to let individuals enter the department freely. If they cannot pay the money, their claim will not be processed¹⁷³. Corruption involves both state and private institutions. The “Home Affairs 2003 Annual Report indicates that 3264 asylum applications (out of over 15000 applicants) were finalised during that year, but that they issued only 1881 refugee documents”¹⁷⁴. When the 1998 refugee act says that a claim should be processed within six months, the Wits University survey discovered that a third of asylum seekers had to wait at least eighteen months¹⁷⁵. This is why the UNHCR planned to “continue to support the Department of Home Affairs in clearing the backlog of pending asylum applications during 2006 and in reversing previous trends by significantly

169 Human Rights Watch, “Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg”, HRW, New York, November 2005 Vol. 17 No 15(A), p. 3

170 Wa Kabwe-Segatti A. & Landau L. (directed by), *Migrations in post-apartheid South Africa, Challenges and questions to policy makers*, *Op. Cit.*, p. 8

171 Wa Kabwe Segatti A. & Landau L., “Human Development Report 2009; Human Development Impacts on Migration, Case study: South Africa”, Forced Migration Study Programme, For the United Nations Development Programme, January 2009, p. 45

172 Landau L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 8

173 *Ibid.*, p. 9

174 *Ibid.*, p. 9

175 In Landau L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 8

decreasing the volume of new, abusive or manifestly unfounded asylum applications”¹⁷⁶. If the idea was that the law would set out different criteria for asylum applications, the reality is that they have not been implemented by the DHA. If the DHA is corrupted, it is not its only problem. The lack of capacity and incompetence in the DHA allows for corruption to breed and corruption allows incompetence to flourish. This department is clearly not carrying out what is expected of them. If the department is corrupted, it forces new immigrants who are willing to go through the legal process to pay extra money. Because of that, they are not following a legal process anymore. The corruption present in the DHA pushes African migrants to use illegal means to enter into the country.

If the DHA is not able to finalise all the asylum applications and other applications as the South African laws set out, it is also because this department lacks resources. South Africa is a developing state and therefore cannot give as much resources to its departments as modern states are able to. When Aurélia Wa Kabwe Segatti from the forced migration studies programme of the University of Witwatersrand was asked whether new policies could be implemented by the DHA, her answer was, “no, not in the current state of the Department (high skills deficit, overemphasis on control and policing, very low morale and ethics of staff)”¹⁷⁷. This is why the HRW recommend that the South African state should “substantially increase the number of appropriately trained staff and the facilities at refugee reception offices for more efficient processing of asylum applications, the determination of status, and the issuing of refugee identity documents”¹⁷⁸ and should “strengthen the anti-corruption unit within DHA to urgently address incidents of corruption”¹⁷⁹.

But the problems of policy implementation and administration of resources in South Africa about the African migration issue do not only happen at the DHA. “Recognising the imperative to address migration in building inclusive, safe, and prosperous cities does not necessarily mean that officials have the information or tools to do this effectively”¹⁸⁰. In order to decentralise the power and the responsibilities in the Africa migration issue, local governments have to decide on some of their own policies. But this does not necessarily mean that they have the tools to implement them correctly either.

There are also problems at border posts. “To create a more onerous, control-and-expulsion oriented approach to migration at this point in time in South Africa risks forcing people underground (quite literally) and therefore eroding the good will and legal practices that currently

176 UNHCR Operation Country plan 2006. Country: South Africa. p. 5

177 See interview with Aurélia Wa Kabwe Segatti in appendices.

178 Human Rights Watch, “Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg”, *Op. Cit.*, p. 2

179 *Ibid.*, p. 3

180 Wa Kabwe Segatti A. & Landau L., “Human Development Report 2009; Human Development Impacts on Migration, Case study: South Africa”, for the UNDP, *Op. Cit.*, p. 30

exist as well as undermining efforts to build on this regularized movement in the future”¹⁸¹. The same problem of corruption at the DHA will occur. African migrants will not seek to go through a legal process but prefer to stay illegal despite the risk. The control on immigration will lose its efficiency, which already stands at a low level.

The South African state finds it difficult to implement its policies. The system has dysfunctions in different parts of bureaucracy. These dysfunctions force African migrants to be illegal. But it is also a problem in terms of disrespect for international laws. These laws should equally be applied in South Africa. The rights of refugees and asylum seekers are not respected. South Africa disrespects international laws. It creates a “high risk of *refoulement*”¹⁸² for refugees. Because of those dysfunctions, IOs, NGOs and political literature offer solutions for the South African state. Reports and political literature focused on immigration in South Africa a lot because it is considered as a problematic situation. Therefore, the way policies and the manner in which African migrants are treated is well known by external actors. HRW recommended in 2007 again that “the Department of Home Affairs, the South African Police Service, and the Department of Defence should ensure that the correct procedures for arrest, detention, and deportation as set out in the immigration law are consistently followed by state officials”¹⁸³. But the South African state does not seem to take heed of these suggestions. It seems like the policy implementation process has not changed, that bureaucrats still have more power than they should have and that human rights are not guaranteed because of this organisational and resource issue. The key organs of the South African state maintain their xenophobic position on immigration.

181 McDonald D. A., Zinyama L., Gay J., de Vletter F. & Mattes R., “Guess who's coming for dinner: Migration from Lesotho, Mozambique and Zimbabwe to South Africa”, *International Migration Review*, Vol. 34, No. 3, (Autumn 2000), Center for Migration Studies of New York, p. 836

182 The *refoulement* is term often used in international law and politics. It literally means to 'drive back'. If the South African state disrespects international laws, migrants do not have the chances they should to get an asylum or refugee status. Because of this disrespect, some migrants will not get the chance to have the status they are applying for. Therefore, they might be driven back to their home country.

Quote from Human Rights Watch, “Neighbors in Need: Zimbabweans seeking refuge in South Africa”, HRW, New York, June 2008, p. 20

183 Human Rights Watch, “Keep your head down: Unprotected migrants in South Africa”, *Op. Cit.*, p. 10

III/ The South African way of dealing with immigration: Interaction between South Africa and African migrants

Firstly of all, the legal system coming from the constitution and other immigration Acts in South Africa seems to protect African migrants' human rights. But it is not the way the South African state interacts with African migrants. With the 1994 regime change, the new power created a legal system that protects the human rights of its citizens and immigrants. The preamble of the constitution affirms that "South Africa belongs to all who live in it, united in our diversity" which forms a united 'rainbow nation'. As an example for migrants, "the Constitution of the Republic of South Africa, the Immigration Act 2002, and the Sectorial Determination 13 (on) Farm Worker Sector (or basic conditions of employment law for farm workers) provide, for the most part, an adequate legal framework for protecting farm workers' rights"¹⁸⁴. But "despite the overall legal framework offering migrants in general more rights and guarantees than ever before, their situation in terms of human rights' abuses, economic and social rights and day-to-day interactions remains a source of concern"¹⁸⁵. In law, a distinction between the actual law and its application can always be made. Even if South Africa created a system to protect general human rights, it does not mean that this system is applied to African Migrants. As Renu Modi recognises, "states do have a sovereign right to protect their own citizens' interests by regulating their borders. The South African policy therefore is no different. What differentiates the South African policy is a total lack of commitment to minimum human rights standards agreed upon by the international community, to which South Africa is a signatory"¹⁸⁶. The human rights abuses carried out by South African authorities against African Migrants are common. "The increasing criminalization of migrants from the region lends itself to the kinds of human rights abuses that continue to plague South African security and immigration authorities"¹⁸⁷.

Human rights laws are not applied to African migrants. This lack of implementation let South Africa create xenophobic policies and bureaucracy. South African xenophobia has been highly criticised by political literature, NGO and IO reports. The "non-racial and non-ethnic"¹⁸⁸

184 Human Rights Watch, "Keep your head down: Unprotected migrants in South Africa", *Op. Cit.*, p. 35

185 Wa Kabwe-Segatti A. & Landau L. (directed by), *Migrations in post-apartheid South Africa, Challenges and questions to policy makers*, *Op. Cit.*, p. 18

186 Modi R., "Migration to Democratic South Africa", *Op. Cit.*, p. 1760

187 McDonald D. A., Zinyama L., Gay J., de Vletter F. & Mattes R., "Guess who's coming for dinner: Migration from Lesotho, Mozambique and Zimbabwe to South Africa", *Op. Cit.*, p. 836

188 Klotz argues that xenophobia in South Africa is not based on racial or ethnic criteria. But there is a very fine line. If xenophobia in South Africa is not racial or ethnic, one has to consider that there are many types of xenophobia. Also, if African migrants come from different areas than South Africa, they are from the same race but not the same ethnic group. If Klotz considers the South African xenophobia as non-racial and non-ethnic, it is to differentiate it

xenophobia in South Africa was manifested by the people through the attacks of May 2008. The xenophobic attitude is also expressed in public policies and their implementation by bureaucrats as well as in public speeches. Already at the very beginning of the new regime, Mangosuthu Buthelezi as Minister of Home Affairs, gave a xenophobic speech. He was not blamed for this by any other state institution. South Africa is in the process of recreating its identity ever since the beginning of the new regime. Part of this process is the re-conceptualisation of the outsider. As South African leaders applaud the "new cosmopolitanism, conflicts over the right to space, services, and livelihood have surfaced as South Africans and African immigrants converge on the streets of previously 'forbidden' cities"¹⁸⁹, "the xenophobia (...) toward outsiders, and Africans in particular, plays an important role in policy making"¹⁹⁰. A SAMP survey argues that xenophobic levels in South Africa are the highest recorded anywhere in the world¹⁹¹. "South Africa is increasingly characterized by powerful xenophobic and exclusionary discourses centred on migration from the rest of Africa"¹⁹². Even the language used by different legal acts on immigration "creates a single undifferentiated category of *alien*"¹⁹³.

