"Shifting in” state sovereignty: social policy and migration control in Costa Rica

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This paper challenges the globalist claim that nation states lose sovereignty to normative frameworks of international human rights with regards to their migration policy. In contrast, the analysis of the interplay between migration and social policy in Costa Rica shows that states may find inventive ways to maintain control over its migration policy and remain central in the granting of social rights to immigrants and their actual access to social policy. Indeed, Costa Rica has shifted in its migration control, by giving the country’s emblematic and praised social security and healthcare institution, the Caja Costarricense de Seguro Social, a pivotal role in immigrants’ regularization process, thereby creating barriers to healthcare benefits for immigrants. As such, the state remains central in processes of social integration, while citizenship and migratory status continue to be key determinants for immigrants’ access to national welfare benefits.

Keywords: social policy; migration policy; sovereignty; integration; citizenship

1. Introduction

International migration lies at the junction of a prominent debate in comparative politics and international relations regarding the extent to which states lose national sovereignty and policy-making power to economic and political developments coined under the term “globalization” and international norms (Guiraudon & Lahav, 2000; Evans, 1998; Keohane & Milner, 1996). Globalist perspectives attribute the demise of national sovereignty to migration (Sassen, 1996), larger international human movements making migration control increasingly difficult for states. States would be unable to prevent certain types of migration flows and settlements, undocumented migration being the most obvious. This decrease of policy decision-making power is to a large extent a result of the emergence of an international human rights regime, a normative framework for, and legitimacy of, inalienable rights and entitlements based on personhood, and not citizenship or nationality (Soysal, 1994). As a result, national citizenship would lose central importance in the extension of social rights (Soysal, 1994; Jacobson, 1996; Sassen, 1996; Sharma, 2006).

Through this international human rights regime, nation states are required to grant broad social rights to immigrants living in the country, and these rights are synonymous with citizenship (Baldwin-Edwards, 2002). Human rights are inalienable natural and legal rights, independent of nationality, in contrast to the national, political, social, and

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civil rights that are based on the distinction between domestic and foreign (Sassen 1996, 1998). Globalist perspectives then argue that human rights and immigration challenge State sovereignty, thereby inducing a devaluation of the importance of citizenship (Sassen, 1996, p. 95), because human rights agendas would prevail over national attempts of exclusion, eventually leading to the granting of social rights to immigrants.

However, as Guiraudon and Lahav (2000) argue, these claims are not self-evident, and while debate in the Global North is ongoing, in the Global South much less attention is paid to confirming or revoking this assertion. This is surprising, as much of international migration is between countries in the South (Hujo & Piper, 2010) and the nexus of migration and social policy is a pressing issue in the South, possible even more than in the North. For example, it could be argued that countries in the South, with generally less developed welfare structures, are more protective of the scarcer welfare recourses, making immigrants’ social integration more contested (Baganya, 2000), while weaker institutions might not be able to exert the same resistance to international human rights agendas as could a state in the North. Therefore, the globalist argument deserves special attention for countries in the developing world.

Costa Rica provides a unique setting in the Global South for studying the migration/social policy nexus in general, and the globalist claim with regards to human rights agendas and migration in particular. First, as a share of the total population, it is the largest net recipient of migrants in Latin America (UN, 2009), with a migrant “stock” of about 9% of the total population in 2011 (INEC, 2011). Second, Costa Rica has a strong state-led social protection system (Martínez Franzoni, 2008), based on principles of solidarity and universalism. Third, this social protection regime has been deteriorating since the 1980s, when the state was left in a weaker position to provide social protection (Martínez Franzoni, 2008), but especially since 2011 when its emblematic social security and healthcare institution, the Caja Costarricense de Seguro Social (CCSS), entered into a severe financial crisis. Finally, while immigrants’ claim to Costa Rica’s welfare benefits has been a contested issue for long (Sandoval, 2008), more recently voices of welfare chauvinism have surged as especially Nicaraguan immigrants are blamed for the CCSS’s financial hardship (Voorend, 2013; Bonilla-Carrión, 2008).

Welfare chauvinism reflects the fear amongst native populations that new immigrants take away jobs and social services (Faist, 1994) and can translate into a more restrictive benefit policy, denying immigrants access to social benefits, and a more restrictive immigration policy, denying foreigners the right to stay in the country and restricting their access to comprehensive social programs (Banting, 2000).

In this context, I will analyze whether the country resorts to limiting newcomers’ access to welfare state resources or whether it is bound by international human rights laws that ensure their social integration and equal rights to social security. Specifically, the focus of this article is on immigrants’ access to Costa Rica’s universal healthcare system, in particular, through analyzing the latest reform to migration legislature in 2009 (Asamblea Legislativa, 2009), and by using recent internal communications of the CCSS, complemented with semi-structured interviews with CCSS and migration officials.

The findings suggest that globalist arguments should not be overstated, showing that state policy continues to be a critical factor in immigrants’ social integration, and that citizenship and legal migratory status are pivotal in immigrants’ access to social welfare benefits. In line with authors such as Guiraudon and Lahav (2000), states with strong social policies in the Global South can circumvent international human rights normative frameworks by finding inventive ways of maintaining their sovereignty. In Costa Rica’s
case, social policy is given an explicit role in migration control, shifting the level at which sovereignty of migration control is exerted to social welfare institutions.

