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**The Incorporation of Nicaraguan Temporary Migrants into  
Costa Rica's Healthcare System: an Opportunity for Social Equity?**

**By  
Mauricio López Ruiz**

**A Dissertation  
Submitted to the Faculty of Graduate Studies  
through Sociology, Anthropology and Criminology  
in Partial Fulfillment of the Requirements for  
the Degree of Doctor of Philosophy at the  
University of Windsor**

**Windsor, Ontario, Canada**

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The Incorporation of Nicaraguan Temporary Migrants into Costa Rica's Healthcare System: an Opportunity for Social Equity?

by  
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## **Author's Declaration of Originality**

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## **Abstract**

This dissertation explores the incorporation of Nicaraguan migrants employed temporarily under the Costa Rica - Nicaraguan Bi-national Agreement (BNA) into the Costa Rican healthcare system. It draws on insights from the literature on citizenship and migration, particularly Linda Bosniak's notion of alienage and Lydia Morris' concept of 'civic stratification.' Exploring the social construction of alienage for different categories of migrants in three institutional domains (namely, the migration law, social security protections, and the healthcare provisions), the analysis presented in the dissertation reveals complexities depending on both the type of migrants and the institution in question. Non-citizens, such as legally employed temporary workers are granted some membership entitlements in each of these institutional domains; yet, they are excluded from others. Overall, this partial membership tends to reproduce vulnerabilities and dynamics of exclusion. Furthermore, even though legally employed temporary workers in host societies are granted certain benefits, at times policy makers and service providers tend to ignore the differences between these migrant workers and other migratory categories (such as 'illegal' migrants) and consequently deny benefits to all migrants regardless of their status .

This dissertation makes a contribution to the literature on citizenship and migration by illustrating how policy making, particularly with respect to certain categories of migrants, is a 'messy' process, based on incomplete knowledge, mistaken perceptions, and unclear assumptions. The analysis reveals how the extension of benefits granted to these aliens is based on a precarious migratory status configured around their market price and a non-permanent affiliation to the host society. As a result, they are slipping through a crack between old public healthcare arrangements designed to

protect national citizens, and the promotion of flexible practices for employers requiring a foreign workforce.

Beyond the official government rhetoric, the BNA reaffirms traditional notions of citizenship, based on national membership not suited to protect temporary migrants. As a result, migrants get only partial coverage under the public social security and healthcare systems. In addition, the special needs of these migrants are largely ignored. These exclusions leave legal temporary migrant workers unprotected and vulnerable.

*In the loving memory of my mother, Doña Mery*

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As I sit down to express some final words of gratitude, Maria Rita's graceful interpretation of *encontros e despedidas* is helping me to understand how this dissertation would not be possible without the implicit or explicit complicity of family and friends. Back in 2006 and 2007, when my plans to study outside my country started to be crystallized, I was lucky to be part of the Social Research Institute and the Sociology School of the University of Costa Rica. There, colleagues and friends honoured me with their unconditional support. I would particularly like to thank Lucy Gutierrez and Carlos Sandoval for their truly selfless help through all these years. Not only did Jorge Rovira Mas write letters of recommendation for me, but he also taught me with his example the importance of being involved in the academic world.

Currently, I am part of a process of generational transition at the University of Costa Rica. This institution, through its Cooperation and Foreign Affairs Office, gave me the financial support needed to conclude my doctoral studies. More importantly, to be part of a major and comprehensive educational project allowed me to develop a sense of belonging that helped me to face different sorts of challenges outside home. I was always looking at the South, even though I was working in the North.

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The University of Windsor, through the Faculty of Graduate Studies and the Sociology, Anthropology, and Criminology Department, granted me scholarships required to fund my first years of studies in Canada. Furthermore, I had a chance to work as a GA for different undergraduate courses in this Department; and most importantly, to work as a research assistant in the Centre for Studies in Social Justice and the Canada Research Chair in History of International Health. All these different jobs allowed me to combine my studies with a fruitful process of professional growth.

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## List of Abbreviations

AECID	Spanish Agency for International Development Cooperation
ASIS	Comprehensive Analysis of Health States
ATAP	Primary Healthcare Technician
BNA	Costa Rica-Nicaragua Bi-national Agreement
CCAA	Costa Rican Agricultural and Agro-industrial Chamber
CCC	Costa Rican Chamber of Construction
CCSS	Costa Rican Social Security Fund
CEN-CINAI	Education and Nutrition Centres for Children

CINDE	Costa Rican Investment Promotion Agency
CRM	Regional Conference on Migrations
CSO	Occupational Health Council
DGME	The General Migration Authority (Costa Rica)
DR-CAFTA	Dominican Republic and Central American Free Trade Agreement
EBAIS	Basic Comprehensive Health Teams
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
IAFA	Institute on Drugs and Alcoholism Dependency
ICAFFE	Costa Rican Institute of Coffee
IDHUCA	Human Rights Institute at Central American University (UCA)
ILO	International Labour Organization
IMAS	Institute of Welfare Services
INCIENSA	Costa Rican Research Institute on Health and Nutrition
INEC	National Institute of Statistics and Census
INS	National Insurance Institute
IOM	International Organization for Migrations
IVM	Disability, Ageing, and Death Pension Regime
MIDEPLAN	The Costa Rican Ministry of Planning
MINSA	Ministry of Health (Costa Rica)
MITRAB	Ministry of Labour (Nicaragua)
MTSS	Ministry of Labour and Social Security (Costa Rica)
OAS	Organization of American States

OCAM	Central American Commission of Migration Councils
OIM	International Organization for Migration -Spanish Abbreviation
PAHO	Pan American Health Organization
PLN	National Liberation Party
SAP	Structural Adjustment Program
SEPAN	National Secretariat on Food and Nutrition
SICA	Central American Integration System
SIECA	Central American Economic Integration System
SWAP	Canada's Seasonal Agricultural Worker Program
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development



# Chapter 1

## Introduction

### 1.1 The working hands that have cropped our harvests

In her first meeting with Nicaraguan president, Daniel Ortega after taking office in 2010, Costa Rica's current head of state, Laura Chinchilla, thanked Nicaraguan immigrants for being "the working hands that have raised our buildings, cropped our harvests, and taken care of our sons and daughters" (Viscaíno, 2010). In a single phrase she not only described the main labour markets in which these immigrants have been located over the past two decades; she also recognized the importance of this migratory group for the economic development of Costa Rica. Yet despite this politically-correct gratitude expressed toward immigrants, the migration laws and policies designed and implemented by recent Costa Rican governments have privileged control, administration and punishment.

In this context, the Costa Rica-Nicaragua Bi-national Agreement (BNA) is one of the few political initiatives to address formally the importance of this migratory flow for social development. The accord has been in place since December 2007. It sets official procedures to regulate the temporary inclusion of Nicaraguan workers in different labour markets, mainly agriculture. This formal agreement promoting the legal recruitment of temporary migrants is supported openly by certain employers and big farmers who see it as a necessary production input. It is also favoured by government

officials as a strategy 'to manage' migratory flows. Yet there has been no research conducted on the program. This dissertation aims to fill an important part of this gap. It explores whether (and to what degree) the protection of the social rights of the Nicaraguan labour force covered under the agreement has been included in the BNA's implementation agenda. More specifically, this dissertation examines how the Costa Rican healthcare system incorporates these migrants into its redistributive policies and practices.

As an instrument to 'manage' labour migrations, temporary foreign worker programs could be a useful means to protect migrants' access to work, make them visible, and acknowledge their contribution to the national economy. Despite its limitations, the BNA has made it possible for foreign workers to reside and work legally in a country with an important presence of documented and undocumented Nicaraguan labour migrants. According to the national census of 2000 (the most recent one for which data is available), around 6% of the overall population living in Costa Rica had arrived from Nicaragua. The temporary migrants brought by the BNA have been located in places and in economic activities where the recruitment of temporary labour migrants – regardless of their legal status- has been widely accepted during the past decades.

As a social policy initiative, temporary foreign worker programs pose different challenges to the host society's welfare institutions. For instance, in the field of public health it is necessary to consider how best to guarantee migrants' access to healthcare. Furthermore, it is important to analyse and evaluate migrants' particular economic, cultural, or medical needs and design policy initiatives to address them. There are no easy answers to these sorts of inquiries. Some believe that migrants' specific needs require special provisions in the social protection schemes; while others feel that it is

sufficient to include migrants -totally or partially- in the prevailing redistributive practices.

Finally, it is also necessary to keep in mind that in countries like Costa Rica discussions about the incorporation of different migrant populations into the healthcare system have been taking place in the context of financial cut-backs and the weakening of the social policy sectors' ability to provide services for the population in general. In this context, aggravated by the deeply xenophobic character of the national population, Nicaraguan migrants in Costa Rica have been stigmatized and transformed into "threatening others" (Sandoval 2004). In popular images, Nicaraguan migrants have not only "stolen" jobs from Costa Ricans, but they have been a drain on public services, especially healthcare.

Unlike other studies relying on the analysis of patterns in epidemiology and use of medical services among migrants, the research in this dissertation sheds light on the institutional capability of the Costa Rican healthcare system to promote social justice goals by taking care of vulnerable groups in a stratified and culturally diverse society. In their recent book, Hall and Lamont (2009) suggest that the development of our societies should be assessed not just in economic terms but according to the degree to which the health of their populations is protected. In this light, the dissertation assesses the success of the Costa Rica Healthcare System authorities in meeting the health needs of Nicaraguan temporary migrants in Costa Rica as an indicator of the current state of development of this society.

This dissertation explores how legally employed temporary migrants are incorporated into healthcare systems. Migratory populations are neither homogeneous, nor subject to the same membership rules in host political communities and their main

welfare institutions. Legal temporary migrants constitute a specific kind of *non-citizens* categorized as *aliens* in legal parlance. From a sociological point of view, their condition of alienage varies with regards to different social scenarios. Thus, to be categorized as an alien in the labour market context can have different affiliation implications and practical consequences than in the social security context.

As explained in the chapters that follow, different analytical complexities arise depending on both the types of migrants and the institutional domains under study. Non-citizens such as legally employed temporary workers are granted some membership entitlements, such as civil and social rights; yet, they are excluded from others. Overall, this partial membership tends to reproduce vulnerabilities and dynamics of exclusion. Furthermore, even though legally employed temporary workers in host societies are entitled to receive certain benefits, there are institutional contexts where policy makers and service providers tend to ignore the differences between these migrant workers and other 'illegal' migratory groups. Thus, the entitlements of legal temporary migrants are denied. This dissertation makes a contribution to the literature on citizenship and immigration by drawing attention to the complexities involved in the construction of alienage in different institutional settings and by illustrating how policy making, particularly with respect to certain categories of migrants, is a 'messy' process, based on incomplete knowledge, mistaken perceptions, and unclear assumptions.

## **1.2 Redistribution, recognition... or citizenship?**

Claims on redistribution and demands for recognition have been taken as the essential bricks in the architecture of our societies, welfare states, and most significant

social policies. It has been said that struggles over distribution or recognition have established the moral ground over which the inclusion –or exclusion– of different social groups have become justified across time. In this dichotomy, the former claims are the most familiar. Beyond utilitarian parameters settled through market logic, philosophers like John Rawls, among other important figures, have been combining the Liberal tradition –in which individual liberty is important– with statements in favour of the development of social democratic political institutions capable of looking for alternative resource allocation strategies (Barry, 2005: 5-6).

Taken by social scientists, these claims have been analysed in the context of broad resource inequality dynamics produced by factors such as economic exploitation, or relative deprivation. The main subjects considered in these studies are social classes defined by their possession of means of production, or by their location in the labour market space. The incorporation of social classes into redistributive dynamics framed by welfare institutions is considered nowadays as a key requirement to ameliorate different aspects of their well-being like health states.

In addition to discussing issues of redistribution, philosophers and political theorists have turned their gaze to demands for recognition. They argue that if identity is shaped by others' recognition, their rejection can inflict harm or produce oppression, “a real damage” and “distortion” when people “mirror back to them a confining or demeaning or contemptible picture of themselves” (Taylor, 1994: 25).

Taken by social scientists, these demands have been examined in the context of broad subordination dynamics produced by factors such as cultural domination. As a result, those suffering these inequalities have been treated like hostile cultural outsiders, are kept “invisible” by political authorities, and most of the time become “routinely

maligned or disparaged in stereotypic public cultural representations or everyday life interactions” (Fraser, 2003: 13). The main subjects suffering these demeaning situations are not social classes but persons and groups with relatively less status respect, esteem and prestige within the hierarchies of cultural value rooted in the social contexts.