According to a modern vision of sovereignty in the international system, the state is expected to deliver peace and prosperity. "We see these trends across Europe and North America, but 'semi-periphery' Commonwealth countries like South Africa, Australia and Canada are no exception"¹⁹⁴. In South Africa, immigrants are perceived as being a threat to the security and welfare that the state should provide to its citizens. When there is a lack of security, "South Africans are increasingly invoking nationalist rhetoric in their efforts to resolve their disputes"¹⁹⁵ about all sorts of internal political debates. African migrants are considered a threat to nationals in terms of security but also employment. South Africa's new regime tries to balance the injustices of the previous regime through policies such as affirmative action in labour laws. But it does not want African migrants to benefit from those measures. For this reason, anti-immigrant policies are justified by national interests and brought a "legitimate private violence"¹⁹⁶ against foreigners as was highly shown by international and national press in the attacks of May 2008. The South African

from the apartheid system.

Klotz A., "Migration after Apartheid: Deracialising South Africa foreign policy", *Op. Cit.*, p. 835

189 Landau L. B., "The Laws of (in)hospitality: Black Africans in South Africa", *Op. Cit.*, p. 2

190 Klotz A., "Migration after Apartheid: Deracialising South Africa foreign policy", *Op. Cit.*, p. 840

191 According to a SAMP survey that recorded that: 45 per cent were for strict limits on migrants and immigrants and only 17 per cent agreed to it, if there were no problems like unemployment. Twenty-five per cent of the people wanted a total ban on migration into South Africa. Only 6 per cent voted for open borders. Such statistics made the SAMP consider that it was the highest levels in the world, in 1999.

In Modi R., "Migration to Democratic South Africa", *Op. Cit.*, p. 1761

192 Peberdy S., "Imagining Immigration: Inclusive Identities and Exclusive Policies in Post-1994 South Africa", *Op. Cit.*, p. 16

193 *Ibid.*, p. 24

194 Klotz A., "Migration after Apartheid: Deracialising South Africa foreign policy", *Op. Cit.*, p. 833

195 Landau L. B., "The Laws of (in)hospitality: Black Africans in South Africa", *Op. Cit.*, p. 2

196 *Ibid.*, p. 2

state allowed those attacks to happen. In a way, this was in the interest of the state and was in keeping with its xenophobic attitude. But by doing so, the South African state lost the monopoly of legitimate violence. This does not only happen with violence towards African migrants. In South Africa it occurs that citizens resolve their debates without any police intervention. But such violence was particularly important during the xenophobic attacks. Even if such attacks suit the South African state's interests, the state loses a part of its sovereignty by losing the monopoly of legitimate violence according to Weber's conceptions.

The South African state's interaction with African migrants is xenophobic in general. To guarantee what the state considers as its interest, the South African state seeks to control African migration. It does this through repressing a national threat. The way in which it does this is specifically through not applying Human Rights guarantees. South African policies demonstrate "vigorous attempts to control and discourage both legal and undocumented immigration and migration"¹⁹⁷. As examples, Audie Klotz explains that the Aliens Control Act "increased the scope for repressive powers"¹⁹⁸. Even the 1998 Refugee Act "seeks to limit population inflows drastically and bolster enforcement measures"¹⁹⁹. The Department of Home Affairs declared in 1998 that "no one in the unskilled and semi-skilled categories would normally be accepted as an immigrant worker"²⁰⁰. The barriers have been raised for all applicants, permanent and temporary, but "the new regulations and restrictions are directed primarily at people from other African countries"²⁰¹. To ensure its control over African migrants, the South African state introduced increasingly draconian measures in order to raise the rates of identification, arrest, detention, and deportation of undocumented migrants. It first increased the capacity of the DHA to track down and deport undocumented migrants, then the state's strategy was to introduce a computer-based surveillance system. Furthermore, the "DHA has called on all government departments to deny access to services like health care, education, and utilities to undocumented (and other) migrants"²⁰². Finally, the state authorised the DHA to arrest, detain and repatriate undocumented migrants without allowing them access to a court of law. Deportation increased, as shown in the following graph.

State control has tried to be applied at the borders as well as at the DHA. "The new government has paid increasing attention to policing the nation's borders, introducing a new border control policy. The purpose of the policy is to exert state authority over national territory, as well as

197 Peberdy S., "Imagining Immigration: Inclusive Identities and Exclusive Policies in Post-1994 South Africa", *Op. Cit.*, p. 16

198 Audie Klotz, "Migration After Apartheid: Deracialising South African foreign policy", *Third World Quarterly*, Vol. 20 No. 5, October 2000, Taylor And Francis LTD., pp. 831-847, p. 832

199 *Ibid.*, p. 832

200 Peberdy S., "Imagining Immigration: Inclusive Identities and Exclusive Policies in Post-1994 South Africa", *Op. Cit.*, p. 17

201 *Ibid.*, p. 18

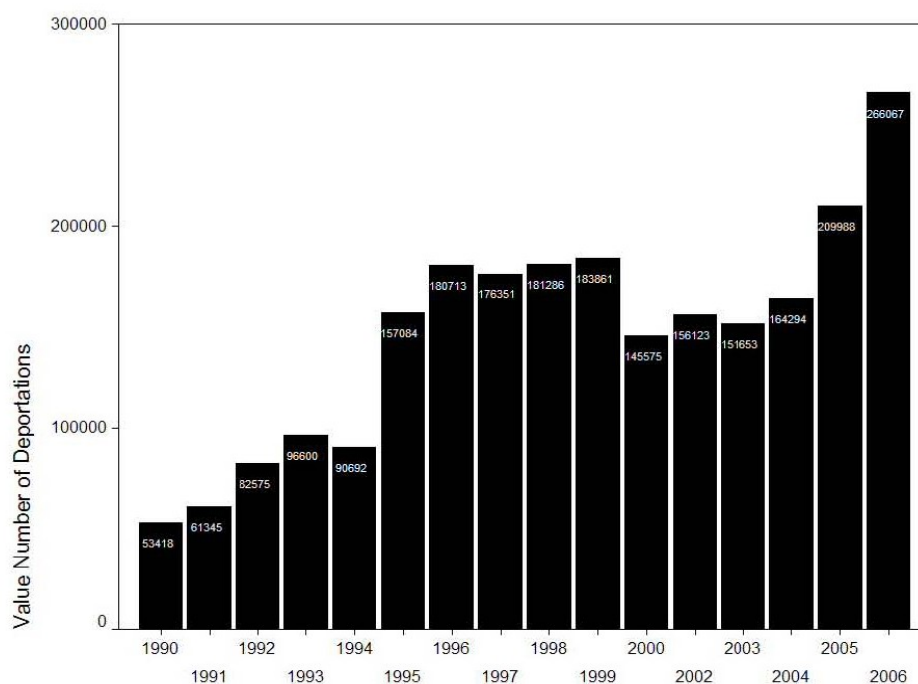
202 *Ibid.*, p. 22

control over the entry of undocumented migrants, contraband goods, and illegal drugs and guns”²⁰³.

Despite the increasing number of deportations of undocumented African migrants from South Africa, control over immigration has not been a real success. The number of immigrants did not decrease. Those entering the country are not necessarily more skilled than before. The South African state made great efforts to deport African migrants. They did this despite being conscious of contradicting human rights that are part of the South African legal system. But this does not mean that African migrants will not come back. From his research, Landau found out how easy it is for them to come back to South Africa illegally²⁰⁴. Already at the beginning of the new regime, Mr. Penuel Maduna, Deputy Minister of Home Affairs, affirmed that “History has shown us time and time again that hunger and fear are driving forces which are much stronger than even the most sophisticated aliens control measures. South Africa has become the country of survival for many”²⁰⁵. Maybe Hollifield was right in stating that a state cannot control such a complex process as immigration. But what is certain is that the strategy developed by the South African government did not reach its goal of controlling and limiting African migration.

Table 3

Deportation from South Africa 1990-2006



Years

Source: Wa Kabwe Segatti A. & Landau L., “Human Development Report 2009; Human Development Impacts on Migration, Case study: South Africa”, UNDP, *Op. Cit.*, p. 13

From the Department of Home Affairs

203 *Ibid.*, p. 22

204 Between 50 and 100 rands to cross the border illegally from Mozambique

In Landau L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 11

205 Solomon H., “Strategic perspectives on illegal immigration into South Africa”, *Op. Cit.*, p. 10

Section 2 – South Africa in the context of Africa and Southern Africa and its relations with external actors

Now that the South African state has re-entered the International system, it has new interactions with several actors. When SADC attempted to create a regional approach to migration, South Africa limited this attempt. It used its hegemonic position to keep the regional situation under its control and to impose its point of view, which will be argued. It seems like the South African state is not interested in constructing a group of states which could deal with the migration issue. But this attitude cannot be applied to external actors. IOs and NGOs influenced South Africa in its position. They still do. But if the state accepted to do so, it is also because it has some interest in this influence.