In what follows, the interplay between migration and social policy regimes is discussed in general, and the globalist debate concerning state-sovereignty and the extension of social rights, as well as its contentions, in particular. Then, the Costa Rican case is justified and explained in more detail. Ensuing, Costa Rica’s recent migration policy reform, and especially the more recent interactions with the country’s social security institution, the CCSS, are analyzed. The final section offers some final reflections on the migration-social policy nexus in countries in the Global South.

2. Migration, citizenship, and social policy

By definition, the modern nation state forms part of the creation of international migration (Joppke, 1999). That is, if there were no states, there would be no such thing as international migration. Furthermore, migration is shaped in different ways, by “the communicative, expansive grid of the modern state system” (Joppke, 1999, p. 1) which enables migration. At the same time, throughout history, governments have had an active role in the creation of cross-border migratory movements, for example through the expulsion of religious, ethnic or political populations, as colonial influences or as governments recruiting labor abroad for domestic economies (Bommes and Geddes, 2000; Joppke, 1999). The following discussion highlights some of the key issues for the migration-social policy nexus.

2.1 Migration and citizenship

Migration challenges the very notion of the state (Bommes and Geddes, 2000; Faist, 1994, 1995; Sassen, 1996, 1998; Sharma, 2006), understood as self-governing political entities involving a series of rights and obligations granted equally to all members of its community, but at the same time as mechanisms of closure, separating members from non-members (Brubaker, 1992). Due to its transnational nature, migration defies these mechanisms (Bommes and Geddes, 2000; Sharma, 2006), and destabilizes the order of the nation state (Sandoval, 2008).

Citizenship, understood as individual rights, participation and membership in different institutional spaces (Bauböck, 2007; López, 2012), is key to understanding the dynamics of inclusion and exclusion in welfare arrangements. Citizenship lies at the basis of “the boundaries of inclusion and exclusion, which define both those who are full members of existing networks of reciprocity and deserve support, and those who are ‘strangers’ or ‘others’ to whom little is owed” (Banting, 2000, p. 13). It is important to note that these boundaries are not written in stone, but are “socially constructed with respect to different groups of people and in different institutional contexts” (López, 2012, p. 6).

Through citizenship, national protection systems become political filters that condition immigrants’ efforts to realize their potential for social participation (Bommes and Geddes, 2000). Marshall’s (1950) famous work on social citizenship analyzes the evolution of social citizenship and the extension of rights, and subsequently elaborates how this relates to migration. Marshall explored how social citizenship, through the functioning of social welfare institutions, progressively extended to various social groups (López, 2012). The famous “Marshallian triptych” is an evolutionary account of social citizenship, where people are granted first civil rights (e.g. protection from
discrimination, freedom of thought, expression, and religion), political rights (e.g. the right to vote), and finally social rights (e.g. eligibility for universal healthcare and education) (Marshall, 1950).

However, there is some debate as to how accurately Marshall’s model explains the extension of rights to immigrant groups (Bauböck, 1995; Bosniak, 2000; Guiraudon, 2000; Kivisto & Faist, 2007). The social groups Marshall analyzed were all “nationals,” people who have a right of entry and stay in the country (Joppke, 1999), whereas social inclusion is not as automatic for immigrants. Bauböck (1995) and Guiraudon (2000), for example, argue that the extension of civil, political and social rights to immigrants took place in an order that contradicts Marshall’s model: social benefits were secured very early on while political rights are still contested. In contrast, Schierup et al. (2006, p. 63) reason that at the supranational level Marshall’s triptych is put “back on its feet” through “a market-bound civic citizenship,” but without this necessarily guaranteeing the evolutionary follow-up of social citizenship.

In any case, it is clear that migration transforms the traditional notion of citizenship (Bauböck, 2007), and has diversified categories of membership in societies, “defying the citizen-alien dualism of either full or no membership at all” (Joppke, 1999, p. 6). For example, immigrants with legal migratory status, who do not enjoy full social rights and only limited access to social policy, have been called “denizens” (Hammar, 1990), a sort of incomplete citizenship that evidences processes of civil stratification (Morris, 2002).

At the bottom of this stratification are so-called “aliens,” people who live and work in the country without official documentation, whose presence in the host societies usually generates stern political controversy (López, 2012). They generally do not enjoy the basic rights associated with citizenship (Bosniak, 2000, p. 963). Thereby, citizenship not only serves as an imposition of national borders, but also as a “as a legal divide inside the political community, separating full members from those people who are located within the national territory but who are not formally recognized as full members.”

2.2 Migration and social policy: inclusion or exclusion?

There is ample consensus that social policy, understood as public interventions that have the objective to prevent people suffering from income and life opportunities losses, while actively promoting decent living and work conditions for all (Fischer, 2009; Mkandawire, 2005), plays a central role in the economic and social incorporation of immigrants. In essence, social policies are fundamentally political exercises that define the institutional base of citizenship rights, and articulate the principal mechanisms of integration and segregation within societies (Fischer, 2009; Mkandawire, 2005).