Instead of analysing the incorporation of temporary migrants through trade-offs between redistribution and recognition, this research has opted to use a theoretical approach based on citizenship theories. Following Engin Isin, et.al. (2008: 4), in this research it was assumed that the ostensible separation between redistribution and recognition is a “false distinction.” Although these notions are suggestive, they should be reinterpreted in a unified frame in order to construct pertinent objects of study from a sociological viewpoint. Citizenship understood as a social institution offers an alternative approach in which concerns about redistribution are brought into dialogue with concerns about recognition.

### **1.3 Theoretical approach**

As will be explained in detail in Chapter 2, my interest in citizenship theories has informed my understanding of the link between temporary migrants and healthcare systems. Citizenship can be seen as an institutional formation established to organize people’s *membership* in different institutional spaces. This membership can be socially constructed with respect to different groups of people and in different institutional contexts. With regards to migrants, citizenship, understood as socially constructed membership, can be applied to such paradoxical situations where non-citizens –like temporary migrants- have been affiliated to institutional spaces designed to recognize

the rights of national citizens. These paradoxes are particularly important when assessing the extension of civil and social rights. As Linda Bosniak's (2006) concept of 'alien citizenship' captures, there are cases in which certain entitlements have not been totally denied to outsiders, thus creating ambivalent situations.

Related to the last point, Lydia Morris (2002) has suggested that political communities grant to labour migrants *partial forms of membership*. As mentioned earlier, migrants are neither homogeneous nor are they treated by host societies in an undifferentiated way. Instead, systems of *civic stratification* are endemic to citizenship arrangements. For that reason, there are outsiders who have the right to reside in the country but not to work; others who can work legally but not receive the same full 'package' of protections enjoyed by citizens; or even cases in which undocumented migrants can get social provisions for humanitarian reasons.

With regards to the field of studies on healthcare systems, it is not common to examine how their architecture has been conditioned by process of social construction of citizenship. Traditionally, the strategies of provision modeled and imagined by these systems have been anchored in the figure of a national citizen. As Rogers Brubaker (1992, 2010) has argued in his classical studies on the formation of nation states, healthcare systems -as a welfare institution- function as a membership organization configured around different dynamics of *social closure*.<sup>1</sup> Applying the ideas of partial membership and civic stratification, healthcare systems reveals itself in terms of institutions that could set diverse terms of inclusion and exclusion for migrant populations.

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<sup>1</sup> Following Max Weber, social closure refers to collective practices restricting other people's access to resources and rewards. These privilege and preserve practices have been used in social class analyses. In citizenship studies, the term was adopted by Rogers Brubaker (1992).

Taken together, these ideas on membership, alienship, civic stratification, partial membership, and social closure, offer important inputs to analyse how current patterns of global mobility of people and workers raised dilemmas and tensions concerning traditional logics of integration to political communities, as well as the types of entitlements that should be guaranteed by welfare institutions.<sup>2</sup>

#### **1.4 Incorporating temporary migrants into healthcare systems**

Adequate sanitation and housing, the availability of medical attention for the majority of the population, and the development of collective mechanisms of social insurance aimed at increasing the number of society members protected against risks and misfortune – all are part of the social foundations of human health that have motivated the configuration of healthcare systems. For Western societies, according to Porter (1999), these systems have been configured around collective actions aiming to regulate and improve the populations' health through the introduction of practices such as hygiene, state medicine and sanitation. In this sense, initiatives in public healthcare should not be understood solely in terms of different types of medical goods and services offered, or in terms of their effective translation into certain kinds of desirable traditional epidemiological or mortality outcomes. Most importantly, these initiatives indicate the capability of health systems to incorporate different social groups into shared mechanisms of social control, cohesion, and development.

How has the incorporation of labour immigrants into health systems been analysed in the recent literature? Among mainstream researchers on health,

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<sup>2</sup> See for example Benhabib (2004); and Sassen (2006, 2008).



development, and immigration, the topic of incorporation has been related to the establishment of relations between certain epidemiological outputs and patterns of use of medical services by migrants. These research efforts have been useful to extend discussions on issues such as the social determinants of health among labour migrants and refugees.<sup>3</sup> Concerning temporary migrants, it is possible to find case studies identifying three broad analytical issues: a) development of illnesses such as those related to pesticide exposure, hypertension, musculoskeletal injuries, sexual and reproductive disease, and mental health problems; b) limitations in the social insurance offered by the healthcare systems in both sending and receiving countries (especially legal limitations imposed by labour contracts); and c) the impact of occupational hazards and workplace subordination and exploitation on the effectiveness of healthcare for temporary migrants.<sup>4</sup>

On the one hand, this research on migration and health has outlined specific patterns of morbidity and mortality –the so called health gradients- attached to labour migrants. Besides, it has identified formal legal failures in labour contracts, as well as the ways in which employers’ practices of exclusion affect temporary migrants’ access to medical resources. But there is an important aspect missing in this research. Reflecting on the evolution of research on health systems, Michèle Lamont (2009: 151) has signalled the importance of an institutional dimension into the analysis. More specifically, he

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<sup>3</sup> For the relation between well-being indicators (including health) and the access of immigrants and minority groups to public services, see the collection included in Banting and Kymlicka (2006). Regarding just health indicators, see PNUD (2009), and Carballo and Mboup (2005). Similar approaches have been developed in Latin America and Costa Rica in the works of Cerutti (2007), and Bonilla (2007). For examples about the relation between social determinants of health and migrations, see Ng, Edward, et.al. (2005); Hyman (2007); and Navarro (2009).

<sup>4</sup> See McLaughlin (2009); Loría et.al. (2008); Anthony, Williams, and Avery (2008); Ross, Pagán, and Polsky (2006); Arcury and Quandt (2007); Pastor and Alva (2004); Villarejo (2003).

urged researchers to explore inequality dynamics in the healthcare system or differences in the social recognition of entitlements of different groups of people based on the understanding of “who fits in, who belongs, who is *us* and who is *them*.”

As part of the recently established area of studies of intra-regional (South-South) migration and development, this research is focussed on temporary foreign workers programs, an important type of political initiative promoted by diverse countries around the globe to ‘manage’ labour migrations. I have examined the degree to which the Costa Rican public healthcare system has recognized migrants’ entitlements and special needs over the first three years of existence of the BNA –from the end of 2007 to 2010. In general terms, the study of healthcare constitutes a point of departure to assess progress made in the extension of entitlements towards migrant populations in host political communities in general.

Furthermore, in countries like Costa Rica the historical configuration of collective healthcare mechanisms has played an important role not only in the improvement of different social groups and communities, but also in the development of shared understandings on belonging and social justice. Over time, ideals such as universality or solidarity have informed normative frameworks, discourses, and decision-making processes in the public health field. For Costa Ricans, healthcare has become a valuable right. In this sense, access to social insurance, medical services, or health promotion strategies, offers a minimum common denominator to analyse the way in which this political community has adopted –or rejected- the needs of Nicaraguan labour migrants as part of its basic commitments.

In order to analyse the conditions of partial and complete inclusion in, or exclusion from the Costa Rican healthcare system set up for Nicaraguan temporary

migrants, this dissertation studies current discussions and health and migration policies through the lens of *citizenship*, defined above in terms of an institutional formation set to organize people's membership in political communities and related spaces like welfare institutions. The main objective of this study is to explore *how the incorporation of temporary migrants into public healthcare systems has been influenced by the social construction of citizenship*.

My inquiry into this question has assumed, in a first place, that the incorporation of labour migrants into healthcare systems is conditioned by the way in which membership terms have been instituted in three different policy contexts: a) migration policies, where legal statuses define which outsiders are entitled to reside and work in the political community; b) social security policies, where conditions such as nationality, residence, labour status, or financial contributions, are used to define which outsiders are entitled to be insured against certain types of risks; and c) health policies; where healthcare providers, based on shared formal and informal rules, viewpoints and material restrictions, define ways in which those insured outsiders are entitled to become patients.

Citizenship-membership criteria, or what I call the *politics of incorporation*, are part of the integration paths configured by political communities to understand –and deal with– the diversity of peoples within a population. The presence of information systems, laws, and research programs based on such variables as the country of birth and migration status, as well as the emergence of discourses promoting multicultural issues, makes it possible to design policies that meet the needs of migrants. The lack of these types of practices will create situations in which the social rights of migrant populations

are overlooked, or at best, assimilated uneasily to policy frameworks designed for the national citizens.

Finally, the politics of incorporation configured in one policy context influence the politics configured in the other. In the case of the incorporation of Nicaraguan temporary migrants into the Costa Rican healthcare system, the right to be a patient is conditioned by the right to be insured, in the same way as the right to be insured depends on the right to reside and work in the country. The criteria for membership developed by Public healthcare systems mirror both the logic established in the social security realm, and also the logic established at the national state level through migratory laws and policies.

As will be explained in the next chapters, a fundamental institutional contradiction underlies the development of the BNA with regards to the incorporation of temporary migrants into the Costa Rican healthcare system. The agreement established that these workers should get access to the same entitlements enjoyed by any other national citizen. But in fact, temporary migrants have been granted a *precarious* migratory status configured around their market price and merely temporary affiliation to the host society –two characteristics that produce their vulnerability. As a result, they are slipping through a crack between old welfare arrangements designed to protect national citizens and non-mobile populations, and the promotion of neo-liberal contractual oriented practices to assure flexibility for employers requiring foreign workforce.

## 1.5 Research objectives and strategy

In order to understand how the incorporation of Nicaraguan temporary migrants into Costa Rica's public healthcare systems has been influenced by the social construction of citizenship, this study established the following three objectives with related questions:

1. Analyse the link between legal residence and work status granted to temporary migrants and major migration-related normative frameworks and policies by asking the following questions. First, has the development of the BNA introduced significant formal changes in the relationship between migrants, the host political community, and its welfare institutions? And second, is the temporary migrant status embedded in a context where the rights of labour migrants have been promoted and protected?
2. Examine the extension of health insurance regimes to temporary migrants with regards to the prevailing protection strategies established in the social security realm by asking the following questions. First, which types of public social insurance programs are these workers entitled to? Second, are these insurance programs functioning according to a contributory or non-contributory base? And third, is this labour force perceived as an economic burden on the social security system?

3. Analyse social rights and benefits extended to temporary migrants by healthcare decision makers and providers at the national, regional and local levels by asking the following questions. First, what types of illnesses and health risks have been associated with temporary labour migrants? Second, what types of health promotion initiatives have been developed for the temporary migrants involved in the BNA? Third, have temporary migrants received special treatment compared to other groups of workers?

The research is based on a detailed study of official policy initiatives and, most of all, discourses on health and labour migration issues organized in the context of the Costa Rica – Nicaragua Bi-national Agreement by the following actors: a) Costa Rican government officials from the General Migration Authority (DGME), The Costa Rican Ombudsperson's Office, the Ministry of Labour and Social Security (MTSS), the Ministry of Health, the Costa Rican Social Security Fund (CCSS), and the National Insurance Institute (INS); b) representatives from international organizations including, the International Organization for Migrations (IOM), and the United Nations Populations Fund (UNFPA); c) two pro-migrant civil society groups, both members of the Costa Rican National Council for Migrants at that time; and d) the Costa Rican Agricultural and Agro-industrial Chamber (CCAA) and the Costa Rican Chamber of Construction (CCC), the two most important employers' associations involved in the creation of the BNA. The study has also benefited from insight from two qualified informants, a former Costa Rican Health Minister, and a specialist on labour law who has analysed the BNA. Informal conversations were also conducted with the human resources departments and

other representative among the main employers in order to confirm their participation in the BNA.

Data for this project were collected from on-site interviews conducted with different policy makers and healthcare providers employed in the public and private institutions mentioned above between September and December 2010. A total of 27 persons were interviewed in the project. As will be explained in chapter 6, interviews with Ministry of Health and the CCSS representatives were conducted both in San José (in their central government offices), and also in regional and local healthcare facilities. In the latter case, three regions and communities where the BNA had been implemented in 2010 were visited. As will be explained in Chapter 3, around 89% of the permits recommended by the MTSS from 2008 to 2010 were distributed among employers in four areas of agricultural production: sugar cane, melon, palm oil, and pineapple. These producers are geographically concentrated in three regions of the country -Central Pacific, Chorotega, and North Huetar, according to administrative geographical distinctions used by the health sector. The main regional authorities of the Ministry of Health and the CCSS for these areas were contacted for interviews (two per region) and they recommended specific communities where: a) the activities developed by the producers mentioned above were key for their economic development; and b) the presence of Nicaraguan labour migrants was important. For each community, one interview was conducted with the main physician at local healthcare facilities known as

EBAIS –walk-in clinics providing ambulatory medical services for communities composed of five thousand persons.<sup>5</sup>

In addition, the DGME granted me access to databases containing information on the temporary residence permits granted during the past decade. The MTSS provided the lists of entrepreneurs involved in the BNA, the number of work permits approved for temporary migrants from 2007 to 2010, as well as data about the quantity and geographical distribution of the inspections conducted in different work facilities during the past decade. Regional and local authorities from the Ministry of Health and the CCSS provided me with the information about the health conditions of communities in the areas where the BNA was implemented, as well as data on social security and inspections. The CCAA and the CCC provided valuable data on labour shortages experienced in the years before the BNA enactment.