I/ The attractiveness of South Africa for African migrants

The African migration issue is not only an issue for South Africa. There is an old tradition of migration in Africa. And there are many different migration issues. “Few countries have immigrations laws and much fewer enforce them rigidly”²⁰⁶. Thus, there are a lot of undocumented migrants. This is especially the case with ethnic groups that are split by artificial international borders. The delimitation of borders in Africa made by colonialist powers did not consider the different ethnic groups. This issue also happens in South Africa and particularly with the “emergence of transnational immigrant communities between the Machaze Mozambican region and the Vaal region in South Africa”²⁰⁷. It is one of the aspects of undocumented migration in Africa. “Three developments are pertinent to an understanding of undocumented migration, and recent expulsion of illegal migrants in Africa: demarcation of national boundaries; the emergence of independent national states and the setting up of regulations governing immigration; the initial differential in employment opportunities among countries; and later, the general economic recession”²⁰⁸. During colonisation, movement was facilitated by the French, the British and the

206 Adepaju A., “Illegal and Expulsion in Africa: The Nigerian Experience”, *Op. Cit.*, p. 426

207 Lubkemann S. C., “The transformation of Transnationality among Mozambican Migrants in South Africa”, *Canadian Journal of African Studies/ Revue Canadienne des Etudes Africaines*, Vol. 34 No. 1, Special Issue, Transnationalism, African Immigration and new migrants spaces in South Africa, Canadian Association of African Studies, 2000, p. 41

208 Adepaju A., “Illegal and Expulsion in Africa: The Nigerian Experience”, *Op. Cit.*, p. 427

Portuguese who were looking for workers in different areas in their respective colonies. These movements are still happening in Africa and within Southern Africa. And states in Africa seek to control them. South Africa is of course not the only country that exercises forced deportations²⁰⁹. As an example, one could look at the rise of oil revenues in the 1970's in Nigeria. The deterioration of the economic situation in Ghana and the ECOWAS treaty of free movement of people brought a massive immigration to Nigeria. Wages were much better in Nigeria. Migrants did not need a visa. But at the end of the 1970's, there was an economic recession in the country. Foreign workers were given two weeks to leave (four weeks for skilled workers). At the end, the government expelled 1,5 millions foreigners²¹⁰.

South Africa represents an important economic power for the whole continent. Daniel, Lutchman and Naidu analysed “what has sometimes in the popular media been referred to as the 'South Africanisation' of the African economy”²¹¹. “While the major European and other investors focused in the 1990s on Eastern Europe, while also being generally disillusioned with Africa, South African capital was well placed to take advantage of the new market opportunities opening up in Africa”²¹². South Africa used this advantage properly. The trade balance between South Africa and the rest of Africa has been increasing strongly from 1992²¹³. Therefore, South Africa can be considered as an economic example in many other African countries. Its economic development gave South Africa a reputation of welfare where wages are better. This was the case in Nigeria during the 1970's.

The majority of immigrants all over the world are “motivated by economic considerations” and “within Southern Africa, economic variables also played a role in the migration of people from countries such as Mozambique, Lesotho, Angola and Zimbabwe to countries such as South Africa”²¹⁴. Migrants coming to South Africa for economic reasons believe that they will improve their living standard and economic resources. “South Africa serves as a magnet to those seeking employment, a higher living standard and brighter economic prospects”²¹⁵. The size of the South African economy makes the allure of the country almost overwhelming to many in the region. Its

209 List of deportation policies in Africa:

Ghana (1969); Sierra Leone (1968); Ivory Coast (1958, 1964); Chad (1979); Uganda (1972); Zambia (1971); Equatorial Guinea (1974); Zaire (1970, 1973); Kenya (1977; 1978-81); Senegal (1967); Cameroon (1967); Guinea (1968); Nigeria (1983); Liberia (1983)

Ibid., p. 430

210 According to Adepoju A., “Illegal and Expulsion in Africa: The Nigerian Experience”, *Op. Cit.*

211 Daniel J., Lutchman J. & Naidu S., “Post-Apartheid South Africa's Corporate Expansion into Africa”, *Review of African Political Economy*, Vol. 31, No. 100: Two Cheers? South African Democracy's First Decade, Taylor and Francis Ltd., June 2004, p. 343

212 *Ibid.*, p. 345

213 As shown in the graph, In Daniel J., Lutchman J. & Naidu S., “Post-Apartheid South Africa's Corporate Expansion into Africa”, *Op. Cit.*, p. 345

214 Solomon H., “Strategic perspectives on illegal immigration into South Africa”, *Op. Cit.*, p. 5

215 Solomon H., “Strategic perspectives on illegal immigration into South Africa”, *Op. Cit.*, p. 5

attractiveness is important for economic migrants.

But the African migrants in South Africa do not only enter for economic reasons. Like in the rest of Africa, the political situation of states has an important impact on migrations. In Southern Africa, civil strife in both Angola and Mozambique has displaced thousands of people. South Africa is attractive for both economic and political reasons. The history of South Africa seemed like a myth for African migrants. Because of the struggle against apartheid, of the proclamation of the protection of human rights and the appearance of a non-racial democracy, South Africa can appear to be like a perfect and safe (despite the very high levels of crime) country from the outside to immigrate to.²¹⁶ It appears to be a much better country to live in if it were to be compared to the political instability that takes place in many African countries, such as “persecution of certain groups, denial of political rights, mass expulsions, *coups (d'état)* or civil war”²¹⁷. Therefore, it is because of its economic position in Africa, its sort of hegemonic situation in Southern Africa and the fake attractiveness of its political system and history, that South Africa has to be confronted with African migrations into its territory.

II/ SADC and the attempt at a free movement protocol

If one were to look at the system with the migration issue-area, it has been seen that it can be in the interest of a state to be part of a group. With the example of the EU, states could have an advantage using this group to get skilled migrants from outside of the organisation and to keep its own skilled citizens. In order to encourage a free trade market, citizens of all the countries of the EU are allowed to move freely within countries of the organisation. They can settle in another country without needing a visa. This decision has been accepted by all the states belonging to the EU. The question here is to understand whether South Africa tried to do the same by participating in a political organisation in order to deal with migrations and possibly other issues. Of course, if there is an organisation which could deal with such issues, it would be the SADC.

As we saw, in Africa, one of the problems in migration is that states do not control their borders, they do not have policies or cannot implement them and they then need to take extreme

216 As an example, a Congolese migrant in South Africa declared: “We believed that a country which overcame such a bad racial segregation and human rights violations must be the right place to get asylum and protection”. (Respondent No. 7, 27th of September 2002)

In Amisi B., “An exploration of the Livelihood Strategies of Durban Congolese Refugees”, School of Development Studies and Center for Civil Society, University of Kwazulu-Natal, for the UNHCR, *Working Paper No. 123*, UNHCR, Geneva, February 2006, p. 31

217 Solomon H., “Strategic perspectives on illegal immigration into South Africa”, *Op. Cit.*, p. 6

measures to regulate migrations. SADC attempted to build a migration protocol many times in order to regulate migrations. But South Africa constructed a lot of obstacles. Oucho and Crush demonstrated “how South African opposition blocked and then stymied the SADC secretariat's efforts to develop a regional approach to migration management”²¹⁸. They consider that “South Africa's position is based more on a powerful 'anti-immigrationist' discourse than any systematic analysis of the merits or demerits of the Gaborone proposal for free and freer movement within the SADC”²¹⁹.

The attempt at SADC was “eurocentric”²²⁰. It tried to apply the model of the EEC if not the EU. The OAU is for the free movement of people too, which encourages states to sign bilateral or multilateral treaties on this issue (article 43 of the African Economic Treaty). SADC’s first initiative for a migration treaty was in 1993 in Harare. The first draft appeared in 1995 and was called the Free Movement Protocol. With regards to this draft, “South Africans were particularly alarmed and the department of Home Affairs immediately commissioned an expert opinion from the government-funded research think tank, the Human Science Research Council (HSRC)”²²¹. The report was extremely critical. Thus, South Africa, with Botswana and Namibia as good allies, decided to create its own treaty. By January 1997, the Department of Home Affairs had a draft protocol on 'the facilitation of movement'. Therefore, the secretariat of SADC took note of the South African draft. It redrafted the 'Free Movement Protocol' considering the South African criticisms. It was ready in 1998 and named, the 'Protocol on the facilitation of Movement of Persons'.

The HSRC report was against the objective of the first draft, which aimed to allow for complete free movement of persons within South Africa within a decade²²². The goal of this protocol was based on a pre-colonial era. At that time, the absence of state obstructed the control over migration. The protocol argues that free movement should be established in order to get back to the previous freedom of movement. With a strong critique, the goal of the HSRC report was to build a protocol which suited the seeming interest of South Africa. This was a way for South Africa to build their own protocol, to reject ideas of the SADC and to continue to make it their way to do what suited them. They imposed their point of view, as a hegemon would. Firstly, the HSRC report did not recognise that there was free movement before the colonial era. Therefore it did not consider

218 Oucho J. O. & Crush J., “Contra Free Movement: South Africa and the SADC Migration protocols”, *Africa Today*, Vol. 48, No. 3, “Evaluating South African migration policy after Apartheid” (Autumn 2001), Indiana University Press, p. 140

219 *Ibid.*, p. 140

220 *Ibid.*, p. 140

221 *Ibid.*, p. 143

222 Human Science Research Council, *A Research Review of the Policies Surrounding the issue of Free Movement of People across International borders with Specific reference to Southern Africa and the Particular Effect thereof on South Africa*, Pretoria, HSRC, 1995

that free movement should be based on historical precedent. At that juncture the original protocol “was to propose that governments acknowledge this reality (the massive migrations and inefficient controls) and instead of pouring wasted resources into trying to stop it, [they should] instead acknowledge, manage and govern it”²²³. Even with a non-realistic historical approach, the protocol understood that the political system in Southern Africa was not able to control migration and should therefore reorganise it instead of wasting resources.

