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The Frontiers of Universal Citizenship
Transnational Social Spaces and the
Legal Status of Migrants in Ecuador

Manuel Góngora-Mera, Gioconda Herrera
and Conrad Müller



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The Frontiers of Universal Citizenship

Transnational Social Spaces and the Legal Status of Migrants in Ecuador

Manuel Góngora-Mera, Gioconda Herrera and Conrad Müller

Abstract

The legal status and living conditions of migrants in host countries reflect contemporary forms of inequality arising from the uneven distribution of wealth and power among states. Over the past decades, the transnational social impacts of global movements of people have raised concerns about the appropriateness of the premise of self-contained nation-states, which have led some authors and social actors to reevaluate the notion of nation-based citizenship and to consider alternative conceptions that fit better to the changing complexities of international migration. In 2008, a constitutional amendment in Ecuador introduced the concept of universal citizenship, granting citizens' rights independently of national affiliation. This provides a valuable case study for the exploration of the real implications of a de-nationalized citizenship when adopted under the current international framework, and particularly for understanding the way normative orders and migration policies in transnational social spaces are interconnected. This article examines the way in which the rights of both emigrants and immigrants are included in the Ecuadorian Constitution and analyzes three cases that reflect the kind of interdependent limitations and constraints that Ecuador faces for its migration policy choices and constitutional rules on universal citizenship, including its unintended consequences.

Keywords: universal citizenship | transnational social spaces | international migration

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1. Introduction

As Andrew Linklater has convincingly claimed, “[t]he nation-state is one of the few bastions of exclusion which has not had its rights and claims against the rest of the world seriously questioned” (Linklater 1992: 93). In the current international state system, it is a matter of course that the state grants its citizens several rights and privileges that are not available to noncitizens. No matter how democratic or oppressive, virtually all states justify denial of rights to noncitizens, even long-term residents. During the state-building process in the Westphalian era, the notion of citizenship was adopted as the quintessence of the equality that the individual shall enjoy before the law as member in a polity, thus citizenship emerged as a major legal determinant of social inclusion. However, considering that this notion was strongly tied to the ideal of the self-contained nation-state, it became subsumed into the category of “nationality” (Stolcke 2000), providing states with a naturalized tool of legitimated exclusion, which placed non-nationals apart from the polity.

Much of the 20th century’s history can be understood differently by restoring this paradoxical nature of nation-based citizenship to the foreground: from the effects of homogenization policies to form national units (which constructed the cultural and racial distinctions between insiders and outsiders), in totalitarian nationalist projects (such as Nazi Germany, Fascist Italy, or Stalin’s USSR), and in the tensions between the forces which encouraged, and the forces which resisted, interwoven systems of national-citizenship exclusion (e.g. the numerous social movements that have resisted the social or political exclusion of classes, women, racial minorities, ethnic communities, homosexuals and foreigners). Such entangled forms of exclusion within the nation-state are part of a more complex braid among states. As Korzeniewicz (2011: 26-28) explains, due to global social stratification, international migration represents a strategy of upward mobility as it holds the promise of providing quick access to at least the relatively higher average income of even the poorer segments of a much richer country; by the same token, restricting international migration enhances inequality between countries. Such restrictions (that often follow post-colonial patterns, cf. Boatcă 2011) produce a global divide between people who are granted mobility rights and people who are not,¹ and characterize, to a great extent, interdependent inequalities between sending, transit and receiving countries. That is, the unequal distribution of mobility rights along the traveling continuum connects the unequal distribution of resources and opportunities in the countries of origin with social stratifications based on the national

1 For instance, Steffen Mau demonstrated on the basis of empirical data on visa regulations that mobility rights in liberal states are distributed highly unequally, favoring citizens from rich countries (cf. Mau 2010).

origin (nation-based citizenship) and the migratory status in destination countries. In other words, the legal status and living conditions of migrants in countries of destination reflect contemporary forms of inequality arising from the uneven distribution of wealth and power among states and world regions.

Over the past decades, the transnational social impacts of global movements of people have raised concerns about the appropriateness of the premise of self-contained nation-states, which have led some authors and social actors to reevaluate the notion of citizenship and to consider alternative conceptions that fit better to the changing complexities of international migration and multicultural societies. Yet governments of major receiving countries have remained quite reluctant to extend the rights of citizenship to non-nationals, in part as greater inclusion of non-nationals would clash with powerful interest groups that concentrate resources and opportunities and that benefit from the subordination and precariousness of migrants. Moreover, as a direct impact of the 9/11 attacks in international migration, several governments throughout the world (even in major emigration countries) rapidly moved toward tightened migration policies and border controls (including the intensification of surveillance practices and the shameful proliferation or enhancement of walls, such as in the West Bank, Ceuta or along the U.S.-Mexican border), accelerating a global trend that was already in place and has been characterized appropriately as the “securitization of migration” (Huysmans 2000).

Notwithstanding these developments, a human rights perspective seems to be spreading in other parts of the world. Since the 2000s, some Latin American states have supported a human rights approach to migration policies reflected in new legislation, such as the Argentine Immigration Law N° 25,871 and the Mexican Migratory Act of May 25th 2011, or at the regional level, such as the statement that came out of the 2006 South American Conference on Migrations or the 2010 Andean Plan of Migration. Over that period, Ecuador also followed this approach in its negotiations at the international level. From 2007 on, with the advent of President Correa’s administration, Ecuador launched a radically new migration policy: one that not only emphasized a human rights perspective in the protection of its migrant population but that sought to transcend the nation-state based meanings of citizenship. This was in part a reaction to the simultaneous mass emigration and immigration that occurred in that period. Indeed, at the end of the 1990s, Ecuador underwent an acute economic and political crisis that ended up in an exodus of more than one and a half million people. Later on, in the first half of the 2000s, the country experienced a massive immigration of Colombians, mainly due to the escalation of the Colombian armed conflict, and the

impact of the Plan Colombia² in Colombian-Ecuadorian border areas. The phenomena of mass emigration and immigration raised the possibility to interrogate the conception of citizenship as nationality and to create a moral consciousness or a sense of legal obligation to protect nationals beyond the borders of the nation-state and to reduce the domestic socio-political significance of the category of “foreigner” by disentangling the concept of citizenship from the national territory. The new Constitution, approved by public referendum in September 2008, adopted a groundbreaking approach to human mobility in clear divergence from the global trends of the securitization of migration and also from former Ecuadorian constitutions that were drafted with a restrictive view on migration.³ The 2008 Constitution devotes a whole section to human mobility, as part of Title II, Chapter 3 (on the rights of individuals and groups with priority attention) and introduces the notion of universal citizenship that is to replace the nation-based conception of citizenship (confined to the national territory). Universal citizenship was part of a series of other principles such as free circulation, the right to choose not to migrate, and the protection of migrants’ rights and dignity. In accordance with these constitutional principles, the Ecuadorian state has carried out a very active transnational policy towards the Ecuadorian diaspora, and has had an active in promoting such policy on the international stage. However, the state has taken a more conservative stance with respect to its immigrant population.

Different aspects of this policy have been examined. Previous studies have focused on understanding why the Ecuadorian state launched such a policy that went beyond conventional understandings of citizenship (Koller 2009, Margheritis 2011), its paradoxes (Margheritis 2011; Ramirez 2013), and its political consequences for migrants’ citizenship and the national sense of belonging (Boccagni 2011; Boccagni and Ramirez 2013). While all of these works acknowledge the desire to enhance Ecuador’s international profile in regional and multilateral arenas, most of them emphasize the role of domestic politics and Ecuadorian national belonging. For instance, Margheritis (2011) argues that state-led transnational policies served mainly to furnish Correa’s movement both

2 Plan Colombia is a U.S. counter-narcotics program that grants financial and military aid for the Colombian armed forces and police, providing them with helicopters and supplies for illegal crops eradication through aerial fumigation as well as other equipping, training and intelligence assistance. The program was established in 1998, simultaneously to the peace negotiations with the guerrillas. Since the beginning of aerial spraying of glyphosate (a Monsanto herbicide) in the South of Colombia, residents of the fumigated areas have presented numerous complaints about adverse health effects, damages of legal crops, and contamination of water and eco-systems. For more details, see: Kurz and Muno (2005) and Rincón-Ruiza and Kallis (2013).

3 For instance, in both the 1978 and 1998 Constitutions, provisions on migration were placed in the traditional sections on nationality and foreigners, establishing the equality of rights for foreigners (Art. 14 of the 1978 Constitution and Art. 13 of the 1998 Constitution), with exception of the political rights and certain restrictions to the right of property (Art. 18 of the 1978 Constitution and Art. 15 of the 1998 Constitution); additionally, Article 15 of the 1978 Constitution provided for selective immigration.

in Ecuador and abroad with a political identity, “provid[ing] the resources through which emergent political forces, brought to power by precarious electoral coalitions, may acquire identity and reach out to diverse constituencies” (2011: 214). Ramirez (2013) explains the juxtaposition of human rights-oriented policies with more restrictive ones in terms of the institutional political culture and the enduring security-based outlook within the state, which is the legacy of more than 70 years of immigration control policies. He calls for a local historical understanding of this paradoxical implementation. Keller (2009) argues that the state sought to reinforce its political legitimacy through active communication campaigns on migrant rights within the country and abroad. Boccagni and Ramirez (2013), while analyzing electoral participation abroad, found that participation responds to a conventional sense of Ecuadorian national belonging rather than to the construction of a new kind of democratic transnational political participation. In sum, these analyses support the view that the contingencies of state-led transnational policies as well as the inconsistencies of immigration and emigration policies ought to be analyzed within the domain of national and political transformation.