Finally, secondary sources were also consulted. Through archival documentary research, official documents on public health and migrations were selected and examined. They included international legal instruments, conventions ratified by Costa Rica, and other recommendations made by international organizations; national laws, decrees and accords; policy reports such as national governmental plans, and institutional annual reports; and agendas designed by pro-migrant advocates. News reports were also collected to complement these texts. Information on labour shortages for the agricultural and construction sectors, as well as migration issues related to the provision of public healthcare were searched for the period 2005-2010 in the major Costa

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<sup>5</sup> Interviews of representatives of the Nicaraguan Embassy in Costa Rica and the Nicaraguan Ministry of Labour were planned, but some of them were cancelled and others were turned down at that time.



Rican newspapers such as *La Nación* and *La República*, as well as *El Financiero*, a popular magazine focussed on economic issues.

Information obtained through secondary sources was analysed in terms of strategically oriented goals and normative expectations configuring shared scripts and understandings on citizenship -where membership relationships between migrants, the political community, and the healthcare system were formally established. These ensembles of ideas were attached to a specific historical context, namely the period that corresponded to the increase in labour migration between Costa Rica and Nicaragua, coinciding with a second generation of health policy reforms embedded in *neoliberal* restructuring.<sup>6</sup>

The data from my interviews was used to understand how discourses and data presented in secondary sources informed views and attitudes assumed by government policy makers, healthcare providers, representatives of international organizations, and civil society advocates. Actors involved in this research project can be seen as participants in the social organization of knowledge who act and establish social networks; who allow or restrict deliberative and participative spaces to include social citizenship claims related to migrants; and who address “moral visions, identities, symbols, and historical narratives” creating borders between outsiders and insiders (Hall and Lamont, 2009: 10).

My concern about the incorporation of temporary migrants into the healthcare system was focussed on the organization, articulation, and extension of membership

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<sup>6</sup> According to David Harvey (2005: 2), neoliberalism is a theory of political economic practices that assume that people’s “well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.” In this context, the role of the state will be to guarantee the proper functioning of markets.

rights. In this sense, the research was thought to capture systems of formal and informal rules concerning the institution of citizenship itself, as well as their influence in the recognition of health entitlements for labour migrants. Outcomes or practical consequences of implementation derived from the BNA were left out of the analytical scope of the study. Clearly, the degree to which rights are exercised is relevant to understanding how migrants experience their membership in welfare institutions. However, accumulating and analyzing data on such experiences was outside the scope of this research project.

### **1.6 Conducting research on public policy: a rational policy?**

It is often assumed that public policy is based on empiricist and technocratic presumptions. From an empiricist perspective, policy making is founded on 'objective' knowledge of the world. Thus, actors involved in the design, implementation, or evaluation of policies presumably base their understanding of social reality on its 'own nature', as if this world exists independently of their knowledge of it. However, the empiricist perspective ignores the fact that problems policy makers try to address are often socially constructed rather than discovered. Once empiricist understandings of certain aspects of the social life are established as truth, analysts tend to forget the epistemological roots of the underlying beliefs and end up reproducing research hypotheses, measures, or general opinions in non-critical ways. These true types of knowledge, are framed into what Somers (2008: 33) has described as "social naturalism," or schematic worldviews in which the choices, desires, and expected practices of certain social groups are seen as obeying "self-regulating laws of nature."

From an empiricist perspective, policy making is value-free and is guided merely by technocratic goals. From this perspective, policymakers and analysts can separate their own normative beliefs from their understanding of social reality. Arguments on neutrality are used as shells to protect the validity of their actions. Value-neutral aptitudes guarantee that the empiricist comprehension of the social life will not suffer from any moral or emotional intrusions. From this point of view, the persons and communities behind the development of policies are mere suppliers of a natural-objective wisdom and expertise in the selection of the most pertinent solutions for social problems (Fischer 2003a).

Empiricist and technocratic presumptions have become the cornerstone of “rational analytical” (Stone, 2012) or “rational-choice” (Peck and Theodore, 2010) policy models. This sort of superior knowledge is nurtured by five methodological strategic steps: a) identify objectives; b) identify alternative courses of action for achieving objectives; c) predict the possible consequences of each alternative; d) evaluate the possible consequences of each alternative; and e) select the alternative that maximizes the attainment of objectives (Stone, 2012: 260). Political actions subjected to assessment under this model, have to be judged according to standardized procedures that assess and compare different gradations of failure or success such as cost-effectiveness analyses, budgeting planning and programming, as well as cost-benefit analyses.

At the same time, messy institutional dynamics disrupt this stylized portrayal of ‘rational’ policy-making. There are situations in which the configuration of policies cannot be reduced to processes driven by more or less efficient practices. In fact, the Costa Rican process of policy making in the field of migration offers a good illustration of this messy process which results in: a vague definition of boundaries between citizens

and non-citizens; an ambivalent official status assigned to aliens in the host societies; and the legal production of 'illegal' statuses. In cases like these, analysts are in the presence of actions having collateral effects of social exclusion, legislations attached to paradoxical situations of inclusion/exclusion, or simply, initiatives at early stages of development subjected to ongoing and sometimes unintended mutations.

In my research I therefore viewed the Costa Rican policy making process in the field of migration as messy, based on incomplete knowledge and analysis, and subject to not deliberate changes. I explored why certain health insurances, rights and benefits were denied or partially extended to BNA's workers; what these actions meant in terms of social justice ideals; or for whom these ideals made sense and why. I thus viewed the texts and discourses on these topics as collectively constructed in a specific historical context, where empirical data, theoretical and ideological frameworks, as well as moral values were interacting at the same time.

My research methodology was guided by the institutional ethnography approach (Campbell and Gregor, 2008; Smith, 2005). When conducting my fieldwork and analyzing the collected materials, three main methodological aspects were developed through this lens. First, as mentioned above, I explored secondary sources related to migration, social security, and healthcare policy; as well as primary sources, mainly interviews conducted with key gatekeepers at the national, regional and local levels. Texts such as office reports, national plans, laws, resolutions, migration forms, epidemiological records, and other types of documents, were understood in their practical dimension of "accessibility" (Eastwood, 2006: 182). When researchers look for their primary texts to begin their analysis, they are not just getting access to raw data, concepts and ideas; they are also getting access to structural elements used in the

organization of certain institutions. These elements make possible the coordination of the work of individuals with regards to the policy process, helping to translate individualized actions into collective practices, reproduce institutional paths, or change current social configurations. Thus in my particular research, texts helped to create oriented understandings and value expectations concerning the boundaries dividing citizens and aliens.

Second, my research analysed the link between the development of the BNA and the recognition of entitlements and benefits in the area of health. As will be discussed below, no concrete actions or strong debates about the social security and well-being needs of temporary migrants took place, thus reproducing conditions of vulnerability of the migrants admitted through this program. At least during the first years of its operation, the BNA was merely a barebones procedure to bring the migrant labour force to Costa Rica under minimal legal terms.

Thus, my analysis was not based on a policy that was well planned, implemented, evaluated, and used for policy initiatives in different welfare institutions. Government officials from the MTSS and the DGME, as well as IOM representatives, were the only participants in this research who established the program as the main initiative developed in the country to manage labour migrations. At the same time, the rest of participants from the public health sector had but a vague idea about the BNA and knew nothing about its implementation.

Labour migrations as a topic, and not just the issue of temporary migrants, has not been well developed by the Costa Rican public health sector. With the exception of indigenous Panamanians migrants, as explained in Chapter 6, in all the legal frameworks and reports written by state departments in the health sector consulted in

my study, specific problems faced by different groups or labour migrants were not distinguished from the problems faced by national workers. Even their most important databases such as the list of persons enrolled in the social security program, did not include variables facilitating the identification of these populations, or the different migratory statuses. In fact, the records of the main promoters of the BNA were not properly organized to capture basic characteristics of the workers brought to Costa Rica from 2007 to 2010.

In the course of my fieldwork I realized that in the public health sector there was virtually no discussion on the issues concerning Nicaraguan temporary migrants. I therefore decided to adjust my interview guides. Rather than asking public officials about the implementation of the BNA (as I originally intended), I explored why in the eyes of these public officials temporary labour migrants have remained 'invisible.' In contrast to the image depicted by rational analytical policy models, in which decision makers and providers are subjects detached from normative standpoints, I found it necessary to understand their value judgements on migration matters. In this sense, my questions were focussed not on the 'efficiency' or 'impact' of the political initiatives developed around the BNA, but rather on whether public officials considered it worthwhile to establish special initiatives aimed at protecting the well-being of temporary migrants. I also asked them what contribution their own actions –as public functionaries – made towards diminishing or enhancing migrants' chances of being treated in the same way as national citizens.

Third, in the interviews conducted with regional and local government functionaries, I related the issue of the temporary migrants' precarious status to the discussion of the commonly accepted principles of universality and solidarity. For some

of the participants of my research, this reflexive exercise was unusual. In topics such as public insurance programs, a population's rights regarding medical attention, and epidemiological profiles of migrants, I asked my participants explicitly to mention official data and information produced by the government on these issues. The responses obtained not only helped to ensure that I was getting access to the main documents or databases available on these matters. They also were important to assess if the public officials' opinions and practices were reflective of these texts. As explained in Chapter 2, texts can be viewed as a conceptual currency, used to guide discussions about the role of individuals; as a mean for recognition that can translate individual goals into institutional expectations; and as an instrument of institutional capture, to reproduce hegemonic standpoints (Eastwood, 2006: 181).

In my research, I found that references to issues of labour migrants were usually unclear or vague. As pointed out earlier, this imprecision in part is the result of the lack of attention that migration matters have received in the public health sector. Most important, from my point of view, is the fact that in spite of this absence, the functionaries constructed temporary migrations as a problem of social policy. During the interviews -and also off the record- the officials interviewed in the study used the idea of the 'illegal Nicaraguan migrant' as a parameter to characterize the temporary migrants legally recruited under the BNA. Usually, it was necessary for me 'to bring' these functionaries back to the topic of legal guest labour migrants. Across all the communities where I conducted my fieldwork, the functionaries tended to talk about the 'illegal' side of migrations even though in my questions I clearly stated that I was interested in the legally employed temporary migrants.

With regards to the last point, the analysis presented below distinguishes between two general problems undermining the extension of entitlements and benefits to temporary migrants. One concerns operative state capacities, such as financial restrictions making difficult the creation of transparent accountability mechanisms for the BNA, or adequate strategies to enforce employers to fulfill contractual commitments. The other problem relates to *reflexive governance*, including epistemological state capacities to: (1) access socio-demographic and epidemiological information on different migrant populations; and (2) formulate a critical understanding of the impact of normative parameters on temporary migrants.<sup>7</sup>

### **1.7 Organization of thesis**

The second chapter develops the conceptual framework for understanding the main arguments presented above. It introduces key sociological discussions on citizenship as a social construct, or an institutional form of organizing membership to host political communities (and their healthcare systems). I argue that membership criteria established by government authorities, or the politics of incorporation, constitute inclusion and exclusion dynamics based on social closures created around legal statuses and corresponding stratified systems of extension of rights and benefits. The politics of incorporation establish paths of integration for outsiders at two levels: a) at the formal

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<sup>7</sup> Reflexive governance is related to what Frank Fischer (2009: 17) defines as “professional expertise.” In the policy process, this expertise encompasses decision makers’ capability to develop a critical understanding about the advantages and limitations of their sources of knowledge, skills and techniques. Following Dzur (2008), as democratic societies become more complex, so does the relevance of specialized knowledge attached to different professions -such as engineering or applied social sciences- to the development of policy actions.



level, where national laws and policies constitute formal rules defining who has the right to be a member of political communities and welfare institutions; and b) at the informal level, where the incorporation of outsiders is influenced by local government authorities who are able to address –or break- those formal rules.

Chapter 3 reviews the political economy context in which the BNA arose. This chapter discusses general patterns characterizing the contemporary migratory influx from Nicaragua to Costa Rica, as well as the labour shortages that justified the implementation of the agreement. It examines two moments: a) a few years immediately preceding the BNA enactment in December 2007, when such an agreement was promoted by key public and private actors as a way to regularize the labour supply in construction and export agriculture; and b) the first three years of the BNA's operation, when the construction sector withdrew from the agreement due to the negative impact of the global financial crisis experienced at that time.