Secondly, the HSRC considered that the protocol would increase the unmanageable flow which is a threat to South African job seekers. But Oucho and Crush see the HSRC as not having done adequate research on SADC migrants because in fact, the number of legal workers decreased and the number of illegal workers strongly increased²²⁴. This argument of the HSRC was wrong.

Thirdly the protocol planned to legitimise and regularise illegal immigrants. The HSRC considered that they would then have to be taken in by South Africa. But “the HSRC assumed that all non-South Africans in the country (almost certainly far fewer than they claimed) were immigrants not migrants (who see themselves as temporary residents who will return home)”²²⁵. South Africa would not have had to take in all the illegal migrants due to the dynamics of migration in the region.

Fourthly, the protocol “would mean that foreign labour migration to the mines would have to be phased out”²²⁶ and thus, increase the “influx of workers and add competition for jobs”²²⁷ according to the HSRC. But “there is absolutely no reason why non-South Africans could not work on South African mines under a free movement system”²²⁸. The HSRC suggested that the best way to protect non-South African workers from exploitation was not through the enforcement of minimum labour standards but rather, by not letting them enter in the first place. But abuse is more likely to occur when labour is illegal.

Fifthly, the HSRC considered that the protocol would increase xenophobia in South Africa, something that the HSRC condemns. But the implication of such a consideration by the HSRC “seems to be that the best way to eliminate the xenophobic attitudes of South Africans is to give in to their demands”²²⁹. It is clearly a very populist consideration.

Sixthly, the protocol made a clear distinction between movement within the SADC region

223 Oucho J. O. & Crush J., “Contra Free Movement: South Africa and the SADC Migration protocols”, *Op. Cit.*, p. 146

224 Oucho J. O. & Crush J., “Contra Free Movement: South Africa and the SADC Migration protocols”, *Op. Cit.*, p. 146

225 *Ibid.*, p. 146

226 *Ibid.*, p. 146

227 Human Science Research Council, *A Research Review of the Policies Surrounding the issue of Free Movement of People across International borders with Specific reference to Southern Africa and the Particular Effect thereof on South Africa*, *Op. Cit.*, p. 48

228 Oucho J. O. & Crush J., “Contra Free Movement: South Africa and the SADC Migration protocols”, *Op. Cit.*, p. 147

229 *Ibid.*, p. 147

and movement to the region from elsewhere. The HSRC report considered that this distinction was pointless because the regional outer borders could not be adequately sealed or policed. But the fundamental question was not to know whether the borders could be sealed (they are not even in South Africa) but whether the states of SADC wish to make this kind of distinction. The HSRC groups all different African migrants into the same basket.

Finally, the report encourages South Africa to have a free movement of goods and capital to promote development. “This is probably the strongest part of the HSRC's argument although it is clearly motivated by South African self-interest”²³⁰. It is the same motivation that pushed the HSRC to argue that free movement of people would not produce balanced spatial development. The HSRC considered that if South African companies would be encouraged to invest in other countries of SADC, it would decrease business and employment opportunities for South Africans and increase unemployment. So on the one hand, companies should invest in other countries to stop flow of African migrants in South Africa which creates unemployment. But on the other hand, companies should not invest in the region because it causes unemployment in South Africa. The HSRC uses the same argument to justify two contradictory considerations to support a single policy position. But “the HSRC report proved to be extremely influential in the South African government's negative reaction to the Protocol”²³¹. It created scientific evidence to reject the protocol. It was accepted by the DHA and the Foreign Affairs.

The South African protocol on the facilitation of movement was drafted by the authors of the HSRC report. It had three aims: “to assert the sovereignty of national interest over regional considerations (...), to halt the process of free movement across regional borders at first stage (visa-free entry) (and) to avoid committing the South African government to a phased implementation and a fixed timetable”²³². At the end, the SADC protocol did not have too much impact beyond its name. All the migrants' rights were taken away. There was no reference to free movement. The new version “was significantly diluted”²³³. South Africa imposed its point of view on SADC. Today, the same dysfunctions that arise in the South African state also appear in SADC. “While the Southern African Development Community’s secretariat is ostensibly responsible for developing a regional approach to migration, there is no one in the secretariat specifically charged with migration matters. Even were these bodies to develop effective policy, the inability to implement them will also mean that the effects may be more negative than positive”²³⁴. Migration is still managed by states even

230 *Ibid.*, p. 148

231 Oucho J. O. & Crush J., “Contra Free Movement: South Africa and the SADC Migration protocols”, *Op. Cit.*, p. 148

232 *Ibid.*, p. 149

233 *Ibid.*, p. 153

234 Wa Kabwe Segatti A. & Landau L., “Human Development Report 2009; Human Development Impacts on Migration, Case study: South Africa”, UNDP, *Op. Cit.*, p. 45

within SADC.

III/ The influence of the external actor in South Africa

At the end of apartheid, South Africa 're-entered' the international community. While there was a lot of international pressure for the old South Africa to change its regime, the new government has been willing to interact with international actors. This also means that there is interaction with external actors such as IOs and NGOs. The case of South Africa can be applied to the system that was built in the first chapter. The state interacts with external actors which in turn try to influence the state. The organisation of external actors remains the same. There are IOs and NGOs working together. The UNHCR was planning in 2006 to “actively promote that government and civil society are increasingly capable of providing protection and assistance according to international minimum standards, with a gradually decreasing reliance on international assistance”²³⁵. The UNHCR, as an IO, funds other NGOs for special missions. Even if “not all local civil society organisations supported the call for international norms and standards to be adopted”, because some considered that “South Africa was not in a position to support the level of humanitarian assistance required of initiatives funded (directly or indirectly) by “Western” nations”²³⁶, they generally share this common interest of international values to provide human security for migrants. In the immigration field in South Africa, the different organisations do not have the same role. Their coordination is done in relation to different needs. Generally, they tried to influence the South African state to accept international values for protection of refugees and human rights, to implement them and to get authorisation to work in the South African territory to help migrants.

After the South African regime re-entered the international system, “in 1995 the South African government ratified the two major humanitarian instruments of the United Nations (the 1951 Convention and 1967 protocol) and subsequently the 1969 Organisation of African Unity Convention on the Rights of Refugees in Africa”²³⁷. This new legal interaction took place mainly because of influences by International Organisations (UN and OAU). Those conventions are now applicable in South Africa as is the SADC protocol on Facilitating of Movements of Persons. This

235 UNHCR Country Operation Plan, Country: South Africa, *Op. Cit.*, p. 5

236 Monson T., Igglesden V. & Polzer T., *Humanitarian Assistance to Internally Displaced Persons in South Africa: lessons learned following attacks on foreign nationals in May 2008*, *Op. Cit.*, p. 57

237 Sinclair M. R., “International Refugee Treaties and their Implications for the South African State”, *Southern African Perspectives*, No. 69, Centre for Southern African Studies, University of Western Cape, School of Government, 1998, p. 1

legal framework is added to the constitution (especially the Bill of Rights), the 2002 Immigration Act (amended in 2004), the 1998 Refugee Act, the labour law, the Child rights legislation and the Health care access legislation. This is what could be legally applied to or useful for African migrants. There are also other international conventions signed by South Africa which could be applied to the issue of African migration such as the ICCPR (International Covenant on Civil and Political Rights). But their application is not implemented as much when it comes to migration. Compared to the international legal protection of migrants, the South African internal laws such as the Immigration Act are “largely inconsistent”²³⁸. This is why “a range of international and local human rights organisations were vocal in their demands that international standards be adopted”²³⁹. International Organisations and NGOs put pressure on the South African state to adopt these policies. “International organisations such as Amnesty International and HRW have certainly influenced policy-making on rights and policing issues”²⁴⁰. Pressure has been directly enforced through the implementation of International Laws and through what was already called ‘soft diplomacy’. This can be done via recommendations in public speeches or reports.

As seen before, there could be a difference between legal framework and its application. In South Africa “progress has been achieved in a number of areas but long term policy vision and management capacity is still clearly lacking”²⁴¹. It seems that the South African state had an interest in signing the different international conventions on refugees and migration. It could be eager to develop policies for different reasons such as “international standing and kudos from the international community”²⁴² or that “South Africa is able to access the resources and expertise of the UN in the event of repatriation”²⁴³. But this does not mean that South Africa necessarily applies those policies. In a way, “a generous refugee policy counters the suggestion that South Africa is adopting an increasingly 'closed-door' policy towards the rest of Africa”²⁴⁴. The dysfunction in the South African system might not allow those policies to be applied. But on the other hand, it might be useful for the state to not apply them because of its conceptions of African migration. Therefore, the South African state can pretend to be willing to protect the international rights of African refugees and migrants but it could also ensure that it does not have the resources to directly apply those protections. The state can have a 'closed-door' application of the international laws and national policies because of its seeming lack of resources. As the UNHCR notices, “there is no government programme of specific assistance to asylum seekers and refugees”²⁴⁵ in South Africa.