These mechanisms depend to a large extent on the dominant paradigms that guide social policy provisioning: universalism versus targeting. While it is a highly contested issue (Danson et al., 2012), several authors demonstrate the advantages of universalism over other social policy approaches, such as (means-tested) targeting (e.g. Fischer, 2009; Martínez Franzoni and Sánchez Ancochea, 2013). Fischer (2009, p. 6) argues that the latter “usually entrenches segmentation in provisioning systems, which in turn reinforces social and economic stratification by removing middle classes and their political voice from the services that are supplied to and accessed by the poor.” However, universal social policy is not a sufficient condition to ensure immigrants’ access to such policies. If the right to access to such policies is very narrowly defined as the right of citizenship (Lister, 1990), this would include citizens only and exclude immigrant minorities, even
if they have their documentation in order. If legal migratory status is the eligibility criteria, regularized immigrants would, on paper, have a claim to social policy.

Indeed, there is less agreement on whether nation states will, in fact, include immigrants in their welfare arrangements or not, and authors seem to reach one of two opposing conclusions (Baldwin-Edwards, 2002). To a large extent, these conclusions are founded on an ongoing debate on the extent to which “developments subsumed under the term ‘globalization’ have eroded national sovereignty […] and international norms have constrained national policy making” (Guiraudon & Lahav, 2000, p. 163). On the one extreme, Freeman (1986) argues that (welfare) states are inevitably exclusive in order to secure and defend the social, political and economic rights of the privileged citizen, as well as access to (welfare) benefits. Implicit in this view is that states have the power and capacity to control unwanted migration as well as setting and applying the rules of membership to the national polity.

The other extreme is represented by globalist authors (Jacobson, 1996; Favell, 2006; Sharma, 2006; Soysal, 1994), who see migration as a “case of nation-states losing control” (Guiraudon & Lahav, 2000, p. 164). In their analysis of post-national arguments, these authors argue that economic globalization leads to increased capital, financial and labor mobility, and thereby decreases the power and importance of the nation state. This results in an inherent tension between the nation state, a national concept by definition, and the “denationalizing” logic of globalization (Sassen, 1996), immigration being a crucial factor in this tension (Sassen, 1998).

In this scenario, globalist perspectives argue that international human rights regimes and immigration challenge nation state sovereignty, thereby inducing a devaluation of the importance of citizenship (Sassen, 1996, p. 95). It is reasoned that citizenship is exercised and administered transnationally (Sharma, 2006; Soysal, 1994), as a result of the emergence of an “international human rights regime that prevents nation-states from deciding who can enter and leave their territory” (Guiraudon & Lahav, 2000, p. 164). Human rights are inalienable natural and legal rights, independent of nationality, in contrast to the national, political, social, and civil rights that are based on the distinction between domestic and foreign (Sassen 1996, 1998). Thus, states are obligated to grant broad social rights to immigrants living in its territory, becoming synonymous with citizenship (Baldwin-Edwards, 2002). Human rights agendas would then prevail over national attempts of exclusion to social rights.

Finally, there are authors that take a middle position between “nation-state defenders and nation-state bashers” (Joppke, 1999, p. 4), who question the inevitable loss of state sovereignty versus transnational law (Banting, 2000; Hollifield, 2000; Sainsbury, 2006; Guiraudon & Lahav, 2000). Without denying the importance of transnational forces and economic globalization for public policy-making, and despite the prominence of transnational modes of citizenship in the literature, these argue that the actual level of immigrants’ social inclusion then depends greatly on the country specific context, and to be more precise, on the combination of national immigration and social policies. However, neither the state nor national citizenship have lost centrality regarding the extension of rights (Joppke, 2007).

For example, Guiraudon and Lahav (2000) demonstrate that globalist perspectives overlook inventive state responses, thereby circumventing international constraints. States adapt in at least three ways, shifting the level at which policy is elaborated and implemented “up, down, and out” (p. 177). Thereby, it ensures its sovereignty in the field of migration control, and thus in granting rights related to citizenship. Specifically, to counter or escape transnational normative constraints, they evidence more coordinated
migration control at the international level (shifting up), decentralization of immigration policy to local levels (shifting down) and outsourcing of migration control functions to the private sector, by disciplining behavior that is not in accordance with immigration policy (shifting out) (Guiraudon & Lahav, 2000).

It is argued here that this shifting behavior also happens when states apply internal migration control measures, which transfer “responsibility to agencies […] whose primary concern is not immigration enforcement, for example, hospitals” (Morris, 2002, p. 23). Following Guiraudon and Lahav (2000, p. 164), employing national welfare arrangements to alter migration flows is testimony to the “multifaceted devolution of migration policy [which] shows the adaptiveness of agencies within the central state apparatus in charge of migration control.”

In what follows, based on the Costa Rican experience, it will be shown that states in the Global South may in discourse subscribe to human rights, but that in practice the state finds internal ways to limit newcomers’ social rights and access to social policy as part of restrictive immigration policy measures. These restrictions are founded on the perceived threat immigration poses to the sustainability of Costa Rica’s social policy regime, leading to political reactions that do not favor the social incorporation of the immigrant population.

3. Migration and social policy in Costa Rica
Costa Rica offers a unique scenario to study the interplay between migration and social policy. The country’s social policy regime is often characterized as “exceptional” (Martínez Franzoni, 2008; Filgueira, 2007), and at the same time it is the country in Latin America with the largest immigrant stock, as a percentage of the total population. This section briefly introduces Costa Rica’s social policy regime, and the threat migration has been perceived to have posed to its sustainability.