Chapter 4 explains the current evolution of Costa Rica's migration laws and policies, as well as the position assumed by the government authorities towards human rights and other regional normative instruments related to migrant rights. My aim is to study the link between the legal status granted to migrants by the BNA and other membership principles established in this host society towards outsiders. Temporary residence and work permits granted to migrants are not developed in institutional voids. They are part of general migration control mechanisms and entitlements guaranteed by nation-states, and in some cases, they are also embedded in what Yasemin Soysal (1992) calls post-national models of membership. I argue that the BNA was anchored to a national mode of membership that, in the Costa Rican case, is not well suited to protect

temporary migrants' social rights. In this scenario a precarious migratory status was reproduced for these migrants.

In Costa Rica, like other countries, subscription to the social security system constitutes the main entry door to the public healthcare system. Chapter 5 discusses the logic of granting different types of health insurance established in this social security realm with regards to different legal statuses and citizenship categories. I state that even though the BNA recognizes that recruited workers have a right to obtain public insurance against certain risks, the temporary migrant status by virtue of its hybrid character of 'alienage' places restrictions on this right. Temporary labour migrants are non-citizens who, during short periods of time, have access to welfare institutions designed for citizens, and this ambivalent position imposes limits on the widely touted 'universalist' reach of Costa Rica's various public health insurance programs.

Finally, Chapter 6 analyses the national health policy agendas, as well as practices and discourses put forward by policy makers and healthcare providers -at regional and local levels- with regard to the link between temporary labour migrations, determinants of health, and the evaluation of risks. I argue that discourses and practices related to the treatment of diversity issues and the incorporation of temporary migrants into the healthcare system mimic the membership practices and rationalities constituted in the social security realm and the nation- state as a whole. In the case of labour migrants, what is tested is the widely self-promoted 'solidarity' aim of Costa Rica's healthcare model and health promotion strategies.

## Chapter 2

### Immigration and the Social Construction of Citizenship

#### 2.1 Introduction

The incorporation of migrant populations into public healthcare systems is one of the most relevant challenges faced by societies today. These systems, as Amartya Sen (2004) argues, enhance people's capability to plan and attain good health outcomes as part of what they can consider valuable life achievements. In other words, the configuration of broad and inclusive collective protections in the area of healthcare constitutes an enterprise rooted in certain equity and social justice ambitions developed over time.

In societies where the presence of foreigners has increased, concerns about the applicability of extant social provision schemes to the immigrant population inevitably arise. Obviously, this discussion does not occur in a normative void. The design and implementation of social provision schemes are always attached to existing equity concerns, most of them shaped around the image of a national citizen. In fact, mainstream discussions about the past and future evolution of welfare states assume that this institutional space is composed of a unique kind of bounded citizenry.<sup>8</sup> What is missing in these discussions, particularly in the context of the discussion of the link between welfare institutions and migrants, is an understanding that political communities are often composed of people with different citizenship-based statuses –

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<sup>8</sup> See for example, Esping-Andersen (1999); Gilbert (2004); or the articles collected in Pierson and Castles (2010). The works of Morrisens and Sainsbury (2005); or Sainsbury (2006); constitutes exceptions to this rule.

e.g. refugees, asylum seekers, permanent residents, persons with dual citizenships, among others. This diversity of statuses complicates the simple image that equates welfare states with national citizenry.

As will be explained in the next section, this tendency to think of welfare states in terms of bounded communities of citizens is an indirect result of the influence of the British sociologist T. H. Marshall on our understanding of social citizenship. For him, the main achievement of welfare institutions was to transform into rights people's claims to such entitlements as health or education. Marshall has explored how social citizenship has been progressively extended to diverse social groups. However, one problem with this evolutionary account of social citizenship is that the populations and social groups discussed by Marshall were already national citizens. When the variable 'migration' is included in this picture, it is necessary to ask at least two questions: (1) can a non-citizen aspire to receive the same entitlements as the ones enjoyed by a national citizen; and (2) how is the boundary between citizens and non-citizens drawn?

In this chapter, I will develop a conceptual approach to understanding the incorporation of temporary migrants into public healthcare systems that draws on the citizenship literature. Since the main focus of this study is non-citizens, approaches discussing the migratory status of aliens -as well as the production of precarious types of citizenship - are contrasted with the depiction of citizenship by Marshall. Taking these discussions as a point of departure, I will argue that the migratory status of temporary migrants sets them apart from national citizens. However, the distinction between the two is not absolute. Accordingly, their status will subject them to particular tensions between practices of inclusion and exclusion that will be translated into a partial membership in political communities and welfare institutions, rather than a condition of

absolute 'rightlessness.' In addition, I will sustain that temporary migrants' status and related entitlements are institutionalized through the politics of incorporation operating in migration, social security, and health policy contexts (as will be illustrated in Chapters 4, 5, and 6) both at the formal and informal levels.

## **2.2 The envisioned citizenship: critical approaches**

T.H. Marshall's citizenship theory, possibly the most widespread and influential liberal sociological theory in this area since its first publication in the 1950s, has been responsible for the promotion of studies focussed on institutional expressions of citizenship through state policies. Marshall outlines a 'civilizing' evolution of three types of citizenship rights in Britain. The two first entitlements institutionalized by the state were: (1) civil rights or those liberties such as "freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice"; and (2) political rights or those entitlements concerning the participation "in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body" (Marshall, 1992: 8).

At the top of the citizenship crown Marshall located the emergence of social citizenship or entitlements designed to correct the injustices caused by the capitalist market and their class based inequalities. Social citizenship enhances people's capability to live safely and with dignity in spite of the unequal allocation of resources produced by the market. Its foundations are situated in welfare state mechanisms, from modicum income security to "the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society" (Marshall, 1992:

8). These entitlements ensure social cohesion and solidarity dynamics, as well as the functioning of the economic system, in a way that civil and political rights on their own simply could not do. In a nutshell, they promote “an invasion of contract by status, the subordination of market price to social justice, the replacement of the free bargain by the declaration of rights” (Marshall, 1992: 40).

Despite its merit, this citizenship theory has received criticism. The most common is related to the evolutionary portrayal of the emergence of civil, political, and social rights. It has been pointed out that the sequence portrayed for Britain is simply not historically accurate. And furthermore, it is of limited applicability to other countries.<sup>9</sup> Moreover, Marshall failed to recognize how liberal democracies have denied the recognition of citizenship entitlements to different populations, including women and minority groups.<sup>10</sup> Finally, some scholars insist that it is insufficient to study citizenship in terms of a mere status and collection of rights, where citizens appear as passive individuals subjected to structural dynamics. Instead, they direct attention to issues related to social struggles, and democratic participation.<sup>11</sup>

For the purposes of this research, there is another line of criticism that deserves more attention. From Marshall’s perspective, societies are bounded communities of citizens –an assumption often shared both by his followers and critics. In this sense, his work mainly focussed on the *inclusive* and *expansive* properties of citizenship as status and citizenship as rights. Marshall’s notion of citizenship, as pointed out by Linda Bosniak (2000: 968), entails a normative claim according to which all persons in a

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<sup>9</sup> See for example Mann (1987), Dahrendorf (1990), and Hirschman (1991).

<sup>10</sup> See Glenn (2000, 2002), Turner (2001), and Kivisto and Faist (2007).

<sup>11</sup> See Kymlicka and Norman (1994); Dagnino (2003); as well as the articles collected in Kabeer (2005); and Isin and Nielsen (2008).

political community are –or should be– regarded as entitled to the same citizenship status –imagined in the figure of a national citizen. Subsequently, everybody could have access to homogeneous entitlements equally available to all. For those ‘second class’ citizens, a future extension of an equalitarian right to have rights will allow them to overcome their inferior status.

According to Christian Joppke, this type of “universalistic story of evolving citizenship rights” was the product of Marshall’s particular interest in the matter of social classes. His main analytical concern “was functional, not territorial: how can workers be citizens?” (Joppke, 2007: 38). In the case of migration studies, this functional approach to citizenship needs to be re-visited:

“[...] in an era of globalization and blurring state boundaries, conflicts surrounding citizenship have taken on a different meaning, closer to the original meaning of citizenship as state membership: how can foreigners be citizens, and who are we, the Danes?” (Joppke, 2007: 38).

It is important to turn attention to the importance of territoriality which implies, in the first place, paying attention to the different formal relationships established between foreigners and states and the types of entitlements attached to each of these memberships. In this sort of exercises, migration studies have highlighted paradoxes and ambivalent situations not seen previously. For instance, path breaking studies like Yasemin Soysal’s *Limits of Citizenship* have made it clear how the extension of rights is not necessarily linked to a unique affiliation anchored in the figure of a national citizen. The Foreign Temporary Worker Programs developed in postwar European countries brought to host nation-states foreigners who never returned to their original countries.

For them, getting access to certain basic labour rights and benefits from welfare institutions was premised on the attainment of legal residency and not necessarily of citizenship (Soysal, 1994). Experiences like these show the development of political communities in which civil and social rights are not attached to citizenship requirements.

Studies on the incorporation of migrant populations in host societies can draw from the re-evaluations of citizenship theories. In this regard, Linda Bosniak's work has made one of the most important contributions. Her work has focused on a class of people to whom the presumption that citizenship rights are available 'to everyone' does not apply. In legal parlance, "these people are *aliens*" or non-citizens residing and working in a state "who are neither accorded the status of citizenship nor granted essential rights ordinarily associated with citizenship" (Bosniak, 2000: 970). Their presence in host societies and legal conditions usually generate sharp political controversies particularly because these so-called aliens often arrive to a foreign country without official authorization.

Non-citizen categories raise questions about what kind of "boundaries" have been drawn in societies with respect to the "alien/citizen divide" (Bosniak, 1998: 32); and also, about how the assignment of non-citizen legal status "to large segments of the population can be tolerated in a political community" (Bosniak, 2000: 975). Yet, as long as the bounded nature of a community of citizens is taken as a given, these questions receive only limited answers. Most importantly, Bosniak's relational understanding makes it clear that citizenship -as an institutional form- is not only confined to territorial borders that surround different nation- states. Rather, it also serves an organizational divide working inside each political community. In this sense, any answer to questions



such as who are or who are not citizens, or under which circumstances non-citizens deserve to be treated or not as citizens, “will depend, in large part, on which particular institutions and practices are under discussion” (Bosniak, 2006: 35).

In recent years, debates on the production of *illegal, irregular, or precarious* migratory status -and subsequent processes of rights recognition- have accompanied Bosniak’s work on non-citizen populations.<sup>12</sup> These studies highlight an interesting paradox with respect to the legal and regularized institutionalization of illegal or irregular status that characterizes different persons and social groups. Individuals are not naturally born as ‘illegal’ entities. There are different laws and policies that accomplish this organizational and administrative job. In addition, by questioning the social and political production of ‘the problem’ of illegal migration, these scholars critique approaches to citizenship based on the un-problematized alien/citizen divide.

The notion of precarious status has been used to describe how an illegal or irregular status creates conditions of vulnerability and marginalization for those officially categorized in those terms. These migrants are not only subjected to surveillance by migration authorities but they are also affected by the retrenchment of welfare states and social citizenship. Their precarious status reflects:

“[...] insecurities associated with policies designed to control immigration and curb the overall number of permanent immigrants on the part of states of immigration, and the tendency to make citizens increasingly individually responsible for their existence.” (Goldring, Berinstein, and Bernhard, 2009: 245)

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<sup>12</sup> On the institutionalization of illegal and irregular migratory status see: Calavita (1998); De Genova (2002, 2010); Black, et.al. (2006); Menjivar (2006); and Dauvergne (2008). On precarious migrant status see: Sharma (2001); Oxman-Martinez, et.al. (2005); Goldring, Berinstein, and Bernhard (2009); and Villegas (forthcoming).

According to Goldring, Berinstein, and Bernhard (2009: 240), precarious migratory status is characterized by one of the following: a) lack of authorization to work legally; b) inability to reside permanently in the host society; c) dependence on a third party (such as a spouse, an adult child or an employer) for legal residence and work permits; d) lack of access to social citizenship rights and entitlements provided by welfare institutions. As will be explained in section 2.5, the status granted to temporary migrants is precarious in the sense that residence and work permits are subjected to a third party –employers– and their related entitlements are highly contingent upon migrants’ productivity and economic value.

The next three sections of this chapter are dedicated to explaining useful key concepts to theorize how temporary migrants are incorporated in host political communities, and welfare institutions such as healthcare systems. The conceptual framework advanced below will capture both inclusive and exclusive ideals and practices and will emphasize the tension between them particularly with respect to the treatment of aliens. This standpoint will help to understand the way in which the extension of rights for non-citizens is not ‘fully’ but ‘partially’ granted, both in formal and substantive terms. As will be discussed, the dynamics of citizenship construction are applied differently to aliens and citizens.