238 Human Rights Watch, 'Keep your Head Down: Unprotected Migrants in South Africa', *Op. Cit.*, p. 45

239 Monson T., Igglesden V. & Polzer T., *Humanitarian Assistance to Internally Displaced Persons in South Africa: lessons learned following attacks on foreign nationals in May 2008*, *Op. Cit.*, p. 57

240 Interview with Aurélia Wa Kabwe-Segatti

241 *Ibid*

242 Sinclair M. R.? 'International Refugee Treaties and their implication for the South African state', *Op. Cit.*, p. 7

243 *Ibid.*, 13

244 *Ibid.*, p. 8

245 UNHCR Country Operation Plan, Country: South Africa, *Op. Cit.*, p. 2

If Human Rights organisations are to be considered as a “watchdog of South African migration policy”²⁴⁶, they can also be useful for the South African state. Even if “the sovereignty of individual states (such as South Africa) becomes (...) relative more than absolute”²⁴⁷ because of the implementation of international law into the internal legal system of the states, these states like South Africa have an interest in doing so. State loses sovereignty but gains assistance. IOs and NGOs, cover up for the lack of organisation in the South African state, even if they implement a system which is not clearly wanted by the South African government. They seek to implement a system which is compatible with international expectations of Human Rights protection, and thus try to influence the state in that way. These IO’s and NGO’s work directly with migrants for such implementation. They try to influence South Africa on its position on African migrants. But through this pressure, they work with the state as well and thus help it. As an example, the UNHCR “will be actively engaged in training the large numbers of newly recruited DHA personnel”²⁴⁸.

The South African state tries to deport the maximum amount of migrants, without legal protection²⁴⁹. The state does so either by deporting them itself (with no respect for Human Rights) or by letting IOs and NGOs organise voluntary ones. But they will process only some of them and respect of International Human Rights. This is the difference. In 2006, the UNHCR planned to “actively promote and organize the voluntary repatriation of refugees to selected countries (Angola, Rwanda, Sudan, Liberia and Sierra Leone) while facilitating individual safe return to other countries”²⁵⁰. The International Organisation for Migration also organises repatriations. However, in terms of respect for international law and Human Rights, it does so via a different process to the South African state. This serves the South African state well. During the xenophobic attacks of May 2008, NGOs and IOs were the first to provide material help to the victims²⁵¹. This was before the police and before other organs of the South African state was there for any kind of support.

The interaction between external actors and the state is complex. External actors try to influence the state in relation to international standards of human security. This also effectively helps the state to implement these laws. In a way, the South African state uses those organisations to create a good image of itself in the international system as well as to cover its lack of resources.

246 Interview with Aurélia Wa Kabwe-Segatti

247 Sinclair M. R.? 'International Refugee Treaties and their implication for the South African state', *Op. Cit.*, p. 6

248 UNHCR Country Operation Plan, Country: South Africa, *Op. Cit.*, p. 1

249 The Minister of Home Affairs wrote in a statement in 2002:

“Approximately 90% of foreign persons who are in RSA with fraudulent documents, i.e., either citizenship or migration documents, are involved in other crimes as well...it is quicker to charge these criminals for their false documentation and then to deport them than to pursue the long route in respect of the other crimes that are committed”.

In Landau L. B., 'The laws of (in)hospitality: Black Africans in South Africa', *Op. Cit.*, p. 13

250 *Ibid.*, p. 5

251 See the process of the humanitarian help in Kwazulu-Natal, Gauteng and Western Cape In Monson T., Igglesden V. & Polzer T., *Humanitarian Assistance to Internally Displaced Persons in South Africa: lessons learned following attacks on foreign nationals in May 2008*, *Op. Cit.*

Even if external actors do not have the same interest as the state (the attempt to protect African migrants while the South African state tries to reject them from its territory), they can help the state in some ways. And even if they pressurise the state to apply Human Rights standards, “they haven’t managed to prevent an exponential increase in the deportation policy (300 000 people for 3 years now), numerous and repeated HR abuses, a general spread of the xenophobic sentiment, and recourse to violence as seen in 2008. They haven’t managed either to develop channels of communication with Government in order to promote and implement a more progressive immigration policy”²⁵².

252 Interview with Aurélia Wa Kabwe-Segatti

Section 3 – The struggle of African migrants in the system

In the immigration system, if African migrants are considered as the actors which are the most directly concerned, this does not necessarily mean that they are the most active in terms of interactions and influence of other actors. There are many situations where they have to face a South African system which is not in their favour, as has been seen. But it is not only the state that poses a hindrance to integration for African migrants. The society of the host country is also limiting. Fortunately for them, the help given by external actors can be crucial in some ways despite some lacks. Therefore, they have to face the system and organise themselves. But their organisation is often limited to wanting only survival and is not enough to influence the South African state.

I/ African migrants facing the South African system and its society

In a public speech in 2004, Bertrand Ramcharan, Human Rights Commissioner of South Africa, declared that “refugees, asylum seekers, migrant workers, undocumented immigrants, and other so-called ‘non-citizens’ are being stigmatised and vilified for seeking a better life. They are made scapegoats for all kinds of social ills, subjected to harassment and abuses by political parties, the media, and society at large”²⁵³. As seen before, the South African state is xenophobic towards African migrants. But the difficulties that migrants have to face are not only from the state system. Xenophobia also exists inside the South African society. This is clearly demonstrated by the attacks of May 2008. Migrants are pushed out of society. The mayor of Johannesburg said in his State of the City in 2004, “while migrancy contributes to the rich tapestry of the cosmopolitan city, it also places a severe strain on employment level, housing and public services”²⁵⁴. Because of such considerations, because the South African state, government and other authorities consider them as a threat, “local authorities have reacted to foreign migrants either by denying their presence or by excluding them from developmental plans”²⁵⁵. This attitude does not only come from public authorities. A SAMP survey revealed that 87% of South Africans felt that the country was letting in too many foreigners²⁵⁶. “Moreover, just under 64% South African respondents in the 2003 Wits

253 Ramcharan, Bertrand, “Message of the Acting High Commissioner for Human Rights on the International Day for Elimination of Racial Discrimination” (Pretoria, 21 March 2004).

In Landau L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 7

254 Landau L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 6

255 *Ibid.*, p. 6

256 In *Ibid.*, p6

University survey found that immigrants were generally untrustworthy and a similar percentage (64,8%) thought it would be 'good' or 'very good' if most of the refugees and immigrants left the country²⁵⁷. While state organs consider African migrants as a threat, 48% of the South African population feel that foreigners were a criminal threat²⁵⁸. As Reitzes and Bam noticed from a study conducted in Winterveld, the integration of African migrants was better during apartheid. They were involved in political organisations and working legally. They were in the same position as the blacks of South Africa, which gave a few (even if very few) advantages in terms of integration. But since the end of Apartheid, African migrants are in different position. "The current South African debate on "illegal" immigration is heavily influenced by claims that immigrants have a negative impact on the South African economy and society more particularly, that immigrants consume resources to which South Africans are entitled, and are responsible for rising crime"²⁵⁹. African migrants are not welcomed in the country. South Africans have misconceptions about migrants. "While South Africans perceive that many immigrants are engaged in crime, our evidence does not confirm the accuracy of these perceptions. On the contrary, the insecure status of immigrants actually contributes to rising crime of which they are victims"²⁶⁰. Even if African migrants are involved in crime, they are probably less involved than what is perceived. The problem is to find true information about the proportion of migrants that are involved in crime. However, they are still soft targets for criminal activity.

Because a bad image of African migrants is promoted in South African society, these migrants have to face difficulties in very different parts of their interaction with society and the legal system. In their interaction with the state, there are mainly "four areas in which anti-immigrant sentiments are having significant practical consequences: accessing Department of Home Affairs buildings; acquiring adequate identity documents; securing financial services; and migrants' engagement with the state's coercive apparatus"²⁶¹. As has been seen before, the DHA is corrupt. Migrants have to pay extra money to have access to documents. The security guards "not only (...) regularly extract bribes just to allow entry, but (...) frequently resort to beatings and other violent means to keep people in line in both a figurative and literal sense"²⁶². When the asylum seekers wait for their demands to be processed (which takes more time than it should be according to a Wits

257 Cited in Segale, T., "Forced Migrants and social exclusion in Johannesburg", in L. B. Landau (ed.), *Forced Migrants in the new Johannesburg: Toward a local government response*, Johannesburg, Forced Migrations studies program, 2004

258 Crush, J. & Williams, V., "Criminal Tendencies: Immigrants and Illegality in South Africa", *Migration Policy Brief No. 10*, Cape Town, SAMP, 2003

259 Reitzes, M. & Bam, S., "Citizenship, Immigration and Identity in Winterveld, South Africa", *Op. Cit.*, p. 90

260 *Ibid.*, p. 93

261 Landau, L. B., "The Laws of (in)hospitality: Black Africans in South Africa", *Op. Cit.*, p. 7

262 *Ibid.*, p. 8

survey), they are not allowed to work or study²⁶³. It creates a “criminal class”²⁶⁴ because they have to break the law to survive, either by working illegally or by making fake identity documents. While they wait for their identity documents at the DHA, a single hand-written document is given to them: the 'Section 22'. The policemen are aware of this and use it to exploit their vulnerability. The situation also arises where incorrect IDs are given to migrants by the DHA, which contain mistakes such as incorrect names or birthdates²⁶⁵.