This article examines the way in which the rights of both emigrants and immigrants are included in the Ecuadorian Constitution as well as the various policies reflecting this new approach toward migration and citizenship, including the unintended consequences of such policies. In contrast to other works, it focuses on Ecuador’s asymmetrical interdependencies within the global arena in order to explain constraints to the implementation of universal citizenship. First, we look at some conceptual debates in the literature surrounding the relation between citizenship and migration that raised proposals for alternative configurations of citizenship disentangled from the nation-state. Then we examine the constitutional incorporation of universal citizenship in Ecuador in 2008. Finally, we analyze three cases that reflect the kind of interdependent limitations and constraints that Ecuador faces for its migration policy choices and constitutional rules on universal citizenship.

2. Migration and Citizenship in Transnational Social Spaces

Territory is a spatial category constituted through the perception of the subjects interacting with it and therefore is also a socio-political construct. The idea of the nation-state, which became the dominant form of political organization in the international system, presumes the coincidence of nation, polity and territory. Even if the idea of territorial space as the container of society is a problematic construction, it remains a very convenient tool for analyzing processes of economic, social, cultural or political globalization. The historical achievement of the nation-state can be seen as an exceptionally successful device for constructing space through the definition of

unambiguous affiliations and ties (Weiss 2005: 710ff). Indeed, if the purpose of politics is the exclusionary production of generally binding decisions (“sovereignty”), then the geographical scope of these decisions (“jurisdiction”) becomes a relevant question (Schroer 2006: 186). In this regard, the nation-state can offer a convincing solution with its notional triad: a legal order operating within clearly demarcated borders (the national territory) and with its strict rules of affiliation (a homogenous national identity). This leads to an image of the nation-state as a political community in which territoriality (border), sovereignty (order) and national citizenship (identity) are fused together (Vertovec 2004). Social sciences in general – and migration research in particular – frequently adopt this conception of space, perceiving the nation-state as the obvious container of society and consequently the given unit of analysis.

Nevertheless, the perception of space as a derivative of the territorial sovereignty of a nation-state tends to blur and obscure the investigation of social processes within these political communities rather than providing a sensible analytical framework for them. The combination of the idea of container space, the concept of states as fixed and sovereign units of space, and the dichotomy of inner and foreign affairs constitute the so-called territorial trap (Agnew 1994). Falling into this trap leads to an ahistorical view of the territorial state as a permanent feature of any given polity and its conceptual equalization with the nation. From such a perspective, the formation of political identities and affiliations can only occur through dissociation from and depreciation of the other by means of a territorial, national border. In the field of migration studies, models of container space have often led to a reduction of the complex phenomenon of border-crossing mobility to merely emigration and immigration (i.e. the departure from one and the arrival to another social container as unidirectional relocation).

A relational approach to space offers a path beyond methodological nationalism in migration research (Pries 1997; Glick Schiller 2007). Social constructivist conceptions share a relational view on space being constituted through the interactions of subjects and thus remaining dynamic. Accordingly, space is a social object that gives shape to the relations between individuals and groups (Tarrius 2000: 44). Undoubtedly, space has to be construed without neglecting the role of state actors and the national legal order in the shaping of such processes; but beyond territorial space there are a number of spatially manifested social and historically evolved institutions that do not enclose society but rather arise from and structure it (Löw 2008: 206).

From a relational approach on space that does not view state territory as a container of society, we can observe the emergence of new configurations of citizenship disentangled from nationality, as well as political practices whose objects, operating modes or effects

involve the territories of several states. Such configurations are related with several trends in international migration that challenge the nation-state entanglements of orders, borders, and identities, including: the intensification, expansion, and differentiation of links between migrants and people (as well as institutions) in their countries of origin through modern technologies; the effects that the strengthened connection between the societies of origin and residence produces beyond their own circles and families; the rising amounts of remittances inducing a qualitative change when the well-being of entire economies depend upon them and new economic branches sprout from them; a more frequent and more institutionalized political involvement of migrants in their countries of origin, as well as increasingly significant and common government initiatives directed at their populations residing abroad, ranging from political rights concerning financial incentives and support to on-site attention, voting, counsel and other services. These recent developments in international migration have caught the attention of many migration researchers and prompted them to coin the term of transnationalism (Vertovec 2010: 14f).

An analysis of these transnational phenomena can benefit significantly from a research perspective that is sensitive to their socio-spatial underpinnings. The question of social spaces and how they are construed is a fundamental one for a number of subjects to which a transnational perspective has convincingly been applied: the emergence of new political practices (Schütze 2007; Pries 2010; Pedroza 2013), interdependent social inequalities (Weiss 2005), the evolution of the nation-state in the era of globalizations and regionalizations (Schroer 2006), the conformation of global care chains⁴ (Hochschild 2000; Skornia 2013) and of transnational networks of individuals or families (Herrera 2011) as well as the rise of alternative configurations of citizenship (Agnew 1994; Fijalkowski 1997).

2.1. Transnational Social Space as Analytical Category in Migration Research

Trans-border economic, social and political processes in the current era of globalization have triggered the emancipation of social space from territorial space. Such dissociation entails the stacking up of multiple social spaces in one single place as well as the expansion of single social spaces across several territorially separate places (Pries 1997: 17). In particular, the mingling of citizens with different national affiliations, as well as the differentiation between universal human rights and the privileges of welfare-state membership bound to nationality, drive the emergence of separate social spaces within one territory (Fijalkowski 1997: 349). As a result, the nation-state has the potential to

4 “Global care chains [are defined as] a series of personal links between people across the globe based on the paid or unpaid work of caring.” Hochschild 2000: 131.

lose at least some of its analytical relevance as a framework for economic, social and political processes. This phenomenon often leads to the erroneous conclusion that the nation-state, space or the political vanish altogether (Schroer 2006). However, this belief disregards the dynamic characteristics of social spaces, which by no means depend on the existence of a rigid framework such as the nation-state but rather continuously adapt to the changing interactions and behavioral patterns of their subjects.

The emancipation argument stands in contrast to the common perception of globalization processes according to which space loses its significance in times of ever-cheaper technologies of mass transportation and communication (Schroer 2006: 187; Pries 2008: 77ff). A more accurate assessment points to partially contradicting processes of dissolving socio-spatial borders and their reconfiguration and consolidation in different places, independently of territory (Tarrius 2000: 39f; Schroer 2006: 187f;). In the process, new demarcations are being drawn within as well as beyond the territory of the nation-state (Dirlik 2010: 1). These dynamic processes of formation and reproduction of social spaces are profoundly linked to international migration. In particular, transnational practices and phenomena gain prominence for many migrants (Vertovec 2010: 13ff). Consequently, the perception of individual migratory projects moves from unique, unidirectional changes of residency to preliminary steps that are part of long-term strategies of mobility within vast social networks that encompass territories of multiple nation-states (see Pries 1997: 35; Herrera 2007).

When continuous social and geographical border crossings of many social actors represent a basic element of their life strategy rather than a single biographical event, social borders realign and a transnational social space emerges. It connects localities of origin and residence and yet adds up to more than the sum of two national territories since it represents an interdependent space for the operation of economic, cultural, and political capital. In transnational social spaces, the localities of origin remain an important social context for the voicing and validation of status claims and processes of identity formation (Goldring 1997: 180). Nonetheless, these processes spread to the locality of residence as well and cannot be fully understood by focusing exclusively on a single national social context. Hence, transnational social spaces are the crucial analytical category if the relevant context for the validation of status claims, the determination of social positions and the use of social capital is a transnational one: a) for a significant part of the population of geographic spaces involved in the migration routes; b) on a permanent basis (i.e. links are not casual or transitory); and c) involve the concurrence of jurisdictions or the application of multiple legal orders (e.g. national legislation and migration policies of countries of origin, transit and destination; migration-related international norms, etc.) to the same subjects. This reflects the hybrid nature

of transnational social spaces (Schroer 2006: 213), as they are locally bound within national borders, orders and identities, but at the same time they are able to connect individuals and societies in distant world regions.

The emergence of transnational social spaces interferes with previous membership rules of a given society, the processes of political identity formation and eventually the relation between the polity and the state. In view of the challenges that have arisen for the traditional configurations of the nation-state in the current international order, the notion of transnational social space has encouraged a conceptual reexamination of citizenship.

2.2. Disentangling Citizenship from the National Territory: Alternative Configurations of Citizenship

The decision over who can be considered a member of a polity and who not, as well as the recognition of rights and duties, are at the core of citizenship (Kivisto and Faist 2007: 1). By means of a conceptual disentanglement of the political from territory, affiliation and civil rights can be constructed beyond the nation-state. Transnational migration poses a particularly suitable field for this approach. Migrants may maintain a strong sense of belonging towards their country of origin over a long time, running even into the following generations (Itzigsohn 2000: 1147). This is (re)produced through a number of social practices such as keeping personal ties with friends and family, the cultivation of common traditions and cultural institutions as well as political involvement and the collective struggle for recognition. The specific spatiality of such ties and involvement uncovers a rising incongruity between the political borders of the state and the territorial expansion of the nation (Laguerre 2005: 207). The progressive blurring of the outlines of a polity poses a challenge to the existing rules of affiliation and traditionally territorial models of citizenship. The rapid change of modern societies subjected to manifold processes of globalization causes more and more people to demand a “right to absence” (Schroer 2006: 70).