### **2.3 Citizenship status, social closure, and migrant populations**

In his work on nationhood and citizenship in France and Germany Rogers Brubaker re-examined inclusive properties of citizenship. Inspired by Max Weber’s

theory of social classes, Brubaker conceives of citizenship as a powerful mechanism of *social closure* shaped around legal status.<sup>13</sup> Citizenship status designates formal state membership, “an international filing system” managing the ascription of populations to one or more states:

“In a world divided among exhaustive and mutually exclusive jurisdictions of sovereign states, it is axiomatic that every person ought to have a citizenship, that everyone ought to belong to one state or another. And this principle is largely realized in practice. The vast majority of persons possess the citizenship of at least one state.” (Brubaker, 1992: 31)

However, in a state that is not one’s own, citizenship status is restricted. The concept of social closure allowed Brubaker to shed light on both the ‘inclusive’ and the ‘exclusive’ formal properties of citizenship. For him, citizenship tends to be “internally inclusive” because there are certain rights and obligations that will be shared on equal terms by the members of the community. In other words, those having a similar citizen status enjoy an equal standing. At the same time, citizenship is also “externally exclusive” because the status enjoyed by citizens is not granted to all foreigners in the same way. A nation-state “claims to be the state of, and for, a particular, bounded citizenry” (Brubaker, 1992: 21).

At the core of Brubaker’s understanding of citizenship lies the idea that nation-states do not function exclusively in terms of territorial organization by linking geographical spaces to specific populations. They also work as a “membership

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<sup>13</sup> Based on Weber’s *Economy and Society*, Brubaker (1992: 23) distinguishes between open and closed social relationships: “social interaction may be open to all comers, or it may be closed, in the sense that it excludes or restricts the participation of certain outsiders.”

organization,” in which different collective ties and personal associations are formally coordinated across all its constitutive institutions. In this sense, citizenship has become an instrument of social closure allowing the state to control access to its territory –states can deny entry to non-citizens or expel them after entry. At the same time, this legal status is an object of closure itself, a valuable resource that is distributed, granted, and in some cases, withheld. Persons cannot have indiscriminate access either to foreign political communities or to foreign citizens’ entitlements. There are international and national laws and policies regulating both situations (Brubaker, 1992: 22).

As an instrument of social closure, membership tied to citizenship status in certain states has served to create bounded communities that shield “prosperous states from the migrant poor” (Brubaker, 1992: x) or defend populations against the potential aggressions of other nation-states (Kivisto and Faist, 2007: 50). Furthermore, it has been important to create shared political understandings among national citizens and define which foreigners should be considered as “politically unreliable” to be incorporated into public spaces such as military service or state administration. In fact, the origins of modern citizenship are tied to the idea of collective self-determination and democracy (Brubaker, 1992: 28).

As an object of social closure, citizenship status is granted on the basis of one of the two affiliation principles: (1) *jus sanguinis*, which grants citizenship on the basis of ancestry or parentage kinship, and (2) *jus soli*, which grants citizenship to people born within the territorial borders of a nation-state. Other affiliation criteria include the naturalization of foreigners because of marriage to a national citizen and residential

length of stay (when citizenship status is acquired because of the number of years a foreigner has lived in a specific nation-state).<sup>14</sup>

Over the past half-century, according to Weil (2001) and Joppke (2010), the *jus soli* type of affiliation has been predominant compared to *jus sanguinis*. Under globalization most of the contemporary nation-states have liberalized their access to citizenship by “removing sexual and racial barriers to naturalization and upgrading territory over descent in the birth attribution to citizenship” (Joppke, 2010: 43). The movement away from the *jus sanguinis* principal, as well as ethnic-, gender- or even religious-based discriminations, has been translated into partial openings of affiliation lines not tolerated formerly.

Brubakers’ approach to citizenship uses the link between legal status and social closures as a means to analyse the construction of boundaries around nation-states. However, as explained above, the frequently used *jus solis* principle has permitted affiliation lines to open partially within nation-states. Internal boundaries around different legal statuses have been redrawn as well. Most political communities admit foreigners to their territory under certain circumstances, such as refugees, asylum seekers, or temporary migrant workers.

From a relational point of view, it is possible to conceive three types of citizenship-related statuses attached to migrant populations: a) *aliens*, composed of legal statuses such as undocumented migrant, temporary migrant, trans-border migrant, or international student, among others; b) *denizens*, including refugees and labour migrants with a permanent residence; and c) *citizens*, the ‘naturalized’ foreigner with or without a

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<sup>14</sup> On the other hand, it is necessary to remember that these types of affiliation have been subjected to the subordination practices dictated by ethnicity and gender (Glenn, 2002).

dual-citizenship (Kivisto and Faist, 2010: 226). As will be explained further in section 2.5, aliens and denizens have an ambivalent migration status. For now, it is only necessary to keep in mind that membership to a nation-state is not internally homogeneous, and that different affiliations are attached to different social closure dynamics. As Linda Bosniak has argued, the boundaries drawn by citizenship statuses are not confined to the territorial border of nation-states, they also serve:

“[...] 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.” (Bosniak, 2000: 973)

#### **2.4 Citizenship rights, stratification, and partial memberships**

As status, citizenship is associated with state membership and national laws and policies. This analytical dimension can be explored through theories focussed on formal aspects (as in Brubaker's and Bosniak's work discussed above). However, it is important to recognize another analytical dimension, citizenship as rights, related to the capability of this institutional form to shape and influence the extension of certain entitlements and benefits attached to different legal statuses. First, in addition to formal (*de jure*) rights it is important to pay attention to substantive (*de facto*) rights. The two do not always coincide. The substantive access to, or enjoyment of, substantive citizenship can be viewed as a key element defining life chances to which different social groups resort in order to overcome discriminatory and exclusionary collective processes to thus become 'full members' of a political community.<sup>15</sup>

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<sup>15</sup> Freedoms formally guaranteed such as the right to property, speech, and protection against arbitrary state actions -habeas corpus- are not detached from other types of entitlements

Second, it is also important to distinguish the granting of entitlements based on nationhood, from the granting and promotion of rights based on universal personhood. As Joppke (2010: 73) comments, “one must realize that many rights, such as elementary civil rights and certain social rights, have always been separate from formal citizenship status.” States are the main actors in charge of the extension of the former types of rights, and in some situations, they extend rights on the basis of personhood (when for example a person receives legal protection or social benefits due to humanitarian reasons regardless of citizenship status). This kind of entitlements has been also granted to and claimed by non-state actors, such as domestic Non-Governmental Organizations (NGO’s), and most importantly, by international organizations. The involvement of actors with a transnational scope of influence in the direct extension of entitlements and the change of domestic laws and policies have been linked to the emergence of post-national or cosmopolitan modes of membership supporting human rights (Soysal, 1994; Benhabib, 2007).<sup>16</sup>

The distinctions between the *de jure* and *de facto* extension of rights on the one hand, and entitlements based on nationhood or personhood criteria, on the other, are important to consider. The extension of rights, especially social rights, can thus be understood as a complex process. In the case of temporary migrants, it is necessary to understand that these migrants will be part of host political communities with stratified systems of rights. In this context, access to social rights provided by the state is

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enhancing the social standing of populations, such as to receive quality basic services or public education. As Margaret Somers (2008: 137) establishes, “the right to justice” implies that “formal rights to access are meaningless without the inclusionary resources necessary to create the kind of person capable of accessing and acting those rights.”

<sup>16</sup> Despite the contemporary emphasis on transnational modes of memberships, I will follow Christian Joppke’s (2007, 2010) argument that transnationalism has not undermined the central importance of citizenship and national states with regards to the extension of rights.

differentiated in the first place, and can undergo either amelioration or deterioration, in the second place. Aliens' rights are not simply totally denied or endorsed. Many situations are more complex and the denial of some rights coexists with the acceptance of other rights. Furthermore, different domestic or international political actors – including the same migrant communities- can influence the extension of rights. From this point of view, citizenship should not be seen as a static analytical category but something “negotiated, contested, and reordered” over time (Stasiulis, 2008: 135).

David Lockwood (1996) introduced the notion of stratification in citizenship studies. In his analysis of social integration, he moved the analytical focus from social class structures, to what he called civic stratification:

“[...] that is the ways in which the structuring of life chances and social identities is the direct or indirect result of the institutionalization of citizenship under conditions of social and economic inequality.” (Lockwood, 1996: 532)

Civic stratification configures patterns of inequality based on the uneven *de jure* and *de facto* extension of entitlements. As an institutional form, citizenship shapes social relations with respect to political participation, the market, and the welfare state. There are four systems of stratification: a) civic gain, which refers to a full extension of entitlements through enhanced national laws and policies; b) civic deficit, which refers “either to a situation in which a lack of resources prevents the exercise of rights that are formally enjoyed *or* to one in which the exercise of rights is deteriorating;” c) civic expansion, which refers to the development of claims for inclusion by “civic activists”; and d) civic exclusion, which refers to a formal denial of rights (Lockwood, 1996: 537, 542).



As mentioned earlier, the idea of civic stratification was conceptualized in relation to national populations. It was Lydia Morris (2002) who extended this notion to labour migrants. In her *Managing Migration: Civic Stratification and Migrants' Rights*, she analyses the politics of labour migration in the European Union, comparing the cases of Britain, Germany and Italy. She demonstrates that labour rights and welfare protections extended to migrants legally and through policies shaped by *partial memberships* anchored to the state's "monitoring and control" interests (Morris, 2002: 19).

Furthermore, the surveillance interests of the state are also fused with different "functional sectors" driven by labour markets. As a result, different clusters of residence, work, and welfare entitlements are created. For instance, the entitlements granted to high- and low- skilled temporary migrants tend to vary not only with regards to the temporary length of stay of both groups, but more importantly, with regards to host polities' interests in incorporating these people into their economic, cultural, and political life. For Morris, civic stratification should be understood as a "central device in the management of migration" (Morris, 2002: 27).<sup>17</sup>

## **2.5 Theorizing the incorporation of temporary migrants into healthcare systems: the legal status and rights of aliens**

In order to understand the incorporation of temporary migrants into the healthcare system, it is important to explore two elements: (1) their right to stay and work in a host country; and (2) eligibility to rights. Temporary migrants are

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<sup>17</sup> In this line of analysis, Ayelet Shachar (2006) examines how the U.S., Canada, Australia, and the United Kingdom have created selective immigration programs designed to attract high-skilled migrants, creating as a result a race for talent.

characterized as aliens. As Linda Bosniak has argued, the status granted to these persons allows them, most of the time, to reside and work in host societies but not to get access to entitlements ordinarily enjoyed by citizens. Most importantly, they suffer certain legal disabilities. Usually, all of them are denied the right to vote, are ineligible for key welfare programs, and “are subject to deportation or removal from the community under a variety of circumstances” (Bosniak, 2000: 977).

Aliens are not ‘full members’ of the society (like citizens), but neither are they systematically deprived of basic entitlements attached to the national citizenry. In fact, they find themselves in an ambivalent position, a hybrid legal condition described by Bosniak (1998, 2006). Due to their legal status, aliens are subjected to particular social closure dynamics. Political communities are committed to an “ethic of national solidarity and to practices of bounded national membership.” Consequently, aliens’ legal status is precarious and they experience inequalities that would be seen as unjust if experienced by national citizens. While nationalist exclusionary practices may prevent aliens from becoming naturalized citizens, some will aspire to partial citizenship (Bosniak, 2006: 15).

T.H. Marshall’s citizenship model has limited application to temporary migrants. Temporary migrants’ citizenship is shaped by their economic value to the host society (namely, as a means to alleviate labour shortages) as well as other policy objectives, such as reducing the presence of undocumented migrants, or the enhancement of diplomatic and cultural exchanges between countries. Thus, temporary worker status is anchored on mechanisms regulating admissions, including: recruitment agreements that host countries sign with one or more sending countries; procedures for selecting types of workers, including the definition of skill levels for eligibility and migrants’ intended occupational sector in receiving countries; and conditions attached to migrants’

residence and employment, including the duration of the employment authorization permits, the right to renew them, and other related contractual terms like the possibility to change employers.

The eligibility to receive some citizenship-based rights –including healthcare rights- is attached to the migrants’ legal status. It would be wrong to expect that these aliens would be granted the same rights as citizens. Yet it would also be a mistake to “characterize the status of alienage as entailing a state of rightlessness” (Bosniak, 2000: 977). For instance, in the context of civic stratification, migrants categorized as naturalized citizens can receive the same entitlements and benefits as the nationals. In the domain of public healthcare, packages of benefits include protections against risks like the following:<sup>18</sup>

1. Intergenerational risks: composed of problems inherited from past generations related to economic scarcity, or income inequality; difficulties with the access to quality of basic services (water and sanitation) and housing; or factors like those identified by the literature on health transitions (e.g. the presence of endemic diseases);
2. Class risks: including occupational hazards, and also well-being troubles attached to income insecurity or loss of jobs. In this case the entitlements are designed to protect workers directly, and to protect their closest dependant relatives indirectly; and
3. Life course risks: where it is possible to locate health problems attached to persons’ stages of life, as well as those particular disadvantages accumulated in their life histories. Vaccination programs, disability pensions, or maternity and

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<sup>18</sup> This list is based on Esping-Andersen (1999: 40-41).

reproductive health services for women are part of common healthcare services related to this type of risks.