African migrants are in a position of social exclusion which means a “lack of entitlement to social-economic basic needs including employment in both informal and formal sectors, social services such as education, health care, equal protection by the police, and equality before the law”²⁶⁶. “Many (African migrants) with rights to social services are often denied access to critical social services”²⁶⁷. For example, despite the right for African migrants to enrol their children in school, a study in Johannesburg found that 70% of Somali refugee children of school-going age were not enrolled²⁶⁸. A national study of refugees and asylum seekers found that 17% of respondents had been denied emergency medical care²⁶⁹. “Whenever they go for medical consultation in public hospitals, the first question is 'Why did you come to South Africa and when are you going back home?’”²⁷⁰.

African migrants have difficulties finding work too. As an offence against the Human Rights Convention signed by South Africa, according to the HRW, it is a “violation of the Immigration Act (...) for an employer to hire a foreigner whose immigration status is illegal”²⁷¹. One could use the example of Congolese refugees, who often work as security guards. Now it is stipulated that the Security Officers Board (SOB) should register everybody who wants to work in the security guard industry. Congolese no longer have access to this registration (and therefore) go underground and either become registered through bribery or false SOB registration numbers”²⁷². “The lack of access to formal employment and the xenophobic attitudes of some South African civil servants including Home Affairs officials, police and city officials constrains Congolese refugees to work under conditions in which employers, both South Africans and well established refugees, and employees

263 Case in the Cape Town High Court, (*Watchenuka vs Minister of Home Affairs*, 2003 (1) SA 619 (C))

264 Landau, L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 9

265 Case of Congolese refugees in Durban

In Amisi, B., “An exploration of the Livelihood Strategies of Durban Congolese Refugees”, *Op. Cit.*, p. 34

266 *Ibid.*, p. 34

267 Landau, L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 9

268 Cited in Stone, L. and Winterstein, S., *A Right or a Privilege? Access to Basic Education for Refugee and Asylum Seeker Children in South Africa*. Pretoria: National Consortium of Refugee Affairs 2003

269 Belvedere, F., *et al. National Refugee Baseline Survey: Final Report*. Johannesburg: Community Agency for Social Enquiry (CASE), Japan International Cooperation, and United Nations High Commissioner for Refugees, 2003, p. 6

270 About Congolese refugees in Durban

In Amisi, B., “An exploration of the Livelihood Strategies of Durban Congolese Refugees”, *Op. Cit.*, p. 33

271 Human Rights Watch, “Keep your head down: Unprotected migrants in South Africa”, *Op. Cit.*, p. 55

272 Amisi, B., “An exploration of the Livelihood Strategies of Durban Congolese Refugees”, *Op. Cit.*, p. 32

disregard South African labour law in terms of contracts and working conditions”²⁷³.

The most difficult situation that African migrants in South Africa have to face is probably the violence that they have to go through. For the police, arresting an immigrant is a good opportunity. This is easy if one were to consider the quota of arrests they have to make. They usually do not acknowledge their documents or they destroy them on the spot. Immigrants are therefore “vulnerable to arbitrary arrests and detention”²⁷⁴. And because most South Africans see immigrants as a source of crime, they see it as good for the police to arrest some of them, thus showing their will to fight against crime. The HRW denounces the violence that African migrants have to suffer. This includes “extortion of money and other property from them by police, military, and immigration officials”²⁷⁵, “deportation without an opportunity to collect remuneration, savings, and personal belongings”²⁷⁶, “detention not in compliance with legal standards”²⁷⁷, “unlawful detention of children”²⁷⁸, “unlawful detention of those awaiting deportation with convicted prisoners and those awaiting trial”²⁷⁹.

The system that African migrants have to face does not encourage them to stay. But because they are “denied the opportunity to participate meaningfully in civil society and to engage positively with the state, they will increasingly devise strategies of avoiding or outwitting the state”²⁸⁰. For this reason, external help can be precious for them.

II/ A fortuitous assistance from the external actor

The external actor’s assistance to African migrants has been crucial for their integration in South Africa. However, because of its position in the system, help has not been always consistent. It has been directed primarily towards refugees and those in crisis situations.

Refugees have different expectations of the kind of help that they could receive. Their expectations “accord with their knowledge of the 1951 UN Convention² and the 1969 OAU Protocol of African Refugees”²⁸¹. If the example of Congolese refugees were to be used, “the

273 *Ibid.*, p. 39

274 Landau, L. B., “The Laws of (in)hospitality: Black Africans in South Africa”, *Op. Cit.*, p. 11

275 Human Rights Watch, “Keep your head down: Unprotected migrants in South Africa”, *Op. Cit.*, p. 60

276 *Ibid.*, p. 76

277 *Ibid.*, p. 69

278 *Ibid.*, p. 73

279 *Ibid.*, p. 74

280 Reitzes, M. & Bam, S., “Citizenship, Immigration and Identity in Winterveld, South Africa”, *Op. Cit.*, p. 98

281 Amisi, B., “An exploration of the Livelihood Strategies of Durban Congolese Refugees”, *Op. Cit.*, p. 31

aspirations and hopes of Congolese refugees vary according to an individual's age, marital status, and family size, level of education back home, previous occupation and standard of living. But these aspirations also are influenced by experiences back home where the UNHCR fully supported refugees from other countries and hence refugees expected the same level of assistance in South Africa²⁸². But the situation and the help given to African migrants could be different in South Africa, because of its system.

There are different types of organisations which complement external actors in South Africa. Their main objective is to support refugees. The major type of organisation is the service-provider NGOs and their funders, primarily the UNHCR, (...) the major funder of refugee-support activities²⁸³. As has been seen in the systemic approach, some IOs fund NGOs to do their field work. This also happens in South Africa. "The UNHCR interprets its role to be one of monitoring South Africa's implementation of the 1998 Refugee Act, assistance with the creation of an environment that integrates refugees into South Africa, temporary assistance to refugees, assistance to local government, and assistance with specific solutions such as voluntary repatriation"²⁸⁴. Because South Africa is a middle-income country, it can therefore provide its own support to refugees. The UNHCR focuses more on funding "local service providers"²⁸⁵. An example of this is Lawyers for Human Rights. It helps "individual refugees with their applications and other legal concerns"²⁸⁶. Twenty lawyers have been seconded into the Department of Home Affairs in order to speed up the processing of applications. Another NGO funded by the UNHCR is the National Consortium for Refugee Affairs. "It facilitates communication at a national level on refugee related concerns"²⁸⁷. The UNHCR also funds NGOs in each of the Refugee Reception Office found in major cities.

An additional category would be "refugee forums, networks and coordinating bodies which attempt to bring together all refugee communities in a city to address common concerns"²⁸⁸. They attempt to bring together all stakeholders to address refugee needs. But it seems that they have struggled to succeed.

The last category in the external actor would be refugee-run NGOs, political parties and churches. This is basically constituted by civil society in small organisations. They do not necessarily work for refugees. As an example, "in Johannesburg, one woman refugee has founded

282 *Ibid.*, p. 31

283 Amisi B. & Ballard R., "In the Absence of citizenship: Congolese refugee struggle and organisation in South Africa", *Op. Cit.*, p. 24

284 *Ibid.*, p. 24

285 *Ibid.*, p. 24

286 *Ibid.*, p. 24

287 *Ibid.*, p. 25

288 *Ibid.*, p. 24

an NGO to address women's concerns"²⁸⁹.

The work done by IOs and NGOs covers many spheres. They are active in many different domains. Since they focus mainly on refugees issues, they can also help African migrants. However, sometimes this does not seem like enough, considering all the difficulties that migrants have to face. They depend on civil society and volunteers for small organisations. While African migrants are confronted by xenophobia, civil society does not engage a lot in helping them. However, the situation does change when there is a crisis. This was the case during the attacks of May 2008.

During those attacks, the government had difficulty in managing the crisis because it was new and immense in terms of the number of displaced people. "UN agencies and NGOs played a significant role in responding to the disaster in South Africa"²⁹⁰. But in line with the system, they had to wait for state authorisation to be active. However, the help given by International Organisations and civil society has been crucial.

We can divide the humanitarian help into three phases. The first phase was emergency assistance. It consisted of the provision of shelter, including emergency research and planning as well as lobbying for safer places, provision of food and non-food items (for babies, clothes, tents, blankets, etc.), personal welfare with medical assistance and medical support, protection of the Internally Displaced Persons. Then the second phase called "camps and norms and standards"²⁹¹, had the objective of relocating the IDPs. It also continued to provide material and personal assistance to IDPs as well as security protection. It is in this phase that the South African state started to be active, particularly with regards to relocation of the IDPs. The phase centred on reintegration and camp closure. It consisted of lobbying for better conditions for IDPs, camp closure, continuing the material and personal assistance. The protection of IDPs during this phase also included assistance with legal documents for African migrants.

The UNHCR was "confined to playing an advisory and training role"²⁹² during this crisis. The UNHCR maintained its role in the system. It acted as an advisor, surveying the crisis and funding civil society organisations to do the field work. However, NGOs "were involved in both advisory and direct assistance roles"²⁹³. Their coordination and cooperation with different external actors has stayed the same. In general, they were involved in different roles such as planning and management (UN agencies helped to plan the facilities, with the management of camps and the

²⁸⁹ *Ibid.*, p. 29

²⁹⁰ Monson T., Igglesden V. & Polzer T., *Humanitarian Assistance to Internally Displaced Persons in South Africa: lessons learned following attacks on foreign nationals in May 2008*, *Op. Cit.*, p. 50

²⁹¹ *Ibid.*, p. 28

²⁹² *Ibid.*, p. 50

²⁹³ *Ibid.*, p. 50

process of reintegration and voluntary repatriations), training of government officials, technical expertise with disaster management structures, and practical services.