These social developments bear implications for practices and institutions of citizenship that can be summarized with the terms of erosion, withdrawal, inclusion and expansion (Kivisto/Faist 2007). The phenomenon of citizenship’ erosion primarily concerns the social rights of citizens that are as much at stake in European welfare states as in virtually all major countries of origin due to what are characterized as economic imperatives resulting from the neoliberal restructuring of the world economy during the last three decades. This trend is closely related to the withdrawal of considerable parts

of society from public life and political participation resulting from a growing sense of insecurity and exclusive practices of dominant groups. While all of the four trends are strongly interrelated with transnational migration, inclusion and expansion can be considered the most dynamic developments for the new configurations of citizenship and cannot be fully understood without taking the political practices of migrants into account.

2.2.1. Political Inclusion of Emigrants in De-territorialized Nations

Migrants are often excluded from political participation and civil rights, regarding both their country of origin (due to their absence) and their country of residence (due to their nationality). Since the establishment of the first modern democracies, previously excluded societal groups have demanded their civil rights and eventually have gained access to the polity. However, emigrants expressing claims for formal recognition and political participation towards their country of origin present a somewhat different challenge to the respective political bodies. This is because including emigrants into the polity entails its spatial expansion onto foreign territory. The subsequent institutionalization and consolidation of migrants' relations to their country of origin poses a substantial alteration of emigration politics (Itzigsohn 2000). In addition to granting formal recognition, governments, administrations and political parties need to open their organizational structures and political agendas for representatives and issues of migrants. Only then can a commitment to emigration politics lead to political inclusion and trans-jurisdictional protection of a previously marginalized societal group (Góngora-Mera 2012).

What does it mean for the future of the nation-state when the state is no longer fully congruent with a nation that remains defined by territory? The capacity to clearly define boundaries and membership rules has been essential for the formation of a collective identity, and thus, of a polity. Assuming that territorial delimitation creates an integrative effect on the inside, an emancipation approach raises the question of how sending countries can achieve societal (re-)inclusion of migrant citizens. One strategy a number of countries of origin have adopted is the discursive construction of a de-territorialized nation. In the way that the traditional definition of citizenship was part of a nation-building process, the national jurisdiction is redefined to suit the territorial expansion of its affiliates,⁵ even identifying the émigré population as another region in the national territorial division (e.g. in Peru and Ecuador⁶). While the phenomenon is not new, current inclusive measures such as electoral statutes that incorporate overseas constituencies, which are electoral districts located outside of the nation-

state's borders, encouraging the political participation of their citizens abroad, are now being used. Politicians and governments engage in this endeavor by strengthening migrants' social and political rights, the cultivation of common traditions and cultural symbols, the joint celebration of national and religious holidays, a rhetoric emphasizing unity and sense of belonging (diaspora discourses) as well as frequent visits and local representations. These measures aim at maintenance and fostering of a common social identity and solidarity as preconditions for the formation of a polity and fundamental elements of citizenship (Bosniak 2001).

Processes of identity formation and citizenship are intertwined (Kivisto and Faist 2007: 138). How individual and collective identities evolve partially determines the configuration of citizenship a society imposes on itself. This becomes clear when looking at civil rights movements. For a movement to be successful, a group has to find a separate collective identity that holds its members together but still allows them to identify themselves as an equal part of society. Today, migrants can resort to this mode of identity politics in their own struggle for recognition and inclusion (Vertovec 2010: 16). However, migrants' processes of identity formation may differ from those of other groups due to their multiple social and political affiliations. Transnational social spaces pose a separate reference for social positions, status claims, and thus, identity formation and validation (Pries 1997: 15ff; Goldring 1997: 180). In such frameworks, migrants' demands are not necessarily revolutionary or post-national but rather emphasize the importance of the nation as the corpus of choice for a modern polity by claiming membership in both origin and destination countries. At the same time, affiliation, rights, and obligations increasingly align along social borders rather than territorial ones. The borders of a polity hence become less sharp-edged and permanent, constantly shifting in accordance with the affiliates' involvement (Schroer 2006: 214). Based on these experiences, migrants alter the understanding of citizenship and pose a challenge to the old-fashioned architecture of the nation-state.

5 In this vein, the title of Schütze's (2007) article on the activities of Mexican political parties in the U.S. "La nación mexicana llega hasta donde estamos los mexicanos" hints towards a changing understanding of national belonging.

6 For instance, it is common in Peru to refer to emigrants as the fifth Peruvian region ("Quinto Suyu," emulating the territorial divisions of the Inca Empire): "Si bien el emergente discurso del 'Quinto Suyu' nos indica una transformación de la noción del Estado-Nación para incluir también a las poblaciones peruanas que se encuentran más allá de las fronteras geográficas del país, se trata también de una extensión del Estado Peruano y una reproducción de ciertas prácticas de poder mediante las cuales el Estado Peruano se ha relacionado con los ciudadanos desde hace siglos." Tamagno and Berg 2004: 2. In Ecuador, emigrants are also commonly called the "Fifth Region" (the other four regions are the Pacific Coast, the Andean region, the Amazonas and the insular region of Galapagos).

2.2.2. De-nationalized Citizenship: Expansion of Citizen Rights for Immigrants

Migrants' transnational practices and institutions often cause an incongruity between their political and their legal status (Itzigsohn 2000: 1131). Due to their political involvement, internal affairs become external affairs and create an impact in another country (Hoffmann 2002). Furthermore, bilateral and regional agreements can strengthen migrants' rights in countries where they do not enjoy full citizenship. For instance, the European Union and other similar regional architectures (e.g. the Andean Community and Mercosur in South America) are involved to varying degrees in the consolidation of a regional identity under a post-national citizenship for shaping civil, political and social rights within the geographic regional space. A post-national notion of citizenship seems to follow a logical progression starting from city-states to principalities, nation-states and nowadays even bigger political organizations (supranational unions, confederations, federations) granting citizenship rights. The spatial expansion of citizenship is based on the increasing significance of supranational regimes for the definition of affiliation, rights, obligations, and political identity; in the case of intra-regional migrants, such an expansion of citizen rights entails the disentanglement of citizenship from nationality. Consequently, the nation-state is losing its exclusive authority in this regard.

The conventional answer of the nation-states to the kind of challenges arising from the de-nationalization of citizenship is allowing dual citizenship. Although it is not a new phenomenon, recent decades have shown a rapidly increasing demand for it, following the intensification of world trade and workers' growing mobility. This process is obviously deeply connected to international migration (Kivisto and Faist 2007: 103ff). Remarkably, governments are moving towards acceptance of dual citizenship as well. Moving beyond the fear of divided identities leading to divided loyalties, more and more states adapt their national discourses as well as their laws in an effort to recognize the growing number of people with multiple political identities. This type of change is concomitant to the consolidation of migrants' transnational practices and institutions. From dispersed individuals without noteworthy visibility, some Latin American migrants have become a fairly influential collective subject, in both the country of residence and in the country of origin as a result of the maintenance of durable social, political and economic trans-border ties. Their struggle for full membership in their home country as well as their country of residence often represents a central issue for politically involved and organized migrants. Dual citizenship can serve as an initial theme for the collective mobilization of migrants establishing durable institutions and practices for political participation. The organizational structures and strategies employed are prevalently transnational since political actors and governments of both countries pose as interlocutors and strategic coalitions are set up across borders. Consequently,

migrants' transnational practices and life-styles that trigger demands for dual citizenship in the first place are reproduced and institutionalized throughout the mobilization process. Thus, transnational migration and the proliferation of dual citizenship are strongly correlated.

However, the rejection of dual citizenship still prevails in some states that tend to see their sovereignty at stake when they lose their status as sole authority in the definition of their citizens' affiliations, rights and obligations. On the one hand, receiving countries of migration are usually interested in maintaining the quality and value of their collective goods a) by restricting migration and keeping affiliation an exclusive privilege (Centeno 2005: 205), or/and b) by making the enjoyment of social rights contingent on economic activity, establishing new inequalities between nationals and immigrants, and among those immigrants who participate in the workforce and those who do not. On the other hand, political actors in countries of origin have moved towards advocating their citizens' full membership in the countries of residence hoping to strengthen their political weight and economic success. In any case, the practice of dual citizenship does not call the nation-state as a major arbiter of affiliation into question (Kivisto and Faist 2007: 139). The key annex to the existing rules is that several states now might have a say in an individual case, reflecting the overall growing interdependencies between nations and world regions.

In comparison to post-national and dual citizenship, universal citizenship proposes the universal recognition of citizens' rights independently of national affiliation. This third model for granting citizens' rights to non-nationals is basically characterized by attributing a number of social and political rights that go beyond basic human rights to people irrespectively of their nationality. Approaches of this kind may appear in countries with high percentages of their population living abroad. In their countries of residence, migrants often live in legally underprivileged or even irregular situations. Their claims for legal upgrading are frequently directed at the governments in the countries of origin, too. Therefore, universal citizenship can be used as a political instrument based on expectations of reciprocity. Pointing to the equal treatment of all persons within their own territories, governments from the countries of origin also demand the same for their citizens abroad. Even though migration flows from the global north to the global south are not nearly as massive as vice versa, in some cases reciprocal policies have proven to be an effective tool, as in the controversies over deportation practices in Spain and Brazil or over voting rights for extra-communitarians on the local level in Spain (Alarcón Requejo 2009).

From a global perspective, universal citizenship is still rather uncommon. In 2008, Ecuador adopted this model in its Constitution, which provides a valuable case study for the exploration of its real implications when adopted under the current international framework, and particularly for understanding the way normative orders and migration policies in transnational social spaces are interconnected, as explained in detail in the following sections.