The extension of these types of entitlements or benefits to aliens is more complex, because most of the time they will receive only partial memberships. Almost all of them, even undocumented aliens, can have access to different employment and civil rights protections but none of them are entitled to receive political rights that are necessary to claim social entitlements. Some aliens, like asylum seekers, might be entitled to reside in a country but not to work legally, a situation diminishing their access to economic resources and contribution-based insurances needed to improve their well-being. In the case of temporary workers, these rights are highly conditioned by their contract-based legal status which varies from one occupational sector to another, as well as surveillance powers developed across and within nation-states. In this case, protections like disability pensions or the extension of benefits towards temporary workers' closest relatives fall outside the scope of the rights offered by temporary foreign workers programs.

Another important dimension useful for an analysis of the incorporation of migrant into the healthcare system is the distinction between nationhood and personhood, mentioned earlier. For instance, access to specialized public healthcare services is usually denied to those categorized as irregular or undocumented migrants in most welfare states. Also, in some situations access to public insurance programs does not include long-term protections for temporary labour migrants, whose rights are attached to their financial contributions and who are covered exclusively for the period of their legal employment in the country.

On the other hand, temporary workers -as with other types of aliens- can enjoy entitlements based on personhood. Their legal statuses are not an impediment to receiving certain healthcare benefits. Even undocumented migrants, who are the most vulnerable types of aliens, can receive medical attention in emergency rooms, or for other types of humanitarian reasons. Furthermore, there are groups like children whose health rights have been widely promoted as a human right that should be enforced by national governments. As will be explained in Chapter 5, these sorts of protections are usually associated with non-contribution-based types of public insurance programs established by social security systems.

In sum, in order to analyse the incorporation of temporary labour migrants into the healthcare systems from the citizenship perspective, it is necessary to focus on the social construction of citizenship. In the case of temporary migrants, the social closure dynamics founded on their ambivalent legal status, as well as their partial membership in certain welfare institutions are important elements to take into account. Furthermore, as will be discussed in the next section, the construction of citizenship is an ongoing process tied to different policy fields.

## **2.6 Politics of incorporation and paths of belonging**

As an institutional formation, the social construction of citizenship is conditioned by government's coercive power. As seen above, for migrant populations citizenship has become significant in two ways: a) through different legal statuses, citizenship defines formal relationships between individuals or social groups and host nation-states; and b) it defines eligibility to entitlements for different segments of the state's population. The

social construction of citizenship is a complex process. In Charles Tilly's (2005: 193) words citizenship is:

"[...] variable in range, never completely specified, always depending on unstated assumptions about context, modified by practice, constrained by collective memory, yet ineluctably involving rights and obligations sufficiently defined that either party is likely to express indignation and take corrective action when the other fails to meet expectations built into the relationship."

It is therefore important to address the *politics of incorporation* or state-employed approaches based on different normative frameworks and expressed through specific political actions. When studying how the incorporation of temporary workers in the healthcare systems is influenced by these politics, three policy fields can be identified: a) migration policies, where migration authorities define who has the right to work legally in the political community; b) social security policies, where, on the basis of nationhood and personhood principles, policy makers decide which outsiders can be insured against which risks through contribution and non-contribution based protections; and finally c) healthcare policies, where decision makers and medical providers decide which health rights and benefits will be distributed among those insured migrants.

In these policy fields, the politics of incorporation operate both at the formal and informal levels. At the formal level, the politics of incorporation are composed of national or regional laws and policies managing the relationship between migrants and host polities, including their welfare institutions. Employing the institutional ethnography approach (see Eastwood, 2005, 2006, for instance), legal frameworks and blueprints can be seen as texts through which power relations are collectively read and

activated by government authorities. They function as: a) a conceptual currency, framing a cultural background to guide the political discussions on institutional roles and individual commitments; b) a recognition parameter, translating individual expectations into collective expectations subjected to policy actions; and c) a means of institutional capture, since currency and accountability functions help to establish hegemonic standpoints and make visible –or invisible– certain public problems. Thus, at the formal level the politics of incorporation translate data, words, and ideas into structural elements such as official immigrant forms, personal medical records, annual institutional reports, or court indictments, all of them necessary to coordinate the work of different stakeholders and policy networks (Eastwood, 2006: 182).

The expression and institutionalization of power relations in different policy fields is just one side of the politics of incorporation. The other side involves practices developed at local levels, in everyday situations where the welfare service providers are placed in charge of providing entitlements and benefits articulated in laws and policy documents. Under certain material and administrative restrictions, these government actors are able to interpret and enforce (or not enforce) membership rules formally constituted.

The *de facto*, or “substantive” character of citizenship is described by Evelyn Nakano Glenn (2002: 2) in terms of “localized, often face-to-face practices” that determine whether or not people’s entitlements are translated into concrete actions and benefits. The way in which formal entitlements are enacted by government authorities could produce what Glenn (2002: 53) calls a “racialized and gendered” recognition of citizenship entitlements “when theoretically universal citizenship rights are differentially enforced.” At this point what is at stake is not the substantive denial of

rights and related benefits, but the practical inability to break certain patterns of inequality.

In order to obtain public medical goods and services labour migrants need to overcome certain institutional obstacles. First, they need to obtain membership in the political community. A proper legal status, supported by national migration laws and policies, is the first pre-condition. Then they need obtain membership in the welfare field. They will need to apply to public insurance institutions that select people worthy of being protected. Finally, this right to be considered as 'legal' and 'officially' insured people, has to be recognized by decision makers and providers who design and implement health policies at the local level.

The politics of incorporation not only entails tensions between inclusion and exclusion practices shaped around legal status and rights. In addition, there is a third citizenship-related analytical dimension related to how societies address issues of equity and solidarity in the context of diversity. The politics of incorporation helps to create and reproduce different *paths of belonging*, in which citizenship principles are translated into common identities and beliefs. These identities and beliefs are often founded on notions of state sovereignty, territorial belonging, and national pride.

According to Jeffrey Alexander, host societies tend to transform different characteristics of newly arrived out-groups like migrants (such as language and religion) in the context of subordination and repression. In these scenarios, the politics of incorporation can restrict or enhance:

“[...] the possibility of closing the gap between stigmatized categories of persons –people whose particular identities have been relegated to the invisibility of private life- and the utopian promises that regulate life principles that imply



equality, solidarity, and respect among members of the society” (Alexander, 2006: 410).

Two of the most relevant analytical frameworks used to describe the way in which political communities have addressed challenges of cultural diversity are assimilation and multiculturalism. Under assimilationist terms, “out-groups are allowed to enter fully into civil life on condition that they shed their polluted primordial identities.” In the realm of citizenship, values of the core group become universalized while cultural particularism is subjected to stigmatization and defeat. Along with other socialization channels such as education or mass-mediated representations, host societies tend to constitute “civilizing or purifying” projects towards migrant populations designed to reconfigure “their primordial qualities” (Alexander, 2006: 421).<sup>19</sup>

In the field of citizenship studies, the multiculturalist agenda is clearly articulated in Will Kymlicka’s *Multicultural Citizenship* (1995). As pointed out by Joppke (2010: 23), Kymlicka tackles the question of how to reconcile citizenship equality principles – usually thought of in a universalistic way- in the context of diversity:

“[...] multicultural citizenship is particularistic, pointing to inherent deficiencies of universalistic citizenship rights for ethnic and national minorities. It addresses instances where the universalism of law, even if extended to non-citizens, is the problem, not the solution.”

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<sup>19</sup> The discussion on assimilation has been widely developed in the North American context. See for example, Glazer (1993); Portes (2001); Portes and Rumbaut (2001); and Kivisto (2005).

The promotion of multicultural schemes in the different policy fields introduces new valorizations of difference that can open doors to the recognition of entitlements designed to address the needs of migrants. In theory, multicultural paths of belonging would not try to “purify” the characters of denigrated persons as assimilation approaches do. Instead, the idea is to recognize diverse qualities of minority groups and expand “the range of imagined life experiences for core-groups members.” Citizenship practices and other channels of socialization are then used to translate values and cultural particularity of out-groups into “sources of cross-group identification,” opening up the possibility “not just for acceptance and toleration but for understanding and recognition” (Alexander, 2006: 451).<sup>20</sup>

Debates on assimilation *versus* multiculturalism offer a framework for understanding different paths of belonging for different migrants articulated and institutionalized through the politics of incorporation. The presence of information systems, laws, and research programs that take into consideration differences based on nationality, as well as emerging discourses calling for respect for cultural diversity, improve chances that labour migrants would have access to policy actions designed to protect their well-being. Without these practices, migrants’ entitlements are overlooked, or at best, assimilated to policy frameworks designed for national citizens.

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<sup>20</sup> At least five types of claims have been associated with multiculturalist approaches: a) a claim to enjoy rights different to those enjoyed by the majority; b) a claim to be exempt, on cultural grounds, from duties that members of the majority are committed to; c) a claim for extra resources and policies related to goods which are culturally important to them; d) a claim for special representation in political institutions; and e) a claim for rights of self-government (Fabre, 2007: 51-52). See also Taylor (1994); Hartmann and Gerteis (2005); Bloemraad, Korteweg, and Yurdakul (2008: 159).

## 2.7 Conclusion

Citizenship theories offer useful analytical tools to analyse the incorporation of labour migrants, such as temporary migrants into host societies. Yet, many citizenship scholars do not acknowledge that the social constructions of citizenship affect national citizens and aliens in different ways. As explained in Chapter 4 for the Costa Rican case, temporary workers are aliens or non-citizens who live and work in societies that have designed practices and mechanisms of inclusion and exclusion for national citizens. In this context, temporary workers' legal status is not translated automatically into a condition of 'rightlessness.' Rather, the tension between inclusion and exclusion of these migrants leads to specific patterns of social closure and civic stratification and produces partial membership in political communities and welfare institutions.

The social closures and dynamics of stratification experienced by temporary workers place them in a vulnerable situation where their temporary presence would not 'offend' the rest of the society, as long as they remain productive agents for the domestic economy. From a policy-making perspective, recognizing the institutionalized production of this precarious status would make it possible to question and revise the current politics of incorporation of labour migrants. As will be examined through Chapters 5 and 6 with regards to the extension of public health insurance programs and healthcare benefits to temporary migrants, this vulnerability reproduces an inadequate understanding of what is and what should be the social citizenship of these labour migrants in migration, social security, and healthcare policy contexts. In countries with a marked presence of permanent or temporary labour migrants, it is important to problematize the experiences of these non-citizens.

Finally, citizenship can be seen as an expression of belonging to a society of equal but diverse members. This belonging can be expressed through two opposite principles. When based on the assimilation principle, the politics of incorporation aims to erase cultural particularities and ignore specific needs of different social groups. The multicultural principle, on the other hand, encourages the advancement of specific laws and policies different from those traditionally designed for majority groups. Whether the country adopts the assimilationist or the multicultural approach to dealing with issues of diversity is a statement about how boundaries on equity and solidarity are drawn *vis-a-vis* newcomers such as temporary workers. In xenophobic countries like Costa Rica, it is important to analyse these tendencies in order to assess if there is an opportunity to close gaps with regards to minority groups and develop new understandings of social justice.

## Chapter 3

# The Contemporary Demand for Temporary Migrants in Costa Rica

### 3.1 Introduction

Labour migratory flows are not new in Costa Rica. Almost since its foundation, this country has experienced voluntary, planned and forced movements of populations from Africa, China, Europe, and the rest of its Central American neighbours, among other parts of the world (Alvarenga, 2008). What is particular about the contemporary migration patterns is not only their magnitude, especially in the case of Nicaraguans, but also the geographical destination of the majority of the migrants, and the terms of the relationship established between aliens and the host polity. These terms, as could be expected, have changed over time according to the evolution of the Costa Rican nation-state and its economy.

Currently in the world, temporary migrant workers constitute an important labour force attached to the trade dynamics taking place on the transnational level. Most importantly, in any political community their recruitment has challenged the former citizenship boundaries and sovereign rules established by nation states. In this sense, the inclusion of these migrants has been justified for the sake of the development of host societies. In the realm of labour migrations, temporary migrants constitute the perfect migrant. In theory, they will behave according to the productive requirements of the employers and the economic cycles in which they are involved. Thus, as described by Abella (2006), Ruhs (2006) and Soysal (1994), the principle of temporariness is not only a

formal characteristic institutionalized in all the temporary migrant systems, but also one of most important reasons they are allowed to move to the host society.