In this crisis, the government took a while to start being active. Its role can be highly criticised. However, in a paper on the 12th of September 2008, the Gauteng Provincial Government noted that it cost 20 million Rands to provide shelters, food and security to the IDPs²⁹⁴. The same paper noticed that “the government of the Republic of South Africa (does not) provide the same (services) to the poorest of South African citizens”²⁹⁵. The situation is complex for African migrants. The help they receive might not be enough. As Crush and McDonald noticed, local groups that represent migrants/refugees have made very little progress in their effort to combat xenophobia in the country”²⁹⁶. It is up to them to make themselves recognised as being part of the population living in the country.

III/ The importance of organisation for the purpose of survival, more than influence

As all migrants and immigrants do when in other countries, African migrants in South Africa first seek to meet people of their community or ethnic group of origin. In those communities, they organise themselves for survival. For example, there are about seventeen different Congolese groups in Durban and eleven in Cape Town²⁹⁷. This reflects home base communities. They stay in their groups in order to support each other through the struggle that they face in South Africa²⁹⁸. These organisations have different purposes. The main one is to provide help to other members and to new arrivals. They meet irregularly. Everybody has to donate a bit of money at meetings. The money collected is used for collective expenses such as funerals or to welcome newcomers²⁹⁹. “In

294 Cited in *Ibid.*, p. 50

295 *Ibid.*, p. 50

296 Crush J. & McDonald D. A., “Transnationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Canadian Journal of African Studies*, Vol. 34 No 1, Canadian Association of African Studies, 2000, p. 13

297 Amisi B. & Ballard R., “In the Absence of citizenship: Congolese refugee struggle and organisation in South Africa”, *Op. Cit.*, p. 8

298 As an example, from an interview of a Congolese immigrant:

“In Maputo, an Anglican priest told me that life is very difficult and dangerous in South Africa. When I insisted that I must come to South Africa, the priest gave US\$50. I paid my guide to help me cross the Mozambique-South African borders. On our way, my guide found 11 single guys each on them paying US\$45. When the taxi stopped in Durban, the driver called a gentleman and told him he had foreigners who wanted to see their friends and relatives. We all jumped out and wanted to talk to the man. He divided us into five groups according to nationalities. Then he asked to the two Congolese, myself included, our provinces of origin and tribes. Suddenly, I saw someone from Uvira and who belongs to Bashi tribe. He was so surprised to see me there and took me to their flat. I spent three months there with free meals and accommodation”. (Respondent No.7, September 27, 2002)

In Amisi B., “An exploration of the Livelihood Strategies of Durban Congolese Refugees”, *Op. Cit.*, p. 25

299 One could notice the difference of African communities and Bangladeshi ones with a patronage relation to new arrivals. African communities work more on a communal basis.

fact social networks play a crucial role in Congolese refugees' lives and constitute a reaction to the social exclusion they face in Durban"³⁰⁰. Those groups already existed in Congo as a type of decentralisation or organisation by the colonial power. This is exactly the type of interaction that migrants could face in a system, in order to ensure their survival or fight against a lack of integration. But those communities also deal with issues of cultural identity and security. In the case of Congolese refugees, most of them wish to return to DRC and do not seek to settle in South Africa³⁰¹. It is why they try to protect their cultural identity for the sake of themselves and for their children. These types of organisation between African migrants occur everywhere in South Africa and in all the different communities. But communities don't mix. They are composed of migrants from the same ethnic group or origin. Even if those organisations work on the same basis as political parties do, they are not political. African migrants often consider it to be more important to keep their culture than to influence policies and their situation in the host country³⁰². The purpose of such organisations is survival. It is one way to recreate a home community.

If the African migrants want to influence the South African state and its immigration policies, their survival organisations are not enough. Either they can use those organisations and develop them in a political way or they could create new ones, such as political parties or associations in order to be heard politically. This is a process that does not develop as much as it should. To follow the case of Congolese migrants, there is no political organisation amongst Congolese refugees. They have built some kind of political parties, but they are only concerned with the political situation in Congo or DRC. Since they preferred to organise themselves for cultural reasons, they prefer that their political organisations work on situations of their home country, instead of focussing on fighting for their interests in South Africa. In a survey done in Winterveld about migrants in the region, one South African respondent said: immigrants are the cause of their own predicament and can blame no one, but must learn to stand up and fight for their rights"³⁰³. It is exactly this question which needs to be answered. Do African migrants then fight for their rights? In other words, do African migrants try to influence South African state policies in order to have human rights apply to them too? It seems like this should be the only solution.

There are only a few political organisations created by African migrants. Lispky stated that

300 *Ibid.*, p. 26

301 From a sample of Congolese refugees in Durban

In Amisi B. & Ballard R., "In the Absence of citizenship: Congolese refugee struggle and organisation in South Africa", *Op. Cit.*, p. 10

302 *Ibid.*, p. 12

303 Reitzes M. & Bam S., "Citizenship, Immigration and Identity in Winterveld, South Africa", *Op. Cit.*, p. 88

protests need organisation in order to succeed. But African migrants' protests lack organisation. Despite this, they did manage to create some types of organisation for protesting and thus tried to influence the South African state. Since the Congolese are particularly interested in the political situation in DRC, they protested just before a meeting organised by the UNHCR on the World refugee day, against Rwandan aggression in the DRC. "It ended at the city hall (in Durban central) where a statement was read out. No press were there to hear it"³⁰⁴. If the press does not give a stronger attention to the protest, it has a lesser chance of success, as Lipsky states. But some protests were directly linked to the African migrants' situation in South Africa, which were against services in South Africa and local NGOs. For example, one in Durban was about the badly distributed funds of the UHNCR by the Durban Refugee Forum, in April 2000. "Episodes such as these are interesting as they represent at once the willingness of refugees to take to the streets and the complicated political identities they wish to express"³⁰⁵. Another example would be when Ethiopian asylum seekers supported by the Ethiopian Community Committee, marched to the Union Buildings in Pretoria to appeal for refugee status³⁰⁶. African migrants also protested against xenophobia. In 2002, a refugee was killed for his cell phone in Durban. Other refugees and migrants decided to march in front of parliament before the funeral. This march is interesting in the way that the idea came from Congolese refugees but was supported by other migrants. Sometimes, the communities will open and understand that they can work on a common interest. A major part of the protests are directly against the Department of Home Affairs. Most of them were planned and therefore organised. But in some cases, "it was suggested (by African migrants) that an absence of marching resulted from an absence of organisation rather than general satisfaction amongst refugees with their conditions"³⁰⁷. The lack of organisation and resources is a very important limitation to the potential influence that African migrants could have on the South African state. Some would like to protest, but they are held back by fear. "The National Consortium for Refugee Affairs confirmed that those who have taken action have, at times, been victimised"³⁰⁸. Their fears and the violence used against them can give strength to the protest as Lipsky noticed. But it remains as a limit, particularly because the press does not report the protests of African migrants. So far, African migrants have not succeeded in being heard and influenced by the South African state. If external actors' help is crucial for their survival, some could say that "without strong regional or international pressure it is unlikely that (legal or illegal) immigrants influence will counter-balance the prevalent 'democratic xenophobia' that represents a broad based constituency for most South

304 Amisi B. & Ballard R., "In the Absence of citizenship: Congolese refugee struggle and organisation in South Africa", *Op. Cit.*, p. 8

305 *Ibid.*, p. 4

306 More detailed in Klotz A., "Migration after Apartheid: Deracialising South Africa foreign policy", *Op. Cit.*, p. 842

307 Amisi B. & Ballard R., "In the Absence of citizenship: Congolese refugee struggle and organisation in South Africa", *Op. Cit.*, p. 8

308 *Ibid.*, p. 7

African politicians”³⁰⁹.

There is another way for African migrants to influence the South African state. This could be through the legal system, via legal claims at different courts throughout the country. Some have been successful. “For example, the court (supreme court) ruled in 2004 that the provisions of the Social Assistance Act, 1992 (No.59 of 1992) that reserved social assistance benefits for only South African citizens were unconstitutional and had to be extended to permanent residents but not to “illegal foreigners” and temporary residents”³¹⁰. This case is interesting in terms of influence because the principles of the court were followed by the Social Assistance Act in 2004. As another example, the Supreme Court considered that the procedures for asylum seekers were unconstitutional because the only document they had did not provide any security against detention or arbitrary deportation, while they were waiting for their application to be processed³¹¹. But this way of influence helps the individual. It does not work on a mass basis. Even if the above examples became authoritative precedents or changed the policies, they are rare. And the opportunities for African migrants to present themselves in court are few. They do not have the resources. As already seen, they could be deported before they have a chance to go to court. And this process does not secure their chances of staying in the country. Even if the Supreme Court considered the procedures for asylum seekers as unconstitutional, asylum seekers are still not allowed to study or work while they wait for their permit. The possibilities for African migrants to influence the South African state are few and even less frequently used because of a lack of resources and organisation. Maybe it is also because African migrants do not appreciate the importance and benefits of regrouping themselves for the sake of power. Because they can almost only rely on themselves, their organisation for the purpose of their survival is crucial.

309 Klotz A., “Migration after Apartheid: Deracialising South Africa foreign policy”, *Op. Cit.*, p. 842

310 Human Rights Watch, “Keep your head down: Unprotected migrants in South Africa”, *Op. Cit.*, p. 37

Constitutional Court of South Africa, Louis Khosa v. Minister of Social Development, Case CCT 12/03 and Saleta Mahlaule v. Minister of Social Development, Case CCT 13/03 (henceforth referred to as Khosa v. Minister of Social Development).