3.1 From exceptional to uncertain healthcare
In the Central American region, where public social policy is conspicuous by its absence, Costa Rica followed a unique historical path by creating a strong social policy regime (Filgueira, 2007; Huber & Stephens, 2012; Martínez Franzoni, 2008; Sandbrook et al., 2007), based on universalism and solidarity, and in combination with a relatively strong formal labor market that provides jobs with decent pay (Haggard & Kaufman, 2008). This way, the country was able to secure formal employment and social protection for a good part of its citizens, thereby ensuring what Martínez Franzoni and Ancochea Sánchez (2013) call the “elusive double incorporation,” that is, simultaneous economic and social incorporation.

Costa Rica very early on established universal free primary education, high rates of social security and healthcare coverage, including for vulnerable and non-contributory groups (Mesa-Lago, 1994). The 1940s, 1950s and 1970s saw significant increases in social investment and the construction of a universal social policy regime. Today, Costa Rica is considered a health success story of “health without wealth” (Noy, 2012, p. 14). Key indicators are telling: the infant mortality rate was 8.8 per 1000 births in 2009 (Sáenz et al., 2011, S158), and life expectancy at birth, which in 2010 reached 79.4 years, are comparable with those of the most advanced countries (UNDP, 2011).

Emblematic for this social policy regime is the country’s main healthcare provider and social security agency, the CCSS, which was created in 1941. Originally it covered
formal workers, then their family members (1961), but currently effectively covers over 85% of the Costa Rican population. Uninsured people, however, also do use public health facilities despite not being officially insured, especially hospitals (Clark, 2002; Unger et al., 2008).

By the end of the 1970s, Costa Rica boasted practically universal health insurance and medical services, either through contributory or non contributory means (Martínez Franzoni and Sánchez-Ancochea, 2013). However, the 1980s marked a period of momentous transformation, following the debt crisis early in the decade and subsequent neoliberal reforms promoted by the Washington Consensus. The social policy regime shows remarkable resilience, but tensions arose as there was a need to do more with less resources per capita (Martínez Franzoni and Sanchez-Ancochea, 2013).

As a result, the quality of public healthcare has suffered. Neoliberal reforms have translated into cuts in basic supplies, increases in delivery time, longer waiting lists and dissatisfaction on the part of the national population (Martinez Franzoni and Sanchez-Ancochea, 2013). Indicative of these changes has been the dramatic increase in the private provision of health services. Between 1993 and 1998, own pocket health spending rose five times and between 2000 and 2009, the share of private health expenditure increased from 23% to 33% (Martínez Franzoni and Sanchez-Ancochea, 2013) driven mainly by middle and upper middle income groups.

More recently, partly as a result of the international financial crisis of 2008, which resulted in a slowdown of the Costa Rican economy and increases in unemployment rates, in 2011 the CCSS entered into a financial crisis that has called into question the institution’s sustainability (Carrillo Lara et al., 2011; PAHO, 2011). In 2009, the first signs of financial problems within the CCSS began to show, induced by the international financial crisis. In real terms, Costa Rica’s GDP fell by 1.3%, accompanied by a fiscal deficit of -4% and -5% in 2009 and 2010, respectively (PAHO, 2011). Being allocated 11% of GDP (7% for healthcare and 4% for pensions), the financial crisis directly impacted the CCSS’s income. That said, the PAHO report (2011) on the causes of the crisis emphasized cost and salary increases, as well as mismanagement. Combined with declining revenues and excessive growth of wage employment, the CCSS’s financial situation deteriorated rapidly between 2009 and 2011, when the problem came to light.

3.2 Immigrants’ claim to healthcare

This situation has made the already contested claim of Nicaraguan immigrants to the CCSS’s healthcare services an even more polemic issue. The 1990s especially saw spectacular increases in international labor migration (Sandoval, 2008; Robinson, 2003; Voorend & Robles Rivera, 2011): between 1984 and 2000, the Nicaraguan population in Costa Rica increased from 45,918 to 226,374, from 1.9% to 5.9% of the total population (Castro Valverde, 2008). In 2011, where the total immigrant population represented 9% of the population, Nicaraguans made up 6.7%, three out of four immigrants being Nicaraguan (INEC, 2011).

The crisis of the CCSS is generally perceived to be related to demand for healthcare services from Nicaraguan immigrants (Bonilla-Carrión, 2008). Previous research has shown there to exist a general perception among the Costa Rican population that Nicaraguan immigrants form a threat to the availability of jobs (Voorend & Robles Rivera, 2011), to security (Sandoval, 2008; Dobles et al., 2014) and to the social policy regime (Bonilla-Carrión, 2008). Fueled by negative media coverage (Gonzalez and Horbaty, 2005), in the social imaginary of at least three quarters of the Costa Rican
population there is a persistent belief that immigrants pose a risk to the country’s social security (Gonzalez and Varela, in Bonilla-Carrión, 2008). Similarly, Nicaraguan immigrants are believed more likely to make use of public social services, because of their “lower social levels and their ‘illegality’” (Bonilla-Carrión, 2008, p. 146; own translation). Also, they are assumed to be overrepresented as users of social services, especially healthcare (Voorend, 2013), despite empirical evidence suggesting the opposite (Voorend, 2014a).

The social construction of the immigrant as a threat is an important element in the formation of public policies regarding immigrants (Feldman-Bianco et al., 2011). Indeed, two recurrent perceptions voiced by CCSS policy makers and officials as well as officials of the Directorate General of Migration (Spanish acronym DGME) are key for our understanding of policy changes that were introduced after 2009.