3. Universal Citizenship in Ecuador

Until 1998, Ecuador was a typical Latin American country in terms of international migration, with large-scale emigration flows strongly concentrated to the United States. The Ecuadorian legislation at that time is illustrative for the state consciousness of its obligations vis-à-vis emigrants: according to Article 20 of the Law of Travel Documents (Ley N° 11 de 1989), “[t]he Government does not assume any responsibility for Ecuadorians leaving the country (...).”⁷ Emigration was then perceived as a specific event (not a process) implying an enduring rupture of the relationship between the individual and its state, together with the adherence to the receiving state as her/his main frame of social practices.

Within a relatively short period of time (1999-2004), Ecuador experienced a massive migration of Colombians (mainly seeking asylum status) and the number of Ecuadorians who left the country skyrocketed,⁸ basically due to the economic collapse in the late 1990s. The restrictive migratory controls in the United States diversified migration flows from Ecuador; European countries (in particular, Spain and Italy) turned into major destinations until visas were imposed for admission to the Schengen area (Herrera/Carrillo/Torres 2005). Moreover, the biographies of migrants became increasingly shaped by transnational social spaces (Herrera 2007). Social actors and public institutions began to devote attention to the densification of social and economic interactions with migrants and to the increasing domestic importance of transnational networks. Thus, in a matter of five years, Ecuadorians faced the dramatic social impact of mass emigration and immigration: on the one hand, sudden separation of families and increasing economic dependence from remittances; on the other hand, extremely

7 Translation by the authors. The full text of Article 20 of the Law of Travel Documents reads: “El Gobierno no asume responsabilidad por los ecuatorianos que salen del País. No tienen derecho a exigir la repatriación ni auxilio pecuniario alguno; sin embargo, la Función Ejecutiva podrá suspender la vigencia de esta disposición en favor de los ecuatorianos, que por emergencia de guerra o catástrofes ocurridas en el lugar de su residencia se encontraren en la imposibilidad de sufragar los gastos de retorno” (at: http://www.cajpe.org.pe/gep/images/stories/ley_de_documentos_de_viaje.doc, last access 25/03/2014).

8 According to the Dirección Nacional de Migración, approximately one and half million of Ecuadorians left the country in the period between 1999 and 2005 (see Herrera 2008: 84).

hard living conditions, xenophobia and day-to-day racial discrimination, poorly paid and unprotected work for immigrants. As more and more Ecuadorians were directly confronted with these issues, it increased the public pressure for reforms targeting at protecting Ecuadorians abroad and their families in Ecuador, as well as erasing the socio-political distinctions between nationals and foreigners. With the political turn after the 2006 presidential elections, such demands for reforms gained momentum and became a key priority in the agenda of the Constituent Assembly that was created to draft a new constitution. Ultimately, the constitution incorporated a groundbreaking approach to human mobility based on universal citizenship, recognizing a range of transnational social spaces involved in Ecuadorian migration, and consequently establishing well-defined state obligations to protect migrants, even beyond the national territory.

3.1. Political Inclusion of Emigrants in the 2008 Constitution

Article 40 of the Constitution recognizes the right to migrate and states that no human being shall be identified or considered as “illegal” due to migratory condition. It also imposes certain state obligations for the trans-jurisdictional protection of Ecuadorian migrants (Góngora-Mera 2012), including: 1) to provide them and their families (whether they live abroad or in Ecuador) with assistance; 2) to provide care, advisory services and integral protection for the free exercise of their rights; 3) to protect their rights when, for any reason, they have been deprived of their freedom abroad; 4) to promote their ties with Ecuador, to facilitate family reunification and to encourage their voluntary return; 5) to keep the confidentiality of personal information located in the files of Ecuadorian institutions abroad; and 6) to protect transnational families and the rights of their members. Other state obligations in favor of emigrants can be found in several constitutional provisions, including 1) Articles 371 and 374, on the right to social security of Ecuadorians living abroad, their voluntary affiliation to the national system, and the financing of their social security benefits; 2) Article 329, on the state obligation to ensure observance of the labor rights of Ecuadorian workers overseas and to promote agreements with other countries to assure normal legal rights for such workers; 3) Article 338, on the state obligation to create incentives for the return of emigrants’ savings and assets; 4) Articles 214 and 215, on the international presence of the Defensoría del Pueblo (Ombudsman’s office) for the protection of the human rights of Ecuadorians living abroad.

Regarding political inclusion, Ecuadorian emigrants can be elected for any office in Ecuador (Article 63); moreover, they can submit proposals (as individuals or group) at all governmental levels (Article 102) and they can create political movements under the requirements set forth in national laws (Article 109). Article 63 also extended their political rights allowing them to vote not only in elections for president and vice-president of the Republic (as stated in the 1998 Constitution) but also for members of the Congress (Asamblea Nacional) representing the nation, and representatives of Ecuadorians abroad in the overseas constituencies (circunscripciones del exterior). The constitution does not mention the number of seats that shall be reserved for Ecuadorians abroad in the Congress (Article 118), but according to Article 150 of the 2009 Organic Electoral Law, six representatives are elected by especial overseas constituencies: two to represent Ecuadorians living in Europe, Asia and Oceania, two for Canada and the United States, and two for Latin America, the Caribbean and Africa.

One key factor that explains this paradigmatic shift in the 2008 Ecuadorian Constitution is the participation of emigrants during the Constitution-making process. The Assembly had 130 members: 100 provincial representatives, 24 national representatives and six representatives of Ecuadorian migrants elected from the major destination countries: Linda Machuca (journalist living in New York, working in a primary school) and Guido Rivas (founder of a non-profit organization in New York focused on migrants) for the United States and Canada; Gabriela Quezada (a 24-year-old migrant living in Chile) and Eduardo Zambrano (Executive Director of the Centro de Investigación y Promoción Social in Caracas) for Latin America; and Mercedes Panta (Ecuadorian migrant living in Italy since 1995, working in elderly care) and Edison Narváez (priest and president of an association of Latin American immigrants in Spain) for Europe. The Constituent Assembly was organized in ten working groups (each one consisted of 13 members) specialized on selected issues. Proposals were received and discussed there and then sent in form of reports to the Plenary to be debated and voted. The six representatives of Ecuadorian emigrants took part in four working groups as follows: a) Rivas: Working Group 1 (Citizenship Rights); b) Panta and Zambrano: Working Group 2 (Organization and Citizen Participation); c) Narváez: Working Group 3 (Institutional Structure of the State); d) Quezada and Machuca: Working Group 9 (Sovereignty, International Relations and Latin American Integration). This partially explains why migration issues were not exclusively incorporated into the Constitution in one section but throughout the constitutional text. Emigrants' representatives also encouraged the direct participation of Ecuadorians living abroad in the constitution-making process

through virtual dialogues;⁹ they joined provincial and national meetings with migrants' relatives and pro-migrant NGOs;¹⁰ and also attended meetings with representatives of Colombian migrants in Ecuador, where proposals on alternative notions of citizenship and the proscription of the label "illegal migrants" were discussed.¹¹

The unusual participation of emigrants in the Constituent Assembly should be addressed as a political achievement after years of local and transnational struggles of emigrants,¹² migrants' relatives and pro-migrant NGOs demanding recognition, inclusion and especial protection of their rights. Understandably, the six representatives of Ecuadorian emigrants came to the Constituent Assembly with diverse agendas according to the priorities of the Ecuadorian communities in their respective receiving countries (e.g. dual citizenship was a major concern for Ecuadorians living in the United States but not for Ecuadorians living in Spain), but their biographical backgrounds reveal similar personal experiences as migrants in a post-9/11 world dominated by fears of terrorism and economic insecurity: they were witnesses of the legal and social disadvantages against foreigners in their host societies and to a certain extent they had also suffered as outsiders. However, most of them were not really aware of the fact that Colombian and Peruvian migrants living in Ecuador suffered the abuses and discrimination that they already had seen in Europe and the United States. In diverse regional meetings, some representatives of Ecuadorian emigrants had the opportunity

9 For instance, on April 7, 2008, members of working group 2 and the representatives of Ecuadorian migrants held a virtual forum called *Voces y derechos de los migrantes en la constituyente* (Voices and Rights of Migrants in the Constitution-Making Process) (with Ecuadorian migrants living in Caracas, Milan, Madrid and Rome and with migrants' relatives of different Ecuadorian regions. Participants could present proposals and deliberate on their main concerns, so they could also influence the drafting of the reports of the working group 2 for the Plenary. In particular, proposals aligned around political rights and representation, including seats for emigrants in the Congress, the right to vote and to be elected in Ecuadorian elections, the participation in the constitutional approbatory referendum, and special regulations on social security, taxes, homologation of international degrees and education for children of emigrants. In detail see Panta 2008c; *El Comercio* 2008.

10 For instance, events with migrants' representatives took place in April 2008 in different Ecuadorian cities, and on June 9-10, a meeting with representatives of these regional assemblies and members of the Constituent Assembly served to present the approved provisions on refugee and migration and to discuss which norms should also be promoted in the Plenary and after the constitutional reform.

11 For instance, on March 29, 2008, the Jesuit Refugee Service organized a meeting in Crucita-Manabí with women of different organizations protecting displaced people, refugees, and relatives of migrants, with the participation of Mercedes Panta. This meeting denounced human rights violations and abuses against migrant women. See Panta 2008a.