311 Noticed by Amnesty International

In Amnesty International, Country report 2007, www.amnestyinternational.fr

CONCLUSION

Some transnational studies³¹² on migration in South Africa focus on different units of analysis with regards to migrants. As Crush and McDonald understood, “in many analyses, it appears to be nothing more than a vague descriptive shorthand for an ethnic or spatial agglomeration of immigrants (“immigrant communities”), the source area from which migrants originate (“home communities”), and the bundle of transnational activities and flows that link the two (“transnational communities”)”³¹³. Because of this assumption, they consider that studies of trans-nationalism should focus on different units of analysis, especially in the case of South Africa. “Communities are what migrants (not researchers) make of them”³¹⁴. Therefore they prefer to focus on two alternative concepts at an analytical level: 'the transnational household' and 'transnational migrant spaces’³¹⁵. Using such a unit of analysis completely changes the focus and results of research on migration. With such studies, it seems logical that they would explain the reasons for migration, the every-day life of migrants and their expectations. The researches on trans-nationalism are able to compare different origins and different migrants. They prefer to speak about migrants’ spaces more than migrant communities. It is a fact that communities often get separated during the migration process. In South Africa, there exist settlements or townships where immigrants live together, despite the fact that they come from different communities. Although it has been seen that migrants seek to regroup themselves in keeping with their communities, one could also observe that they live in spaces that are not necessarily regrouped by communities. Such studies on trans-nationalism are interesting in order to understand the interaction between migrants and local populations in some areas. But their focus is narrow when looking at migration in South Africa from a broader perspective.

Such analyses bring about interesting questions or can alternatively offer solutions. This thesis saw African migrants as a group. Because some of the expectations as well as the conditions that they share are the same, they could have been considered as a group, a unit, an actor, in the systemic approach. As it has been seen, all migrants interact with the South African state in the same way: they suffer because of the same system, and most of them (according to their economic or political migrant status) received the same kind of help by external actors. The systemic approach permitted not only the observation of actors as a whole, but also of interaction within the actors

312 Meyers would have considered such studies in the 'National Identity' category because of their focus on identities to follow the distinction made in the introduction.

313 Crush J. & McDonald D. A., “Trans-nationalism, African immigration and new migrant spaces in South Africa: an introduction”, *Op. Cit.*, p. 14

314 *Ibid.*, p. 14

315 *Ibid.*, p. 15

themselves. In these parts, organisational issues were able to be understood. This is where the study of trans-nationalism could be included. It could explain the lack of African migrants' organisation. If they live in new spaces with other migrants and local populations, they could interact as a group, and become organised in order to defend their rights. But it seems that African migrants do not follow this path. Since South African society is fragmented, African migrants are too. When Lipsky considered that a protest had to be organised in order to influence, it seems that African migrants are not organised enough to be able influence the South African state. Such studies of trans-nationalism can explain sub-systemic interactions within African migrants.

If African migrants do not become organised for purposes other than survival, if they do not seek to influence the South African state, it is also because they are proper migrants and not immigrants. Despite the increasing number of refugees and asylum seekers in South Africa, most of the migrants are coming for work or business purposes, when it is not about shopping or visiting family and friends³¹⁶. Half of the migrants from Zimbabwe, Lesotho and Mozambique consider that people should be able to cross freely the borders as a "basic human right"³¹⁷. African migrants are against state control on immigration. If South Africa considers the free movement of population as a high risk, African migrants do not want to stay in South Africa³¹⁸. So if they would like to be able to move freely in Africa or to come freely to South Africa, it is with no intention to stay. So there are African migrants coming to South Africa every year, but there are also migrants leaving South Africa at the same time. This does not take into consideration those that are deported by South African authorities.

As already seen, the South African state considers African migrants as a threat, and is fearful of them. But after knowing why African migrants enter the country and for how long they stay, it seems that this fear is unjustified. The state has created a lot of resources to control borders and to expel African migrants. It seems that the money which is spent is pointless. But if African migrants choose to not stay in South Africa, it could be because of the reaction that they receive from the state. Because they are considered as a threat, they might not want to stay. The causality between state policies on immigration and African migrants' intention of not staying cannot be demonstrated. As it has been seen, the state created a system which is completely against African migrants entering South Africa. Is it for this reason that migrants do not want to settle in South Africa? There is no clear answer to this question. But it seems that the choices of African migrants

316 See McDonald D. A., Zinyama L., Gay J., de Vletter F. & Mattes R., "Guess who's coming for dinner: Migration from Lesotho, Mozambique and Zimbabwe to South Africa", *Op. Cit.*, p. 823

317 *Ibid.*, p. 830

318 61% of migrants from Lesotho Mozambique and Zimbabwe do not want at all to leave in South Africa permanently.
Ibid., p. 834

are not influenced by state policies. From the different studies done on African migrants, it has previously been illustrated that they seek to regroup themselves amongst their own community. Even when living in South Africa, they prefer to maintain the same way of life that they live in their country of origin. Therefore, it seems natural for African migrants to not want to settle in South Africa. They come for political reasons when their country of origin is unstable. But as has been seen with the example of the Congolese, African migrants also protest in South Africa about the situation in their own home country. They seem more concerned about the political situation in their country than by their own situation in South Africa and all the difficulties they have to face. In a way, they are waiting for the opportunity to go back home. After the attacks of May 2008, some migrants, including refugees recognised by the UNHCR, did go back home. They considered that they would prefer to face the political instability such as wars or conflicts in their home country rather than staying in danger in South Africa. They were not in a safer position in South Africa. If South Africa accepts to receive refugees from the rest of Africa, it also has a commitment to fulfil this engagement right until the end. But this is not the case, as it does not offer a safe place for refugees. In a way, they return because of this or they try to go somewhere else. Some African migrants also come for economic reasons. In such cases, they come for a short period to find a job, get money that they send back home, and then return to their home country. Some come temporarily only for business reasons, where they sell goods or other products. As informal trading is highly developed in Africa, in some way, they contribute to the economic trade between African countries. But they do not necessarily leave the country because state policies force them to.

Even if it is clear that the South African state creates a system which does not encourage migrants and immigrants to enter, it is unclear whether this system had such an important impact compared to the resources invested on migrations. Would there have been more migrants entering without such policies? It seems that this question cannot be answered at the moment. But what is sure is that South Africa has spent many unnecessary resources on immigration control. It does not seem in its interest when this country has one of the world's biggest economic inequalities in its population. Therefore, there must be another reason for the state to act this way. Despite the external actors' influence, the South African state needs to define its own identity, it needs to define a nation to ensure a united population. South Africa seeks homogeneity by including very different populations, colours and cultures, who at one time fought against each other. Judging from the state's reactions, it seems like the only thing that South Africans have in common is their nationality. This is also what differentiates them from foreigners. Thus one could say that South Africa uses foreigners to define its identity. The government and the ANC use foreigners to resolve internal issues such as crime when "immigrants have made a considerable contribution to the South

African economy”³¹⁹. Even though South Africa is a rich country in terms of natural resources and cultural diversity, the ANC could find a better solution to unify the South African population. But South African citizens continue to vote for this party, giving it a large majority. The fact that they continue to vote for this party is due to the fact that the ANC 'liberated' the country, being the major and most organised combatant against the apartheid regime. But this party does not seem to act for the South African population's interest and even not for the country's interest when it comes to immigration.

An important issue in systemic approaches is the stability of systems. Studies in international relations define a system according to its structure. But this does not seem necessary in this study. The question is not about knowing whether one, two, or more of the actors rule the system. The system built in the first chapter can be an adequate model for analysing immigration issues. In applying it to South Africa's case, a clear understanding of the role of the different actors, their organisation, and how they could influence can be seen. The systemic approach could also include different types of studies in different parts of its application. As an example, domestic studies can be part of the systemic approach in the understanding of the state/actor organisation. One consideration could be added, the system built in the first part had been constituted with the example of modern states. There is a clear difference in the way states can control immigration between modern states and developing states. But the systemic approach is an analytic tool. Therefore, when applying a system, such differences could have been considered in the vertical approach of the state/actor.

In the immigration system, despite an influence of external actors, the state remains the main actor. Since it is a political issue, the state controls the system at different levels. For example, it decides whether it wants to interact with external actors, even if such interactions become more and more common in the world system. If changes occur, it will mainly be because of the state. External actors seek to influence it, but cannot directly decide on the immigration issue.

Because the South African state still considers African migrants as a threat, it seems that their situation will remain the same. The system will thus remain stable. Laws, policies and external help might change but interactions in the system might not. The model built at the end of the first chapter can be seen as correct and stable for many cases of immigration. Therefore, the conceptions of Rosenau gave the opportunity to build and apply this system. If Rosenau explained how to use systemic approaches to different studies, this thesis applied his conceptions to the issue of immigration. As a result, the test seems successful. Using Rosenau's approach gave the opportunity to understand better immigration issues and the case of South Africa. If such conceptions can be so

319 Reitzes M. & Bam S., “Citizenship, Immigration and Identity in Winterveld, South Africa”, *Op. Cit.*, p. 92

useful, they probably should be used in other studies. Also, if the systemic approach explains well the phenomenon of immigration in South Africa, the system built could be applied to other cases for academic purposes.

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