First, Costa Rica is generally perceived as a welfare magnet for Nicaraguan immigrants. According to interviewees, Costa Rica is particularly attractive for migrants because of the high quality health services that are delivered free of charge. General practitioners and nurses of the CCSS interviewed voiced the quality and low cost of healthcare for the user as powerful pull factors. Coming from a country where they have “to pay part of the medical consult, and having to pay for medicines, coming here where practically everything is for free, well, that is a super powerful magnet, right?” (Interview with Marta Jara, General practitioner, CCSS, 19 March 2013). Indeed,

“They consider that healthcare is better here, which is a huge benefit for them, and, well, they don’t have to pay, they might pay an insurance, or a small fee, but they don’t pay for the injection, they don’t pay for the syringe, they don’t pay…right, a private service” (Interview with Giselle Román, Nurse, CCSS, 25 March 2013).

High ranking CCSS officials generally shared this perception. One of its directors, who wished to remain anonymous, for example, voiced concern over people

“coming to a country but not having the conscience that they come and have to contribute and comply with the laws […] because they don’t have a broad perception of what a social security system is. But they fully understand that it is beneficial and they come to the country for healthcare” (Interview, CCSS, 29 April 2013).

The possibility of acquiring Costa Rican nationality when having a child on Costa Rican territory, through the *ius soli* principle, is perceived to be an important factor in deciding to migrate to Costa Rica, with regards to access to the country’s social policy regime. Most interviewees knew of anecdotal evidence of Nicaraguan women crossing the border pregnant or becoming pregnant in Costa Rica, to not only access prenatal and natal services offered by the CCSS, but also to acquire Costa Rican nationality for their child and themselves through their Costa Rican born child:

“With so much repetition one concludes that among other benefits they acquire residence by the child born right here. Then, if my son is Tico [Costa Rican], I have rights, that is, I am not the direct beneficiary but my son being a Costa Rican, I get many benefits, and they cannot tell me ‘you leave and leave the child here,’ because we would be violating the rights of child” (Interview with Giselle Román, Nurse, CCSS, 25 March 2013).

This is seen as a welfare strategy that permits, through the residence permit a “stay in Costa Rica for a better future, a better life style that unfortunately [they] will never have
in Nicaragua” (Interview with Adrián Jiménez, Deputy Director of Planning, DGME, 13 April 2013).

Second, the legitimacy of immigrant claims for welfare benefits in general, and healthcare services in particular, is directly linked to its legal migratory status. Claims are contested when the immigrant is considered an “illegal alien,” and when immigrants are believed to make disproportionate use of healthcare services. One CCSS director claims the institutions “happily attend immigrants as long as they do things right” (Interview, CCSS, 29 April 2013). Similarly, the crisis of the CCSS is understood to have been caused by “the disorder in the way services have been provided to immigrants because with this idea that we can’t tell them ‘no’ in certain situations. For many people, as the saying goes, we give them a finger and they take the whole hand” (Interview with Marta Jara, General practitioner, CCSS, 19 March 2013). Thus, the legal/illegal dichotomy becomes pivotal in immigrants’ social rights.

In this respect, the general belief that most immigrants enter the country under irregular conditions is problematic (Sandoval, 2008). López (2012, p. 188) argues that policymakers and service providers tend to ignore differences in migratory status. Without a clear understanding of the entitlements that correspond to each status, “policy makers tend to deny them certain benefits” on the basis of the perception of their “illegality,” even when these immigrants are national residents or were formally recruited through bilateral agreements (López, 2012; Voorend, 2013). Indeed, public service attention for immigrants in practice depends much on who is sitting at the counter (Dobles et al., 2014).

4. Migration reform and healthcare law enforcement

Immigration in Costa Rica is “constructed as a problem primarily from the illegality that it is ascribed, [and] it is this illegality that structures the vision of the State” (Domenech, 2011, p. 33; italics in the original). As will be shown in this section, this vision forms the basis for Costa Rica’s policy reactions to migration flows and the crisis of its healthcare institution. It is fairly common in times of economic and political crises (Banting, 2000; Morissens, 2008) that despite pressures to recognize international human rights, a country moves to limit access to social welfare benefits for immigrants. In doing so, the state finds inventive ways to maintain its sovereignty over migration control.

Methodologically, this analysis constitutes a critical revision of the 2009 Migration Law, as well as a series of internal communications of the CCSS, issued in 2012 and passed on to several academic and civil society institutions. These communications stipulate, clarify, change or enforce the institution’s policy towards its employees, and are important inputs for understanding the internal and external functioning of the CCSS with respect to immigrants. Explicitly, taking a similar, although slightly more pragmatic approach than Fouratt (2014), this implies a discursive analysis and a close reading of these texts, focusing on how issues were framed and identifying explicitly the ramifications of policy on healthcare access of immigrant populations. This critical analysis was consequently complemented with a series of 27 interviews with CCSS and DGME officials of different ranks. These interviews centered on the topic of Costa Rica as a welfare magnet for Nicaraguan immigrants, the legitimacy of the claims immigrants make to social services and, most importantly for this article, policy reactions to immigration. Given the scope of the paper, only the most significant interviews were cited.
4.1 Migration law reform

Following the unprecedented Nicaraguan migration inflows during the 1990s, the state increasingly deemed immigration as a problem for integration, security and unemployment, and in 2001 the government proposed a reform to the existing legal framework, dating back to 1986 (Morales, 2008). A new law came into effect in 2006, but was met with backlash because the punitive nature of its strengthened control mechanisms, the surveillance of undocumented immigrants, and mechanisms to police foreign criminal activity completely disregarded human rights (López, 2012; Fouratt, 2014). Opponents of the law argued that it would incite discriminatory and xenophobic attitudes towards immigrants in Costa Rica, and particularly towards Nicaraguan migrants (Jiménez Matarrita, 2009).