12 The first social mobilizations of Ecuadorians in Spain date from 2001, after a group of 12 Ecuadorians working illegally as agricultural workers died in Lorca (Murcia). The tragedy highlighted the precarious situation of Ecuadorians without residence and work permits and triggered an unprecedented migrant movement, including several forms of protest demanding that the Spanish government address the immigrants' situation. Ecuadorian migrants associations in Spain (e.g. Rumifahui in Madrid and Ecuador Llactacaru in Barcelona) opened offices in Quito and coordinated marches and political actions in Ecuador (Túpac-Yupanqui 2013: 5-6).

to know firsthand the experiences of Colombian and Peruvian migrants living in Ecuador. Highly touched by the situation and personal stories of migrants in Ecuador, they recognized the political coherence of granting foreigners living in Ecuador the rights that they demanded in Europe and the United States, thus they engaged in migrant identity politics sponsoring within the Constituent Assembly a pioneering human-rights approach on “human mobility” for a comprehensive protection of the migrant that includes not only aspects related with emigration, but also with immigration, refugee, asylum, forced displacement and internal migration.

Such approach was the product of years of intensive coordination between numerous activists, human rights NGOs, pro-migrant organizations and other civil society actors, including the Catholic Church and university researchers.¹³ In particular, the ideological foundations of the notions of human mobility and universal citizenship are largely credited to the Coalición Interinstitucional para la Migración y el Refugio (hereinafter CIMR), an umbrella organization composed by the Catholic Relief Services, the Department of Human Mobility of the Ecuadorian Episcopal Conference, the Servicio Jesuita a Refugiados y Migrantes (Jesuit Refugee Service), the Ecuadorian Scalabrinian Mission, the Facultad Latinoamericana de Ciencias Sociales (FLACSO) and the Universidad Andina Simón Bolívar. Rather than striving for the application of the reciprocity principle in international migration (“foreigners shall be given the same treatment that Ecuadorians receive in these countries”), CIMR’s proposal for the Constituent Assembly was based on the “coherence principle” according to which the demands that the Ecuadorian state formulates to other states in favor of its citizens must be also domestically applied vis-à-vis foreigners living in Ecuador. Much of the CIMR’s proposal was embraced by representatives of Ecuadorian emigrants and effectively adopted by the Constituent Assembly, including the concepts of human mobility and transnational families, the prohibition of collective expulsions of aliens (as established in Article 22 (8) and (9) of the American Convention on Human Rights), the right of foreigners to vote, the principle of non-discrimination for the migratory condition and the proscription of the label “illegal” migrant, among others.

13 The first reference to universal citizenship can be found in the 2003 Declaration of Principles and Working Lines of the National Workshop on Migration (Declaración de principios y lineamientos de trabajo, Taller Nacional de Migración, TNM): “El Taller Nacional de Migración impulsa la igualdad de derechos entre los nacionales y los extranjeros, con miras a la instauración de un nuevo concepto de ciudadanía, alejado de la pertenencia nacional: el de ciudadanía universal.” TNM included 45 social organizations involved in migration issues (human rights NGOs, the Catholic Church, migrants’ associations, etc.) with the aim of strengthening institutional cooperation and coordination (Túpac-Yupanqui 2013: 7).

3.2. Universal Citizenship: Expansion of Citizen Rights for Immigrants

The core principles governing Ecuador's relations with the international community are listed in Article 416 of the Constitution. By virtue of the coherence principle, Ecuador "demands observance of human rights, especially the rights of migrant persons, and promotes their full enjoyment by complying with the obligations pledged with the signing of international human rights instruments" (section 7 of Article 416). Moreover, Ecuador "advocates the principle of universal citizenship, the free movement of all inhabitants of the planet, and the progressive extinction of the status of alien or foreigner as an element to transform the unequal relations between countries, especially those between North and South" (section 6 of Article 416).¹⁴ In other words, the 2008 Constitution recognizes that Ecuador became both a sending and receiving country in a context of asymmetric North-South relations; as a sending country, Ecuador demands that the international community respects the rights of its emigrants; and as a receiving country it declares its full respect for the rights of immigrants in its territory by complying with the international obligations arising from human rights treaties. Furthermore, Ecuador shall promote "the free movement of all inhabitants of the planet" (to the extent that in 2008 the Ecuadorian government removed the visa requirement for foreigners from any country who want to stay up to 90 days in Ecuador¹⁵) and "the progressive extinction of the status of alien." In this regard, the Constitution prescribes clear state obligations to equate foreigners and nationals in terms of their rights. Article 9 of the 2008 Constitution states that "[f]oreign persons in Ecuadorian territory shall have the same rights and duties as those of Ecuadorians, in accordance with the Constitution." The Constitution also grants them the same political rights that nationals enjoy (Article 61), including the right to vote after five years of legal residence (Article 63), and explicitly prohibits discrimination on the grounds of place of birth or the migratory status (section 2 of Article 11). Other provisions that extend them rights (e.g. using the expression "inhabitants" and not "citizens") can be found throughout the Constitution; for instance, the right to non-discrimination in the access to education, health, food, social security and water (section 1 of Article 3) or the right to preserve their cultural identity (Article 21).

14 This and all other translations from the 2008 Constitution have been done by the authors.

15 Previously, Ecuador required visas for nationals of 130 countries. By 2010, the Ecuadorian government had reinstated the visa requirements for nationals of a few countries in Africa (Eritrea, Ethiopia, Kenya, Nigeria and Somalia) and Asia (Afghanistan, Bangladesh, China, Nepal and Pakistan) identified as sources of human trafficking.

The notion of universal citizenship adopted in the Constitution embraces a cosmopolitan outlook that presumes the obsolescence of the nation-based citizenship due to the transnational dynamics of the globalization. By the time the Constituent Assembly was convened, this kind of discourse was in fashion in Ecuador, particularly through the influence of Spanish scholars (e.g. Real Alcalá 2004) and the domestic reception of the 2006 Declaration of Rivas (final declaration of the II World Social Forum held in Rivas-Vaciamadrid, Madrid). The declaration, which represented the consensus of 1193 civil society organizations from 84 countries, is titled “For a Universal Citizenship and Human Rights: Another World is Possible” and states that “Universal Citizenship is a necessity for the process of living together. All those who arrive in a country must have all the rights inherent to human beings.” According to this declaration, citizenship shall no longer serve as a legitimate division within society, separating nationals from a class of outsiders who reside long-term in the country but who are not formally recognized as full members of the society on the grounds of their citizenship.

Some representatives of Ecuadorian emigrants in the Constituent Assembly adopted part of this discourse during the debates on citizenship. For instance, Linda Machuca (representative of Ecuadorians in the United States and Canada who was part of the constitutional Working Group on sovereignty and international relations) defined universal citizenship in the context of migration as the enjoyment of fundamental rights in both sending and receiving countries. In line with the Declaration of Rivas, the representative argued that citizenship shall not be a privilege that creates different castes inside a country; citizenship shall be a right of every person that lives permanently in a territory, regardless of nationality, and shall allow the equal treatment of all individuals living in the same community. Similarly, Mercedes Panta (representative of Ecuadorians in Europe who integrated the constitutional Working Group on organization and citizen participation) defined cosmopolitan citizenship as the enjoyment of citizens’ rights not only within the national territory, but also abroad, arising from the different legal, political and social protections of multiple interacting legal orders. She supported a Rawlsian version of cosmopolitan citizenship linked with the debates of global justice and based on a new “law of peoples” consisting in certain fundamental principles that are applicable not only to democratic liberal societies but also to hierarchically organized peoples, as long as they are oriented by a conception of justice based on the common good (Panta 2008b: 4). Thus, for Panta, “there is only one humanity and therefore, borders shall not exist; borders do exist to divide territories, not to divide humanity” (Panta 2008b: 7, own translation).

While in the preliminary steps in the path towards the constitutional reform the domestic incorporation of universal citizenship was linked to a “vigorous international campaign”

of the Ecuadorian government for the consolidation of a de-nationalized citizenship in the global framework of North-South unequal relations,¹⁶ and some constitutional provisions encourage the regional expansion of a supranational citizenship in the framework of the Andean Community and other Latin American integration processes,¹⁷ universal citizenship has remained for the most part an Ecuadorian innovation which mainly affects the protection of rights of thousands of non-nationals facing challenging conditions of human mobility in Ecuador (e.g. irregular immigrants, asylum seekers, refugees and displaced persons). First, discrimination on the grounds of nationality and the application of the label of “illegal” to undocumented migrants are banned, at least officially. Second, lawmakers are supposed to enact a variety of norms designed to make an effective citizenship status easier to enjoy and reduce the social significance of nationality. Retrogressive measures (e.g. legislation that reduces basic public benefits to immigrants or restricts access to naturalization for long-term resident foreigners) should also now be unconstitutional. Third, with the aim of strengthening the protection of the rights of individuals and groups who are vulnerable to discrimination, priority attention is supposed to be given to persons in a situation of “human mobility” (Article 35 of the 2008 Constitution). The identification of migrants as a vulnerable group with priority attention in the formulation of public policies was to boost a number of legal and administrative initiatives to improve the living conditions of migrants. Fourth, the 2008 Constitution reiterated the right of asylum and explicitly recognized the right to refuge, respect of the international law principle of non-refoulement and the prohibition of collective expulsions of aliens, humanitarian and legal assistance in emergencies, and the guarantee that persons requesting asylum or refuge will not be penalized or prosecuted for having entered the country or for remaining in an irregular situation (Articles 41 and 66 (14)). The 2008 Constitution also forbids any kind of arbitrary displacement and recognizes the right of displaced individuals and groups to receive protection and humanitarian assistance, ensuring access to food, shelter, housing and health services; children, teenagers, elderly persons, pregnant women, mothers with underage children and persons with disabilities shall receive preferential and specialized humanitarian assistance (Article 42). Finally, additional public institutions have been created to guarantee the implementation of migrants’ constitutional rights.