This chapter explains the political economy context in which the Costa Rica-Nicaragua Bi-national Agreement (BNA) was justified. The first section presents a brief introduction to some of the most relevant temporary migrant initiatives coordinated by industrialized societies. After that, the chapter introduces basic characteristics of the migratory flows to which the BNA belongs. Two moments were identified: a) the years immediately before the agreement's enactment in 2007, when it was designed as an effort to regularize the labour supply in construction and export agriculture; and b) the first three years of the agreement's functioning.

### **3.2 The birth of the perfect labour migrant**

According to Hahamovitch (2003), the first representative temporary labour migrant systems took shape in Prussia and South Africa starting in the 1880's and lasting until the onset of the Great Depression. In the first case, temporary workers were composed of Slavic migrants from Russia and Austria recruited by local farmers; while in the second case they were composed of populations from the British Empire colonies, who came to be part of diamond and gold mines. In both contexts, the idea of a contingent labour force called *guest worker* was born as a product of the growing intolerance of host societies toward migrant populations in general. This historic labour force, like most of their current contemporaries, were seen as "the perfect immigrant;" workers "who could still be bound like indentured servants but who could also be disciplined by the threat of deportation;" people able to be isolated from the general

population; and aliens to the political communities, and thus with no responsibility on the host society of overseeing “integration” or “providing for their welfare” (Hahamovitch, 2003: 73).

A second representative wave of temporary labour migrant systems arose in the U.S. and Europe after the 1940s, due to the labour shortages created by the demands of wartime mobilization and the reconstruction period after World War II. In coordination with British colonial officials, the U.S. government started the British West Indian Labour Program (recruiting farm workers from Jamaica, the Bahamas, St. Lucia, St. Vincent, Dominica, and Barbados). In addition, in 1942 the U.S. signed the first formal labour agreement to bring Mexican farm workers to the country, beginning the so called *Bracero* program. In these new experiences, three characteristics of previous policies on temporary labour migration were established: a) guest workers were absorbed by owners of productive sectors undergoing a rapid change, allowing the employers to keep down rising wages; b) the state was actively involved handling the rising public opposition to the aliens’ presence; and c) employers preserve an advantageous position with regards to employees in the context of labour relations organization – deportation could work as a dissuasive instrument avoiding the formal organization of workers (Hahamovitch, 2003: 76).

Western European countries such as Britain, Netherlands, Sweden, or Germany (and its famous *Gastarbeiter* program enacted in 1955), also became host societies to guest workers. The main objective of their programs was to enlarge the workforce available in certain target productive sectors such as automotive, construction, metal fabrication, or textiles. In these countries, temporary workers were granted with separate work and residence permits – in some cases, losing one’s job did not mean to lose the right to

remain in the political community. Compared to the labour migrants recruited in the U.S., the European guest workers had a better standing. At least two reasons could be mentioned: a) the labour conditions offered to them were better because of the competition established among the same European states for this type of labour force; and b) their incorporation to well-organized industries and unions allowed the recognition of basic entitlements for these outsiders, such as the right to receive a minimum wage or organize and strike (Soysal, 1994; Hahamovitch, 2003; Hollifield, 2007).

Throughout the 1960s and the 1970s most of these programs fell from grace, first in the U.S. (the *Bracero* and *Gastarbeiter* programs finished in 1964 and 1973 respectively), and the European context later. One of the key factors undermining these policies was that guest workers began to remain in the host countries for longer periods of time –with regular or irregular legal statuses- raising related claims such as their integration into the host societies, the recognition of citizenship rights, and the institution of new entitlements like family reunification (Hahamovitch, 2003; Pastor and Alva, 2004; Hollifield, 2007). These different experiences, in a pretty similar way, broke with the exclusionary legal status logic dictated by economic cycles. Against the temporariness principle, these guests “become permanent, contrary to official government policies and rhetoric” (Soysal, 1994: 21).

Even though these temporary migration initiatives became politically unviable in the 1970s, there has been a renewed interest in this form of migration on the part of the policy-makers. After four decades of functioning, Canada’s *Seasonal Agricultural Worker Program* (SWAP) has been entrenched in Canada and has been one of several foreign labour recruitment initiatives aimed to contribute to the development of the Canadian



agriculture sector (Basok 2002). Currently, the number of persons entering Canada to work for short periods of time has “eclipsed” the number of those entering with a permanent resident status. The flow of these temporary workers into this country “now exceeds 100,000 per year, with some 193,061 individuals entering Canada as Temporary Foreign Workers in 2008” (Hennebry and Preibisch, 2009: 6).

Currently, other temporary migration programs are justified both on the basis that they will eliminate the employment of illegal aliens, and on the basis that they are a good “labour supply system” designed “to regularize wages,” to hold down productive costs of different economic activities, and “to keep workers segregated” (Hahamovitch, 2003: 93). For instance, during the past two decades the U.S. government has promoted the implementation of new foreign workers proposals as an effective way to stimulate the economy and reduce the presence of illegally employed foreigners (Castles and Miller, 2009: 187) At present, the U.S. has over 80 types of visas for temporary migrants allowing the recruitment of workers for sectorial shortages in low-skilled occupations (Hennebry and Preibisch, 2009: 3).

Following this renewed promotion of temporary labour migrant policies, the 1990s has witnessed the rise of new bilateral and multilateral temporary migration agreements in the European context. They have been signed both by countries with or without previous experiences in these affairs. The new members of this club include different sending countries from Africa, Asia and Latin America, and host countries such as Spain and Italy. Compared to the former European temporary migration programs, the new programs present certain basic differences. First, the overall number of foreign workers admitted in each country has declined. Second, highly skilled workers are clearly differentiated from low-skilled workers. Most states seek to integrate and settle

the most qualified labour force while restricting the length of stay of non-skilled migrants. Third, temporary migrants' inclusion tends to be included as part of the general cooperation initiatives promoted by host countries toward the developing world. Host countries have claimed to contribute to the economic development of sending societies through remittances (Castles, 2006; Adepoju, Noorloos and Zoomers, 2009).

Unlike the examples mentioned above, the BNA was established in a context of south-south migration. Even though during the 1980s and 1990s the Costa Rican government granted temporary work visas for Nicaraguan migrants, the BNA constitutes the most important official initiative coordinated between these countries to manage the demand for labour migrants in a legal way.

### **3.3 The labour migrations of Nicaraguans in Costa Rica: general patterns**

Traditionally, both permanent and temporary mobilizations of Nicaraguans to Costa Rica helped to configure transnational communities located at their common border, as well as other social networks extended across Costa Rica's northern and Caribbean zones, especially around the productive activities promoted by the sugar cane and banana plantations. In recent times, two significant migratory flows have been added to these traditional patterns of interaction. The first flow was composed of refugees produced by the military conflict in Nicaragua from 1975 to 1990. While the political regime changed in Nicaragua in the 1990s, many of these refugees were repatriated, although a minority of them decided to settle in Costa Rica.

During the 1990s, a second migratory flow of Nicaraguans began. In this case the migrants were labour migrants, people expelled from their homes due to poverty and

social exclusion conditions created by the move to a neoliberal economic and political order in Nicaragua. In that decade, the number of labour migrants looking for jobs in Costa Rica grew as never before. Nicaragua's poor economic performance in agricultural sectors, and the reduction of employment in the public sector and the military, became key 'push' factors affecting a great part of the population. The peak of this second flow was experienced in 1998, when hurricane Mitch hit the Central American Atlantic coast. One year later, in a context of regional political pressure, the Costa Rican government decided to promote a migratory amnesty as a humanitarian response to the social impact of the hurricane in Nicaragua. It was not until the first years of the 2000s that this new migratory flow slowed down.

Over fifteen years, from 1984 to 2000, the overall proportion of the Costa Rican population made up of migrants increased notoriously, from 45,000 to 226,000 persons (1.9% to 5.9% of the total population). Currently, around 76% of all immigrants (or 226,374 people) are originally from Nicaragua (Morales, 2008: 12). In socio-demographic terms, more than half of this second migratory flow has been composed of persons of working age -between 20 and 39 years old. This population is equally divided between men and women, and it has an average of 6 members per household (Marquette, 2006: 4). In addition, there is an important group of migrants not captured in the national census and surveys databases who came to the country in an irregular or illegal condition. In this sense, this new migratory flow has also brought a many migrants whose legal status is irregular.

Taking a historical view, the most important change generated by the second migratory flow has been experienced in the geographical distribution of this population. Before the 1980s, as was commented above, labour migrants to Costa Rica tended to

move between the northern (the so called Chorotega and Huetar North regions) and the Caribbean (Huetar Atlantic region). But during the 1990s, their presence in urban areas around the Central Valley (which includes Costa Rica's capital, San José) increased. For the first time since the early colonial period, an important number of newcomers are settling in the core area of Costa Rican society, and facing the deeply xenophobic character of the nationals (Molina, 2002).

As could be expected, this new geographical distribution is configured around the labour markets in which labour migrants have been located. Nowadays, Nicaraguans are concentrated in San José (around 40%), while another important group remains in the northern region (around 30%). In both cases, the patterns of occupational segmentation place Nicaraguans migrants in low-status jobs. Within these occupations, they also have lower educational levels compared to the nationals, and their payment rewards are also the poorest. In San José and the Central Valley, men tend to work in the construction sector (20% of the overall labour force of this sector), and women in domestic service (30% of the overall labour force). In other regions of the country these labour migrants are taking part in agricultural activities (10% of the overall labour force). Some of them are becoming long-term residents -especially those living in urban areas- but there is an important group of temporary migrants working in rural areas (Marquette, 2006: 6; Morales, 2008: 38).

By 2000, at least 100,000 Nicaraguans could be considered seasonal employees at peak harvest times. Most of them have an "irregular" rather than a "regular" legal status (Marquette, 2006: 3), and their transitory emigration to Costa Rica has been produced not just by unemployment problems, but also by two basic characteristics of this workforce. First, 60% of the overall active labour force occupied in the Nicaraguan agriculture sector

is composed of low-skilled workers, and for them, the rotation between different harvests through the year is not new. Second, the decrease of Nicaraguan agricultural exports during the past two decades has concentrated the creation of job opportunities in domestic markets which are characterized by their poor wages (Baumeister, Fernández, and Acuña, 2008:70-73).

Thus, we are talking about farm workers who are move from harvest to harvest in order to improve their annual incomes. In this sense, it is possible to assume that their decision to migrate to Costa Rica is influenced by factors such as geographical proximity, their willingness to perform tough jobs in agriculture, and most importantly, the salary improvement. In terms of earnings, the minimum wages in Nicaragua during 2008 were around US\$ 2.00 and US\$ 3.00 per day. In Costa Rica, the same type of agricultural activities reported daily wages of US\$ 7.00 and US\$ 10.00. Similarly, in that year other activities like construction reported average payments of US\$ 6.00 and US\$ 14.00 in Nicaragua and Costa Rica respectively (Baumeister, Fernández, and Acuña; 2008: 26).<sup>21</sup>

The second migratory flow has become a key element in the development of Costa Rica and Nicaragua. Nicaraguans are not only the biggest migratory group working in urban and rural areas, but also constitute an indispensable workforce in agriculture, construction and domestic service. In fact, this flow occurred at the time when the Costa Rican agricultural sector improved and diversified its export products, and the construction sector experienced a 'boom,' especially in touristic infrastructure. On the other hand, as Baumeister, Fernández, and Acuña (2008: 27) have established based on the 2005 Nicaraguan Census, Costa Rica and the U.S. have become not only the

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<sup>21</sup> These minimum wages could be increased or decreased depending on labour market dynamics. For example, in 2008 migrant workers cutting sugar cane in Costa Rica could earn US\$ 15.00 per day (Baumeister, Fernández and Acuña; 2008: 27).

most important countries of destination chosen by Nicaraguan labour immigrants, but also the most important country chosen to live in temporarily –along with El Salvador in this particular case.<sup>22</sup>

In the next two sections the political economy scenario in which the BNA was born will be described. This initiative was supported in times when temporary workers were not publicly assumed to be a threat to national workers. Compared to the xenophobic reactions generated against other long-term labour migrants who arrived to the country in a regular or irregular way, the development of a temporary migration program was promoted by private entrepreneurs and the government as a valuable ‘productive resource’ for the Costa Rican economy, and as a good administrative legal procedure to ‘regularize’ the demand for these workers in key productive activities at that time.

### **3.4 The political economy of the Costa Rica-Nicaragua Bi-national Agreement**

The BNA, actively supported by the Costa Rican government during 2006 and 2007, took place in a particular moment of the country’s economic history. Two significant interrelated events that occurred during the first half of the 2000s, laid the foundations for the justification of the temporary migration program: a) the expected positive impact that the approval of a new free-trade agreement with the U.S. would bring; and b) the sustained good economic performance shown by the country since 2003.