In 2007, following pressure from civil society, academics, and international organizations (López, 2012), a new reform was proposed to “promote an administrative model to organize migration laws according to a human rights perspective, that would make possible migrants’ access to Costa Rica’s welfare institutions and other public services offered by the State” (MIDEPLAN 2007, p. 49). In July 2009, the Ley General de Migración y Extranjería (No. 8764) [General Migration Law] was approved by the Legislative Assembly and entered into force in March 2010, introducing some important changes to the previous law of 2006 (Kron, 2011).

Making multiple references to international human rights, the law, for the first time, commits the state to immigrants’ social inclusion (López, 2012; Fouratt, 2014) in Costa Rican society “based on principles of respect for human rights; cultural diversity; solidarity; and gender equity” (General Migration Law 8764, art. 3). However, integration is vaguely defined as “integration in economic, scientific, social, labor, education, cultural, and sports processes” (General Migration Law 8764, art. 7), and does not establish the public policies necessary to ensure this. Still, in contrast with most of the continent, the law explicitly focuses on social integration, although security issues remain central (Kron, 2011; Fouratt, 2014).

Noy and Voorend (2014) argue that this more inclusive language seems to result from domestic advocacy rather than regional integration processes or international pressures to adhere to human rights normative frameworks, given Costa Rica’s reluctance to participate in regional integration processes, like the Central American Integration System, and its hesitancy in signing international conventions that are relevant in this respect.¹ That said, possibly as a result of the inclusive character of its drafting, the 2009 law’s more inclusive language does reflect the human rights discourse. Indeed, DGME officials commented in interviews with the author that most Migration Laws focus on migration control,

“understood [...] in its maximum expression of police repression at different levels. [...] This law, besides immigration control justified by national security, by order, stability, [...] also proposes that the country’s institutions must worry about how foreigners live and how they are integrated, inserted into the social dynamics” (Interview with Julio Aragón, Head of the Integration Direction, DGME, 13 April 2013).

4.2 Reform and access to healthcare

Besides certain protected groups, like children under 18 and pregnant women, who have access to healthcare independent of insurance or migratory status, immigrants and nationals alike need social insurance (seguro social), issued by the CCSS, to have
access to non-emergency healthcare services. Until 2009, immigrants were able to procure social insurance relatively easily as it was not conditioned on migratory status. That is, “legal” residents and “aliens” alike had access to healthcare services, provided they either were insured by their employers, or paid the voluntary insurance fee. If immigrants (or nationals) did not have the seguro social, they would only be attended in case of emergency, and officially would be presented the bill afterwards, although this in practice seldom happened (Voorend, 2013). In reality, the state financed the services provided in these cases. Other general non-emergency healthcare services for those that were uninsured would be delivered at a market price.

Following the migration law reform, critical voices have raised concerns. First of all, the Law establishes affiliation to the country’s national social security system as a new requisite for obtaining a regular migratory status. Indeed, to start the regularization process, immigrants must be able to show their affiliation to the CCSS for the period they have been in the country. Specifically, “all processing of migratory management must guarantee the immigrant’s social security insurance. Such guarantee will ensure that each migratory procedure must contemplate, as one of the basic requirements, having one of the social insurances the CCSS has to offer” (Law 8764, Article 7, paragraph 7; own translation).

Sandoval (forthcoming) argues that this is a harsh requirement, given the CCSS covers only six in ten economically active persons. Indeed, the Law demands a direct insurance of immigrants, while only 31% of Costa Ricans were directly insured as salaried workers or on their own account in 2011, a lower rate than amongst Nicaraguans (37%) (INEC, 2011). Much of the CCSS’s coverage for nationals comes from indirect family insurance, through a directly insured family member, which covered 41.4% of nationals but only 22.8% of Nicaraguans (INEC, 2011).

Furthermore, the costs of insurance represent a significant barrier to regularization. Without a formal employment contract, it is possible to pay a voluntary insurance to the CCSS, the costs of which represent a significant investment of up to 15% of a typically low-skilled informal Nicaraguan worker’s salary (IIS, 2012). Combined with the requisites the Law establishes for a prolonged regularized stay in Costa Rica, the costs of obtaining a residence permit vary between US$370 and US$800 (IIS, 2012). Finally, the Law establishes significant economic fines for irregular stay which are to be paid before starting regularization. In all, following Sandoval (forthcoming, p. 7; own translation), the new conditions do not stimulate the process of regularization, and the Law “produces the ‘illegality’ that it aims to eradicate [fostering] the absence of documentation.”

4.3 Insurance and regularization: Catch-22
The specific interplay of migration and social policy in Costa Rica creates an extra barrier for immigrants’ social integration. This interplay becomes visible in a series of internal communications within the CCSS – of 10 April, 21 and 22 June, 19 October 2012 and 18 February 2013 – in which a new requirement to obtain insurance is established and existing requirements to access the institution’s health services are reinforced.