16 See e.g. the document “Plan de Gobierno de Alianza País 2007-2011,” the government plan of Alianza País, where it is stated (p. 68): “Vamos a impulsar desde el gobierno central [...] una vigorosa campaña internacional para consolidar la expansión supranacional de la ciudadanía. Es decir, que los derechos de ciudadanía no dependan de una u otra nacionalidad, sino de la propia condición humana. La migración, en el terreno político, es una oportunidad para dar paso a una nueva forma de relacionamiento internacional.” Alianza País is the political movement that won the 2006 presidential election and led the Constituent Assembly.

17 For instance, according to Article 423 of the constitution, the Ecuadorian state shall encourage the creation of a Latin American and Caribbean citizenship, considering that the Latin American integration is a strategic objective for Ecuador.

For instance, Article 392 foresees a state organ (the current Secretaría Nacional del Migrante, SENAMI) that shall protect the rights of individuals in situation of human mobility and exert the direction of the migration policy in coordination with other governmental institutions, civil society organizations and even with other states.

As can be observed, Ecuador has made serious efforts to disentangle citizenship from the nation-state. Mass emigration and the configuration of transnational social spaces (in particular, the increasing significance of transnational families) questioned the traditional conception of citizenship as necessarily connected to the national territory and opened a transnational approach on citizenship that ultimately prevailed in the constitution-making process and was introduced in the new constitution. While this should firstly extend the constitutional protection and political inclusion for Ecuadorians living abroad, in line with the coherence principle (and the explicit objective of a “progressive extinction of the status of alien or foreigner”), it also implied a significant improvement of the legal status of foreigners living in Ecuador. Nevertheless, important constraints and challenges remain in the effective implementation of universal citizenship, as analyzed in the following section.

4. Interdependent Constraints on Universal Citizenship

At first glance, the framework of universal citizenship as used in the 2008 Constitution in Ecuador provides a compelling alternative to the highly bilateral (origin-residence) and reductionist (nation-based) approach of international migration. In June 2008, after the Constitution was approved by referendum, the Ecuadorian government issued a decree eliminating visa requirements for any foreigner who intended to visit Ecuador for less than 90 days. The measure was taken “in accordance with the constitutional principle of free circulation and in order to promote the relationship of Ecuador with other nations and to stimulate tourism.”¹⁸ While the Ministry of Foreign Affairs seemed to emphasize the potential commercial and economic benefits for the country, Correa was putting forth a political argument: “We are campaigning for the elimination of these 19th century inventions called passports and visas,” he said in May 2008. Before June 2008, the government had already eliminated tourist visas for holder of passports from Mexico, Bangladesh, Guatemala, and Malaysia (for stays of 90 days or less), and had maintained several exchanges with the Chinese Government in order to

18 “El Ministerio de Relaciones Exteriores, Comercio e Integración informa que, por expresa disposición del Señor Presidente Constitucional de la República, a partir del día viernes 20 de junio de 2008, los ciudadanos de cualquier nacionalidad podrán ingresar al Ecuador, sin necesidad de visa, y permanecer por un período de noventa días, en aplicación del principio de libre circulación de personas y con el fin de fortalecer las relaciones entre el Ecuador y todos los países del mundo, y promover el turismo.” See: Ministerio de Relaciones Exteriores, Comercio e Integración del Ecuador (2008).

formalize an agreement that could stimulate tourism from China. The latter was part of a rapprochement of Correa's government with China particularly focused on Chinese investments in the Ecuadorian oil and mining sector. Earlier that month, criminal background checks (*pasado judicial*) for Colombian citizens entering the country had also been eliminated.

Such open borders reforms were a clear sign of a renewed vision on immigration and echoed the unique constitutional principle of universal citizenship and free circulation. Accordingly, there was an immediate reaction against this measure coming from different groups in Ecuador and beyond. Some political sectors framed their opposition in terms of security and spoke of potential threats targeting two particular groups: Colombian refugees, who were considered to be a threat to national security, and migrants from China and other Asian countries, who were seen as potential victims of international human smuggling and trafficking networks that were taking advantage of Ecuadorian open borders to organize clandestine routes to the United States. However, it was not only a matter of domestic interest group politics: opposition came also from within the government, specifically from immigration police officials, as well as from other governments. The latter began to press the Ecuadorian government for exceptions to the policy in order to avoid the free circulation of their own citizens, with the argument that this made them vulnerable to smuggling networks.

In this section, we will focus on three cases that show how the Ecuadorian state bilaterally negotiated specific conditions for foreign citizens and, by doing so, it had to give up a policy based on principle and implemented instead policy based on conflict resolution. These cases delineate the structural limits of the local application of universal citizenship and free circulation within international relations. Beyond domestic politics, the three cases also demonstrate the asymmetries of power in which the Ecuadorian state acts in the international arena. While the human rights discourse of the Ecuadorian government at the regional and global level continues to uphold universal citizenship, the elimination of passports, and free circulation, it has made concessions on these principles in its immigration policy due to its economic and political interests involving certain states, which means a progressive deviation from universality in favor of a traditional nation-state approach.

We examine the cases of Chinese, Cuban, and Colombian immigration because each of them expresses a different conflict of power for the Ecuadorian state. We start with the fastest negotiation and resolution: The reaction of the Chinese government less than two months after the elimination of visas in August 2008, where significant economic interests as well as international agreements were at stake. Then, we look

at Cuban immigration, whose rapid growth after 2008 was largely an unintended consequence of the free circulation policy. Here the reaction was slower and took place on various fronts: we look at how immigration from Cuba was restricted by agreement with the Cuban government, and how the visibility of Cuban immigrants led to a very restrictive policy on asylum for Cuban applicants. Finally, we analyze the impact of the deterioration of Colombia-Ecuador relations on asylum and immigration policies.

4.1. Economic Interest at Stake: Restoring Visa Requirements for Chinese Citizens

In August 2008, only two months after the removal of visa requirements, the Chinese Embassy expressed its concern about the high influx of Chinese citizens into Ecuador and announced preventive measures among its community in Ecuador to discourage Chinese migration using Ecuador as transit to the United States.¹⁹ According to Fierro (2010), several articles and reports in the media backed up the Chinese diplomatic concerns. However, what is surprising is that the proper Pichincha Immigration Police Chief, that is an Ecuadorian Immigration Official, also expressed his concern that the elimination of visa requirements for Chinese citizens could make Ecuador vulnerable to human trafficking.²⁰ That is, within the state, free circulation encountered resistance.

In addition, other news reports pointed to a huge increase of entries by Chinese nationals, police raids and detentions of Chinese undocumented immigrants in Guayaquil, and the capture of a Mexican plane carrying 14 Chinese nationals. These reports in the media insinuated that the free circulation measure was being beneficial to smugglers.

The data indicated that the arrival of Chinese immigrant population increased dramatically after June 2008 (immigration officials mentioned an increase from 30 to 1,150 entries per month in the last six months of 2008). Still, the Chinese community in

19 “[L]a Embajada de China está preocupada, asegura Guan Yapei, segunda secretaria de la entidad, ante el alto flujo de ciudadanos chinos a Ecuador desde la fecha en mención. ‘Decidimos tomar medidas preventivas para que los ciudadanos no utilicen a Ecuador como plataforma de tipo migratorio hacia otros países’, señaló. Yapei reveló que se ha enviado comunicados a las salidas internacionales chinas y a las provincias de Fujian y Guangdong, que son dos localidades con tradición migratoria. Según la Segunda Secretaria, la embajada mantiene conversaciones con los ciudadanos chinos residentes en Quito y Guayaquil para que no inciten a sus conciudadanos a venir al Ecuador con la intención de emigrar posteriormente a Estados Unidos, utilizando al país andino como ‘puente’.” El Diario 2008, quoted in Fierro (2010: 59).

20 “El miércoles el jefe de Migración de la Policía de la provincia ecuatoriana de Pichincha, Pedro Santillán, expresó su temor de que la eliminación de visados para turistas chinos convierta a este país andino en un punto frágil para el tráfico de personas. ‘Al igual que los ecuatorianos, muchos asiáticos, en especial chinos, son víctimas de los ‘coyoteros’ (traficantes de personas). Ecuador se podría volver un punto frágil para este delito”, alertó el oficial de Migración.” (El Diario 2008).

Ecuador had grown considerably over the past ten years. In 2006, Chinese immigrants were the third largest community applying for a residence visa in the country (Fierro 2010). However, Chinese immigration to Ecuador had historically been rather modest, if compared with Chinese immigration to Brazil or Peru. It started at the end of the 19th century. During the 20th century, the Chinese community in Ecuador created a very active economic role for itself in agriculture and commerce—and most recently in the service industry— particularly in the Coastal region where most of the population, around 25,000 people, is concentrated. The Cámara de Comercio Ecuatoriano-China (Ecuadorian-Chinese Chamber of Commerce) was founded in 1909 and has been very active over the years (Ellis 2009). Hence by 2008, Chinese migration was not an entirely new phenomenon in the country: it was well established and had experienced a significant increase in the last ten years.