In the first communication, of 10 April 2012, the CCSS informs its employees about “an addition to the guidelines for securing migrants as voluntarily insured and self-employed, in accordance with the Law No. 8764, the Immigration Law” (CCSS, 2012a, p. 1). When the CCSS’s direction, in an official letter that circulated the institution dated 21 February 2012, established a series of guidelines for obtaining insurance, on 9 March
the DGME issued a request to the CCSS which made it “necessary to implement an addition to the [previously] mentioned guidelines” (CCSS, 2012a, p. 1).

Specifically, the new requisite states that “foreigners who apply for insurance for purposes of renovating their residence permit, must present their valid residence permit,” or have to be able to show that all the paperwork for obtaining a regular migratory status are accepted and in process, in which case the CCSS can issue a temporary insurance of up to two months (CCSS, 2012a).

In the internal memo of the CCSS (2012d, p. 2) of 19 October 2012, this requirement is confirmed, establishing a transitory measure

“for insuring foreigners as voluntarily insured and independent self-employed: […] in exceptional cases, for the person with an expired residence permit, the [CCSS] will proceed with the insurance, provided that the applicant demonstrates presenting official documentation issued by the DGME, or entities this institution authorizes, that the expired residence permit is in process of renewal”

This creates a Catch-22 situation from which the irregular immigrant can hardly escape (Voorend, 2013). Where DGME demands insurance for a regular migratory status, the CCSS demands the latter as a requisite for insurance. While DGME offered temporary grace periods in which residence permit applications were accepted conditioned on the ensuing insurance from the CCSS, which allowed them to present to the CCSS the necessary paperwork in process, in reality only few migrants made use of these measures (Interview, Adrián Jiménez, DGME, 2013). For those who didn’t, this situation hindered the regularization process and access to healthcare services.

Two rulings of the Supreme Court, of end 2010 and end 2012, have questioned the sequencing of these mutual requisites, although not the requisites themselves. In a nutshell, following complaints by immigrants about this Catch-22 situation, both rulings assure there is nothing unconstitutional about the CCSS’s requisite for a regular migratory status before issuing an insurance. However, they do rule that the DGME should issue a temporary permit that allows the immigrant to proceed with the affiliation to the CCSS’s insurance. Once the insurance is issued, the person can return to the DGME to finalize the regularization process, which on paper should resolve the issue.

However, in practice this does not seem to be the case. A revision on the DGME’s website of the requisites demanded for different migratory statuses shows that this solution is only possible for requests of permanent residence through a tie to a Costa Rican national. That said, the situation is confusing as another document on the same webpage with criteria for this same permanent residence category does list the affiliation to the CCSS insurance (DGME, 2014).

All other types of regularization, of which temporary residence for migrant workers is arguably the most important for Nicaraguan immigrants, list the CCSS insurance requisite (DGME). Also, the fact that the first ruling, of October 2010, is followed by the second, exact same, claim in 2012, shows that the first does not set an apparent precedent for policy change. Furthermore, immigrant testimonies and interviews (Voorend, 2014b) and more recent analyses of the Reform (Fouratt, 2014) suggest that in practice, the Catch-22 situation is anything but resolved.

Finally, another communication (CCSS, 2012c, p. 2) establishes that indirect insurance for immigrants can only be extended to those family members that have a regular migratory status. Specifically, it is stated that “the granting of family benefits in the case of the directly insured applies when, in the case of foreigners, they have legal residence
in the country.” This means that for irregular immigrants who would want to insure irregular family members, the indirect insurance form is rendered obsolete, as all family members over 18 would first have to regularize their migratory status, which implies obtaining a direct and individual insurance.

In any case, the legally established requirement of insurance by the CCSS for regularization demonstrates the explicit transfer of migration control responsibilities to the CCSS. The ensuing requisite of regular migratory status that the CCSS, following an official request of the Directorate General of Migration, establishes as mandatory for insurance, confirms the CCSS’s unequivocal role in migration policy. The communication on this requisite between DGME and the CCSS is an important indicator that shows the interaction between social and migration policy. Specifically, this transfer of migration control responsibilities represents a shift of migration control (Guiraudon & Lahav, 2000; Morris, 2002), inwards to other state institutions that traditionally have no role in migration policy.

4.4 Law enforcement

At the same time, the CCSS refers to the “duty of every official at the moment of attending the serving different users of healthcare services provided by the institution, to verify meticulously the insurance status of each and every one of them” (CCSS, 2012b, p. 3; capitals, bold and underline in original). CCSS officials were reminded that:

“in case patients in state of urgency or emergency are attended, one should proceed in compliance with the established procedures and protocols. After finalizing medical attention, the Medical Records Service clerk or the emergency services receptionist, depending on the case – uncharged with the verification of the patient’s information and the pre-seal of the respective documentation, will refer the patient to the Unit of Validation and Billing of Medical Services, where the corresponding bill will be prepared” (CCSS, 2012b, p. 2).

For all other non-emergency healthcare services, the “UNINSURED patients [...] must cancel the costs of the basic medical consult (in accordance with the effective tariff model), prior to the realization of the service” (CCSS, 2012b, p. 2; capitals in original).

This represents a stricter application of internal laws within the CCSS. Until 2011, this was only loosely applied, largely because the CCSS’s financial situation allowed for more lenient management (Carrillo Lara et al., 2012). Indeed, one Head of a CCSS Area explained that until 2011, the institution was not so concerned with this policy, but that now the CCSS “has become more aggressive” (Interview with Head of a CCSS Area, 29 April 2013). Indeed, irregularities “are better controlled because of the Migration Law” (Interview, Head of a Research Sub-Area, CCSS, 29 April 2013).

With this law enforcement, “illegitimate” demand for healthcare services of irregular immigrants seems to be targeted. Emergency care is legally impossible to deny, but a “market-based” filter is put in place to limit certain minority groups’ demand for these services. At the very least, it serves as a measure to deter people from approaching health clinics, unless it is a matter of life and death, because it would translate into a significant bill, although the CCSS is still in the process of defining what happens if the person cannot pay the bill (Interview, Eduardo Flores, Head of State Coverage, CCSS, 25 April 2013).
5. Conclusions: migration control and state sovereignty

In times of economic and political crises, it is a fairly common policy reaction to limit access to social welfare benefits (Morissens, 2008; Ryner, 2000; Bommes and Geddes, 2000; Banting, 2000; Baldwin-Edwards, 2002), especially in contexts of pressures to liberalize, deregulate and diminish state presence (Ryner, 2000). This is exactly the scenario that Costa Rica is currently facing.

In this article it has been argued that in response to the crisis of the CCSS, emblematic institution of Costa Rica’s “exceptional” solidarity and universal social policy regime, following voices of welfare chauvinism, the state has taken measures to limit immigrant’s access to health services. This contrasts strongly with the more inclusive human rights vocabulary that recent migration reform boasts.

Globalist authors argue that normative frameworks surrounding international human rights would make it more difficult for states to create such barriers, because they decrease the power and importance of the nation state through the “denationalizing” logic of globalization. States in the Global South may be less able to withstand such pressures, making it especially interesting to analyze the interplay of migration and social policy in developing contexts. Indeed, recent migration policy reform in Costa Rica resulted in more inclusive language, adhering to human rights principles, acknowledging the need for immigrant integration, and recognizing their right to access welfare benefits.

However, this article shows the central importance of the state in processes of social integration and citizenship, or rather, a regular migratory status, as a determinant for access to national welfare benefits. In Costa Rica, many immigrants, especially from Nicaragua, have only limited access to the “universal” healthcare services the country is famed for, in many cases because they lack the necessary paperwork, but also because of perceptions of illegality amongst counter clerks, doctors and nurses, rendering their claim to healthcare services “illegitimate,” even if paperwork is in order. Only in cases of emergency, and for certain protected groups like children and pregnant women, there is no legal ground to deny access to healthcare services, although these are being commodified to create mercantile barriers.

Public policy has pointed its arrows at irregular migration, despite its undeniable importance for the Costa Rican economy (Morales & Castro, 2006; Voorend & Robles Rivera, 2011). This has led to an explicit centralization of regularization within the migration policy framework, migration being constructed from the dichotomy of legality versus illegality that it is ascribed. The legitimacy of welfare claims, as follows, derives directly from this dichotomy, although not necessarily always based on the actual migratory status, but rather on the perceived legal status of the immigrant.

Remarkable in this process is the explicit role the country’s social security and healthcare institution, the CCSS, has been granted in migration policy. The 2009 Migration Law reform establishes social security as a requisite for regularization. At the same time, the CCSS was requested by DGME to make regularization obligatory for insurance. While Supreme Court rulings have recognized and partially ruled against this impasse, in practice immigrants’ access to healthcare remains limited, and regularization has been made more difficult to achieve. Indeed, the CCSS has become a central pillar of migration policy, forming a key element of internal migration control. This reflects a shift in Costa Rica’s migration policy, which until 2010 was almost exclusively based on border control (Borge, 2004; Morales, 2008; Jiménez, 2009; López, 2012), to include healthcare access as an internal control measure.
This article shows that, despite normative frameworks advocating more rights for immigrants, countries can fairly easily circumvent these frameworks, by “shifting in” migration control to institutions that are originally not charged with migration policy control, such as social security institutions. This way, internal controls constitute a migration policy tool that permits the limiting of rights, despite recognition of human rights frameworks in political discourse. Far from conceding state power and sovereignty, as “globalists” would have it (Soysal, 1994; Jacobson, 1996, Sassen, 1996, 1998; Sharma, 2006), the Costa Rican state has indeed found ways to sidestep international normative constraints, shifting the level at which control measures are elaborated and implemented. This “shows the adaptiveness of agencies within the central state apparatus in charge of migration control and their political allies” (Guiraudon & Lahav, 2000, p. 165).

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Note
1. Costa Rica has not signed the C97 ILO Convention concerning Migration for Employment, of 1949, the C 143 ILO Convention concerning Migrations in Abusive Conditions, and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, both of 1975; nor the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 1990 (Bolaños, 2009).

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**Appendix: interviews**

Director (anonymous), CCSS. Interview 29 April 2013. Karla Venegas and Koen Voorend.


Head of an Area (anonymous), CCSS. Interview 29 April 2013. Karla Venegas and Koen Voorend.

Head of a Research Sub-Department (anonymous), CCSS. Interview 29 April 2013. Karla Venegas and Koen Voorend.


Ana Patricia Salas, Director of Healthcare Service Comptroller, CCSS. Interview 22 April 2013. Karla Venegas and Koen Voorend.