With the inauguration of President Correa, Ecuador-China relations received an important boost. Correa visited China during his first year of government, in November 2007, and after breaking with the IMF and the World Bank, the Ecuadorian government has had to rely on loans from China to finance its budget. China is today Ecuador's biggest foreign investor and lender. It builds the most important infrastructure projects in the country, from hydroelectric to oil projects, and, as of March 2013, the Ecuadorian government had paid US \$5,270,239,787 for 24 contracts with 15 Chinese companies (CEPRID 2013). All of which is to say, Ecuadorian-Chinese economic relations are very strong.

In November 2008, the two governments reached an agreement by which new measures of control for Chinese nationals were put in place. These included a requirement that Chinese tourists purchase tour packages from companies regularly reporting to Ecuadorian authorities, mandatory registration at the Ecuadorian Embassy in China before travel, and a visa (as required prior to June 2008). From then on, the arrival of Chinese visitors decreased. The reversal of this policy did not capture the public's attention, and it was negotiated with a very low profile. Both Ecuador's interest in safeguarding its relations with China and the Chinese government's official condemnation of irregular migration were at stake.

The hypothesis that Ecuador was becoming a “springboard” for Chinese and migrants of other nationalities to get to the U.S. through smugglers might be plausible. However, according to a study of the U.S. Department of Justice on Chinese smugglers:

American officials claimed that the Chinese smuggling groups have connections in 51 countries that are either part of the transportation web or are involved

in manufacturing fraudulent travel documents, or both. (...) According to an American official, “at any given time, thirty thousand Chinese are stashed away in safe houses around the world, waiting for entry.” Around the globe, many countries are reported being used as intermediate stops on the way to the United States, among which Canada and Mexico are ranked atop for obvious reasons (Zhang and Chin 2002: 3-4).

The same report states that human smuggling organizations seem to be very flexible, and are made of multiple networks of small organizations rather than one whole hierarchical structure; thus, if Ecuador were to become or cease to be an intermediate stop, it could easily be replaced by a different country. Thus, the issue at stake is the importance that the Chinese government gave to preventing human smuggling in Ecuadorian territory. Presumably, this has to do with the tighter policy on human smuggling and trafficking put into place by the US government after 9/11.²¹

4.2. Unintended Consequences of Free Circulation: New Paths for Cuban Immigration

By contrast to the longstanding emigration of Chinese people, Cuban migration to Ecuador was very small before 2008. It was mostly composed of professionals who overstayed after arriving in Ecuador under cooperation programs between the two governments in the areas of medicine or sports. Although such cooperation has increased under Correa’s government, a surge in the arrival of Cuban immigrants occurred after June 2008 with the free circulation decree. However, the available data suggest that this did not involve such a significant number of people. In 2007, 4,713 Cubans entered Ecuador and 4,746 exited. These numbers increased to 35,627 entries and 33,597 exits in 2010. While there clearly was an important intensification of Cuban mobility in and out of the country, the migratory balance is not very significant (less than 2,000 people), that is, a relatively low segment of this population seems to have overstayed. According to the Ecuadorian Population Census of 2010, there are 6,717 Cubans permanently residing in the country, and they represent the fifth group of immigrants by far, after Colombians, Peruvians, Americans, and Spaniards (the latter are often migrant people who have acquired double nationality but registered under Spanish nationality at entry).

21 In January 2014, during his visit to China, Ecuadorian Vice President Jorge Glass announced again the elimination of tourist visa for Chinese citizens among the agreements between both governments. The argument was again to render Ecuador more attractive for the 200 million middle-class Chinese potential tourists. As of March 2014, the Decree with this measure has not being launched yet.

At first glance, Cuban immigrants clearly took advantage of Ecuadorian policy and came to Ecuador. However, according to Ahmed Correa (2013), Cuban immigration to Ecuador has to be understood in conjunction with the policies of at least three governments: the U.S., Cuba, and Ecuador. Indeed, the preferential treatment under U.S. legislation (the 1966 Cuban Refugee Adjustment Act), by which every Cuban citizen who reaches U.S. soil automatically receives legal residency, is an incentive that has been present in the Cuban collective imagination for decades. Secondly, the Cuban government's migration policy stipulation that if Cuban citizens do not return to Cuba after 11 months (24 months after 2013 reforms) they lose their social, political and civil rights as citizens and may only return to the island as tourists put severe limitations on return. This author states that:

Cuban migration policy may be characterized as a juridical-political reaffirmation of their geographic insularity. Emigrating from a country that is building its own social project as an alternative to the capitalist world was considered an act of treason by the political leadership of the Cuban Revolution and by an important segment of the population; a desertion to be forgotten and rejected (Correa 2013: 2).

In other words, there are severe limitations to the return of Cubans and both legal frameworks strongly determine the decisions and practices of Cuban migrants. Thus, free circulation from Ecuador is just one more link in the more complex array of norms that shape Cuban migration.

This is why Cuban immigrants, once in Ecuador, had to work very hard in order to obtain permanent residence as soon as possible. They used all the possibilities at hand to avoid having their citizenship revoked by their country and/or to gain better legal conditions in order to reach the United States: marriage, naturalization, asylum access, professional visas. Many Cubans once in Ecuador made use not only of free circulation policies but also new policies of nondiscrimination, better facilities for naturalization and arranged marriages with Ecuadorian nationals. These procedures were often managed by lucrative criminal networks, and several corruption scandals in public institutions such as the Registro Civil rapidly created a negative public reaction that affected the regularization process for many Cubans.

In 2011, after talks with the Cuban government, the Ecuadorian government put in place a series of measures to restrict both the arrival and the regularization of Cuban immigrants. Several human rights NGO's and the Defensoría del Pueblo have denounced human rights violations (Arcentales and Garbay 2012). Indeed, based

on the 1971 Ley de Extranjería, a law founded on principles of national security (Eguiguren 2011), the state undertook several raids and detentions of undocumented Cubans in the streets, and their work places; they also imposed new requirements to obtain permanent residence, and started to exclude Cuban nationals at airports (Correa 2012).

Finally, asylum was systematically denied to Cuban applicants after 2010. Cuban refugee population only represents 0.48% of all refugees and many of them acquired such status before 2008. In 2009, only 28 applicants were granted asylum; only 3 in 2010, and 2 in 2011. In fact, according to the Dirección de Refugio, 1,121 applications by Cuban citizens were rejected by the Comisión para determinar la condición de Refugiados. In addition, 730 cases were discarded because the applicants did not follow through with the application process (Arcentales and Garbay 2012: 94-95).

This situation is pushing Cuban immigrants out of Ecuador. If at some point some may have seen Ecuador as a plausible place of settlement, restrictions for permanent residence combined with a weak labor market and increasing signs of xenophobia are making it more and more difficult for them to stay. Newspaper El Comercio (2012) collected some testimonies that echo this feeling in an article published in March 2012: “You ask me what is going on, why we are leaving,’ says ... [Aurelio] ... ‘People don’t want to be in Ecuador anymore because we can’t find work, they want to extort us, they won’t legalize us, and we are on our way to the United States.’” (Own translation)

The following testimony collected in a piece by journalist Luisa Fernanda López from Radio Netherlands is quite eloquent about the situation:

The case of Francisco Domingo León Pérez is similar to Alberto’s in many ways, though this 49-year-old Cuban has had better luck. He has been living in Ecuador for 4 years now, in what he describes himself as a “legal limbo.” He hasn’t been able to obtain permanent residence, his political asylum application was denied, and because of legal and economic reasons, he cannot return to his country. Francisco, along with thousands of other Cuban nationals, wants the Ecuadorian government to acknowledge his situation and do something to regularize his status so he can have access to his basic rights. In an open letter to President Rafael Correa they say: “do something for us, you like our country a lot but do something for the Cubans living here” (López 2013, own translation).

From 2011 on, there have been several high profile detentions of Cubans in their way to Mexico and the United States, in Costa Rica, Colombia and above all Panama. In

2012, the Government of Panama reported the detention of 641 undocumented Cubans and called on the Governments of both Ecuador and Cuba to discuss a solution. From then on, Ecuador had continued with exclusions at airports.²²

In sum, the government's management of Cuban migration illustrates that rather than an open control (visa) there were a series of restraints to free circulation tailored to the specific conditions of Cuban migration. In contrast to the Chinese case where economic asymmetric interdependencies prevailed, this case illustrates that ideological affinities rather than economic interests were at stake. The principles of universal citizenship and free circulation were disregarded in favor of realpolitik involving the construction of a new regional block. Such policies affected the rights, conditions and trajectories of Cuban migrants. In the end, both the 2008 Decree on free circulation and its subsequent restrictions had unintended consequences in the lives of migrants.

4.3. Tensions with its Northern Neighbor: The Colombian Refugee Question

As mentioned before, in June 2008, along with the elimination of the visa requirements, the requirement that Colombian citizens present a document of criminal records before entering the country was also removed. Symbolically, this was an important step of rapprochement with Colombia, after some tensions caused by aerial spraying of herbicide aimed at coca plantations very close to the Ecuadorian border.

However, the events in August 2008, in which the Colombian army bombed and raided Ecuadorian territory in Angostura on the Colombian border to kill FARC leader Raúl Reyes, created a diplomatic crisis and a radical shift in bilateral relations between the two nations. The Ecuadorian government broke diplomatic relations, and a protracted period of harsh relations between the two countries ensued. This situation would only change after the end of President Uribe's term in office in 2011. There is no doubt that this had a strong impact on the refugee question.

Indeed, from 2000 on, there was a constant influx of Colombian nationals escaping from violent situation in their country. As of September 2013, there are 55,327 approved

²² “Desde la vía diplomática y de seguridad, Panamá busca resolver el problema que se ha generado en la frontera con Colombia a causa de la creciente llegada de ciudadanos cubanos indocumentados, quienes vienen en tránsito desde Ecuador y tienen como destino final Estados Unidos. (...) Frente a esta situación, el ministro de Relaciones Exteriores, Roberto Henríquez, anunció ayer que invitó a su despacho a los embajadores de Cuba y Ecuador en el país para expresarles la preocupación de Panamá por esta migración de ciudadanos cubanos y buscar en conjunto soluciones al problema. Henríquez reconoció que el destino de estas personas es Estados Unidos, pero advirtió que su migración por el país pone a las autoridades en el dilema de qué hacer, porque Cuba no los acepta de vuelta” (Luna Noguera 2012).

refugees and 165,550 applications. This means an estimate of 100,000 people are staying in the country without asylum protections. The Ecuadorian government's response to the increasing influx of Colombian asylum-seekers is outlined in a paper published in September 2008 by the Foreign Relations Ministry titled "Política del Ecuador en Materia de Refugio." The document takes human rights law as its foundation, and its policies are based on the stated positions of the Foreign Policy chapter of the Plan Nacional de Desarrollo 2007-2011, which had already addressed the need for protection of the large Colombian population in Ecuador (Herrera, Moncayo and Escobar 2012). The spirit of this document is not only to deal with the current situation but to work on long term solutions to guarantee refugees human rights and social integration. This plan was part of the new direction migration policies took at the beginning of President Correa's new term in 2008, including a change in refugee policies.

In fact, this plan was not really implemented. After the crisis of Angostura, the most important action undertaken was the Proceso de Registro Ampliado which was implemented from March 2009 to March 2010. It consisted of a collective determination of refugee status that understood the armed conflict in Colombia as a situation that merited international protection. This policy granted refugee status to 28,000 people, a record number and a significant reversal of the previous situation, where most of the asylum applications had been rejected (Velásquez 2011; Herrera, Moncayo and Escobar 2012).

After this effort of massive regularization, the Ecuadorian government changed directions again, rendering asylum access more and more difficult. The new requirements of approval were set forth in the Executive Decree 1182, of May 30, 2012. According to the Coalition for Migration and Refugees:

The most alarming aspect is the restriction of the definition of a refugee, by eliminating the content of the Declaración de Cartagena (1984). This document had been part of Ecuadorian regulations since 1987 and had put Ecuador at the forefront of human rights protection in Latin America. In addition, the decree creates conditions and timeframes that do not correspond to the real social and economic conditions of most refugees, or to the Ecuadorian context. By adopting these new regulations, the Ecuadorian government has affected the progress of rights, acting regressively and distancing itself from the standards of the 2008 Constitution, which vindicates universal citizenship and free human mobility (Coalición por la Migración y el Refugio 2012: 1, own translation).

After this decree, very few asylum applications have been approved by the government, and despite several reactions from NGOs and refugees associations, the 2008 Refugee Plan has not been implemented.

In sum, the three cases show that despite an initial momentum during which the Ecuadorian government tried to apply the principles of free circulation and universal citizenship to its immigration policies, these policies did not last. In these cases, the different legal treatment of migrants at the domestic level mirrored their unfavorable status in the unequal global distribution of mobility rights, particularly through visa regulations. Visa-free access for Chinese and Cuban nationals is permitted in very few states; and by the 2000s, a long list of countries imposed visa restrictions on Colombian immigrants. Thus, the legal status of foreigners in Ecuador does not depend exclusively on generous domestic constitutional and statutory norms but rather on a range of laws and migratory policies of third states producing global stratifications that are reproduced at the local level. Therefore, much can be gained in understanding contemporary transnational migration by focusing on the differentiated impact of normative orders in the status and living conditions of migrants throughout their migratory route.

5. Conclusion

Citizenship has always been a mechanism of establishing delimitations between members and non-members of a polity. It provides the most privileged legal status to enjoy the benefits and rights recognized by the state, including the right to move freely within the national territory, and to re-enter to it. Conversely, precarious legal status in a destination country (e.g. visa-overstayers, asylum seekers, stateless persons, transit migrants that become long-term residents, etc.) brings with it sharply restricted access to resources, social opportunities and political participation, which usually derives in unequal standards of living.

Is citizenship conceivable and feasible beyond national orders, borders and identities? Admittedly, more and more states granting equal political and even social rights to all residents regardless of nationality hints to the emergence of new transnational configurations of citizenship in a sense of civil and social rights rather than nationality and should be embraced as an emancipatory success of people with multiple social and political identities in an attempt to overcome social inequalities. Ecuador followed this pattern and adopted universal citizenship with the aim of guaranteeing equal access to and distribution of constitutional rights, independently of the national origin. Nevertheless, immigrants in Ecuador still experience differential access based on their position within a stratified nation-based global order. Ecuadorian laws and policies are

constrained by global processes in which they are embedded and by the flexible ways in which migrants respond to changes in these legal and political orders.

The securitization of migration in the United States and Europe after 9/11 has also increased pressure on Latin American countries to securitize migration within their borders and to comply with international requirements on refugees, human smuggling and trafficking. Ecuador followed its own path and instead of a tighter policy on migration, it adopted a groundbreaking package of constitutional norms on human mobility designed to reduce the relevance of national citizenship for the domestic determination of social positions. But once Ecuador incorporated universal citizenship in its constitution, several states feared that the country would presumably become an intermediate stop (a “transit country”) in global human trafficking routes and other undesirable migration flows to the United States, and consequently, they exerted influence on the Ecuadorian government to adjust its migratory policy according to their interests. In particular, in the three cases analyzed, the U.S. government joins the play of powers between Ecuador and the respective country of origin. In the case of Colombia, strong political cooperation with the U.S. government in the war on drugs and terrorism has substantially affected migration movements between Colombia and Ecuador. And in the cases of Chinese and Cuban migrants, empirical evidence suggests that most migrants are headed for U.S. territory, and a portion of those who entered Ecuador for non-working purposes certainly continue to the United States. The country became a relational space within a transnational route to be crossed, but also a place of residence and work, as transit eventually turned into permanent settlement due to international legal regimes and border controls by third countries.

The Cuban case has shown that the abolition of circulation restrictions for foreigners does not necessarily lead to a total net increase in immigration but rather to more mobility altogether, including emigration and transit. Since it creates and strengthens social ties and connectedness, high physical mobility of people is a key feature in the evolution of transnational social spaces. Additionally, as has been shown in the analysis of the Chinese case, the claim that free circulation of people causes or stimulates human trafficking does not only seem absurd on its face but also cannot be verified empirically.

Thus, a single state may proclaim equal rights for everyone but pursuing this effort must rely on diplomacy and agreements beyond its own borders. Hence, the crucial analytical category for the definition of the relevant parties is the specific transnational social space created by migration flows and cross-border interactions. The cases presented in this paper illustrate how transnational social spaces are

continuously shaped and reshaped by nation state actors; the quality of these spaces largely depends on citizenship-related norms and practices put in place by national governments. However, it has become clear that smaller national governments can seldom act unilaterally in citizenship and migration-related matters. Rather, existing citizenship regimes are largely the result of often unequal multilateral and bilateral negotiation processes between national governments. These regimes have an impact on migrants' movements as well as their social and political practices and, thus, on the quality and shape of the transnational social spaces. The Ecuadorian experience shows concretely how these transcend national borders.

Furthermore, it becomes clear that migration is strongly intertwined with other political and economic processes and interests on a global scale and deeply embedded into transnational structures of power. It can be argued that the Ecuadorian government has become acutely aware of these transnational interdependencies and consequently seeks to enhance its political potency and to expand its room to maneuver by employing progressive policies in the domestic as well as the international arena. However, the expectations of reciprocity (improving social and legal conditions for foreigners already in Ecuador or willing to enter the country are supposed to promote improvements for Ecuadorians abroad) have to be toned down due to structural restraints in migratory policies of destination countries. On the other hand, the political back and forth movement within the migration and refugee regime towards Colombians from more openness to closure and vice versa keenly illustrates the dynamic nature of transnational social spaces and the effect rights-centered and citizenship related legislation as well its implementation has on them. While the Cartagena Agreement had implemented a common Andean space of migration and mobility of sorts, political frictions between the Correa and Uribe governments put considerable constraints on the formation of possible transnational social spaces within the Andean region and beyond.

The three cases have shown how Ecuador's migration policies, being based on the principles of human rights and universal citizenship, have come under severe pressure from foreign governments that seek to control their citizens' migration patterns. The ensuing frictions contribute to the dynamic nature of transnational social spaces. While the rigorous application of the principle of universal citizenship through the abolition of visa requirements and the granting of equal rights to foreigners in Ecuador created a de facto spatial continuum of citizenship rights for migrants entering the country, the following rollback for Chinese, Cuban, and Colombian migrants attempted to reestablish the old political frontiers. The curtailing of free movement and civil rights for nationals from all three countries following the initial liberalization had a negative effect on migrants' social positions by limiting their possibilities to find work, acquire refugee

status or protect themselves from criminal networks, for example. Taken together, the evidence presented from Ecuador demonstrates how migration policies are deeply intertwined with social and human rights issues, and not only for those arriving after the new regime was in place: restrictions of free movement tend to be tied to deterioration of legal status and living conditions, even for non-national residents that had entered the country long before the discussed policy shifts.

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