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<sup>22</sup> The implications regarding remittances are explained in Monge, Céspedes, and Vargas (2009).

To begin with, it is necessary to remember that in the same year that the BNA was enacted, a national referendum was conducted in Costa Rica to ratify the participation of the country in a new free-trade agreement with the U.S. This trade agreement, known as the Dominican Republic and Central America Free Trade Agreement (DR-CAFTA), had been discussed since August 2004, when the governments of these countries approved the formal terms of the trade agreement, and the national parliaments started their final ratification. For the next three years, until the Costa Rican voters decided to accept the DR-CAFTA in October 2007, the economic and diplomatic relations of all the Central American countries entered an exceptional and unprecedented period of well-being.

In Costa Rican domestic politics, public opinion was almost equally divided between those opposing and those supporting the treaty and its ratification became the main point in the governments' political agendas, and the leading issue of the 2006 national elections. The winning party, the National Liberation Party (PLN), continued the strong promotion of the DR-CAFTA developed by the former administration. The main advocates of the treaty were public agencies such as the Ministry of Foreign Trade, the Ministry of Labour, and The Foreign Trade Corporation of Costa Rica; influential private entrepreneurs in the so-called *For Costa Rica* group; and finally, conservative think tanks and civil society actors like the Costa Rican Investment Promotion Agency (CINDE).

For all of them (and that was their chief argument), approval of the referendum would bring benefits like 500,000 new jobs related to exports to the U.S. plus the creation

of new employment opportunities in other sectors.<sup>23</sup> Despite the arguments elaborated by the DR-CAFTA antagonists, the thesis about positive changes in the labour markets was broadly spread across the country using different means such as informal chats organized by the ruling party in local communities; official speeches given by government representatives at public events; editorials and opinion columns in the most important newspapers of the country; communication strategies created by the human resources departments of different companies; and finally, the advertising campaign developed by *For Costa Rica*.

All these proponents of change benefited from a positive economic moment. In fact, from 2003 to 2007 the Costa Rican economy grew 6.6% annually on average, a stable situation not seen since the period 1997-1999 –in which the GDP grew at an annual rate higher than 5% (Estado de la Nación, 2009: 168). This good performance was explained, in the first place, by the international demand for assets manufactured by industrial parks, and some non-traditional agricultural products such as bananas, coffee, pineapple and melon. Second, there was a dramatic increase in the diverse activities related to construction and real estate, especially those developed on the Costa Rican west coast in the context of a tourism boom. In overall terms, the construction sector grew 18.2% and 22.4% in 2006 and 2007, almost twice the growth showed by other productive sectors at that time (Estado de la Nación, 2008: 165).

Economic development over these four years produced new job opportunities. The unemployment rate for 2007 was 4.6%, the lowest rate experienced by the Costa Rican economy over the previous twelve years. Besides, almost 96 thousands jobs were

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<sup>23</sup> This expectation was truly impressive for a country with 4 million inhabitants. For a critical review of this chief argument see Martinez and Castro (2004).



created, an important number if we take into account that from 1996 to 2006 the average rate was 74 thousands. This increase was strongly influenced by the most dynamic economic activities at that time, construction and the financial activities related to real states investments (Estado de la Nación, 2008: 174). As will be explained in the next section, the good performance experienced by the Costa Rican economy during 2006 and 2007, as well the expectations generated about the DR-CAFTA, configured a less adverse political context for the development of temporary migration initiatives involving Nicaraguans. Obviously, the third factor which legitimized the BNA was the presence of labour shortages in certain productive activities.

### **3.5 Labour shortages and the private interests surrounding the BNA**

The labour shortages experienced in key productive activities during the first ten years after 2000 were the decisive factor driving the emergence of the BNA in 2007. By that year, diverse economic actors had understood these shortages not only as a particular problem, but also as a sign of Costa Rica's limitations to face the new economic challenges waiting around the corner when the DR-CAFTA was finally approved. Some of these private actors started to pressure the government for solutions to solve this problem.

There were two types of labour shortages manifest at that time. First was the shortage related to the provision of qualified or highly skilled employees for different private investments. In 2006 and 2007, CINDE and the Chamber of Small and Medium Enterprises conducted surveys of their members to evaluate levels of satisfaction with the domestic workforce. The findings suggested that around 40% and 70% of the

participants had had troubles getting the appropriate type of worker for their needs (Estado de la Nación, 2008: 176). In addition, other groups like the Chamber of Communication and Information Technologies pressured the government, without any success, to allow the entry of foreign professionals. In order to continue their activities, some of them decided either to move their business operations outside Costa Rica, or to bring foreign workers on a regular tourist visa for short periods of time (Estado de la Nación, 2008: 177).

Most importantly for the BNA, the claims regarding labour shortages were also sustained by employers demanding low skilled workers. That was the case of the construction sector, a key activity for the Costa Rican economy during the first years of the 2000s. In 2005 and 2006, as seen above, there was an exceptional development of building projects related to tourism and different types of residential facilities in Costa Rica's west coast (in the North and Pacific Central regions). Thanks to these projects, in these years the number of legal construction permits approved in the country almost doubled, creating a high demand for basic services like electricity, sewage systems, and public transportation; and subsequently, a high demand for workers such as carpenters, bricklayers, or welders (MTSS, 2008a: 13-16).

In March 2007, the director of the Costa Rican Chamber of Construction Industries (CCC) and the Costa Rican Minister of Labour, Francisco Morales, announced in a press conference that the overall area of construction by square meter on the west coast in that year would rise 20% over the previous year (Rojas, 2007). The information was based on an inventory of projects presented by the CCC at the end of 2006 to the Ministry of Labour. According to this study, the labour force required during the following years would progressively increase: 19,002 workers would be needed in 2007;

59,896 in 2008; and finally, 77,267 in 2009 and 2010 (CCC, 2006: 5). In order to deal with these expectations, the CCC gave the following policy advice to the government:

“The future labour requirements in construction will not be satisfied at the domestic level. It is indispensable to facilitate the entry of foreign temporary workers both to cope with the demands of the sector, and to avoid an out-of-scale inflation in salary rates and the final cost of properties.” (CCC, 2006: 6)

In the same press conference, Morales thanked all national and international investors who were making possible the future growth of the construction sector. He also commented that in response to “the torrent of new employment demand” generated by this productive activity, the government was preparing a national plan to instruct new professionals and hire foreign workers if necessary (Rojas, 2007). Five months later, in August 2007, Morales announced in the Nicaraguan newspaper *Trinchera de la Noticia* that Costa Rica’s government was to introduce political reforms to facilitate the hiring of foreign workers for construction, as well as the constitution of new procedures to manage the demand for Nicaraguan temporary migrants –procedures that later on would be known as the BNA (MTSS, 2008a: 27).

The construction sector was a key economic actor for the development of the BNA. But it was not alone. Another important productive sector influencing the appearance of this temporary migration initiative was agriculture. In this sector, especially with regard to the exports products, the lack of workers became more than evident throughout the 2000s. For instance, it is not difficult to find press notes describing how sugar cane producers were organizing their activities in order to attract workers (Barquero, 2006); how the Costa Rican Institute of Coffee (ICAFFE) complained

to the government about an “alarming lack of workers” (Barquero, 2007a); or how melon and pineapples farms were worried about a future economic loss, if the government did not solve “the insufficiency of labour power” for their harvests (Barquero, 2007b).<sup>24</sup>

According to the representatives of the Agricultural and Agro-industrial Chamber (CNAA) interviewed for this research, before the enactment of the BNA they had negotiated with the government different initiatives to bring foreign workforce during the peak times of harvest of crops such as sugar cane or melons. At that time, for example, the entry of Ngöbe-Buglé indigenous Panamanians for coffee harvestings in the southern and central regions of Costa Rica was common. But from their point of view, until that moment there was no certainty about the continuity of these ‘good understandings’ achieved between entrepreneurs and the government. Throughout 2007, the common worries expressed by the different chamber members were:<sup>25</sup>

“[...] how to keep a satisfactory stock of workers due to international and local pressures imposed on our national producers. That situation means, in the first place, to solve the lack of labour force at the local level; and in the second, to prevent a possible increase of the salary rates in these labour markets.”

(Interview: CNAA)

The *international pressures* mentioned in the quote were about the promotion of exports that would be generated through the DR-CAFTA; the *local pressures*, instead, were related to the collateral effect produced in the agricultural labour markets by the growth of the construction sector in 2006 and 2007. In both years an important amount of

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<sup>24</sup> See also, Estado de la Nación (2008: 176) and Baumeister, Fernández and Acuña (2008: 90).

<sup>25</sup> The interviews in this research were conducted in Spanish. I translated all these quotations into English.

farm workers migrated to Guanacaste and the Central Pacific region to perform jobs in construction. Compared to occupations like cutting sugar cane, construction offered these workers not only better salary rates, but also a dramatic improvement in labour conditions (Estado de la Nación, 2008: 176). As a result, an internal competition to get access to a workforce was established among the farmers of the rural economy (a competition that increased employers' production costs).

In this context, certain big entrepreneurs required formal mechanisms to keep safe annual stocks of workers, no matter the 'local pressures' experienced in the domestic labour markets:

"When the idea of the Bi-national Agreement appeared, the importance of foreign workers had become clear for us. In fact, their recruitment (regardless of their legal status) was an extended practice in the past. For instance, it is not a secret that lots and lots of Nicaraguan workers have been required during each cane and coffee harvest since the 1980s. What we really began to understand at that time, was that we needed official mechanisms capable of guaranteeing specific quotas of workers during certain periods of the year." (Interview: CNAA)

In September 2007, authorities from the Costa Rica government addressed a National Competitive Agenda presented by the CNAA. This agenda updated a previous competitive agenda on the DR-CAFTA elaborated by the CNAA two years before. It was composed of 12 issues to be solved by the agriculture sector, including the lack of workers. As in the case of the construction sector demands, on behalf of this agenda the General Migration Authority of Costa Rica (DGME) and the Costa Rican Ministry of

Labour (MTSS) agreed to develop institutional mechanisms to facilitate the entry of foreign workers, and also, to extend the temporary migration initiative to the agricultural sector (Alpizar, 2007; MTSS, 2008a: 28).

In sum, the construction and agriculture sectors were key economic actors for the development of the BNA. Their “constant political pressures” to find solutions to their labour shortages troubles “allowed the Costa Rican authorities to highlight the good economic side of the Nicaraguan migratory flows.” For the first time in several years, it was possible to get the economic and political ruling class together, and think about “how to manage the migrations in order to translate them into a strategic instrument for Costa Rica’s economic development.” (Interview: MTSS)

### **3.6 Good times and bad times for the BNA**

When the BNA came into effect in December 2007, the recruitment of workforce from Nicaragua did not pose a serious challenge to Costa Ricans workers. As seen in the past section, the construction sector was expecting increasing demand for labour; meanwhile, the agriculture sector was experiencing labour shortages due, among other things, to the movement of farm workers to the construction sector, and internal competition among farmers for the available labour force.

The continuous years of economic expansion experienced by Costa Rica since 2003 ended during the beginning of the international financial crisis in 2008. During that year, and the next one, the economy experienced a period of contraction and recession in which the GDP dropped to 2.6% and -1.5% respectively, and it was not until 2010 that the economy could show signs of a real recovery (World Bank, 2012). The crisis directly

hit activities linked to exports, and those depending on international financial investments. The first productive sectors to suffer its negative effects were industry, agriculture, and tourism, showing negative rates of growth by the end of 2008.<sup>26</sup> In the first quarter of 2009, the construction sector was severely battered (Estado de la Nación, 2010: 131).

With regards to the labour markets, the most significant problem produced by the economic crisis was the increase of unemployed workers. While in 2007 and 2008 the unemployment rate was 4.6% and 4.9% (INEC, 2009: 4), in 2009 and 2010 they reached 8.4% and 7.3% respectively (INEC, 2010: 3). In 2009, more than a half of the jobs lost by the crisis were from the construction and agricultural sectors, especially in activities which demanded low skilled workers (Estado de la Nación, 2010: 138).

How did this turn in Costa Rica's economic context influence the official launching of the BNA? The effects of the crisis on the agreement varied according to the productive sector. Let's start with construction. Before the BNA was signed on December 2007, expectations of the demand for labour were high. During the process of negotiation of this agreement, the government offered to the sector around 10 thousand permits just for 2008 (interview: CCC).<sup>27</sup> But throughout 2008, it became clear that the Costa Rican authorities were not well suited to accomplish this promised initial quota. In fact, just 759 work permits were recommended by the Ministry of Labour during the first months in which the BNA functioned (MTSS, 2008b: 3).

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<sup>26</sup> By 2008, more than a half of Costa Rican exports went to the U.S. Also, more than half of tourists, and of direct international financial investments came from this country (Estado de la Nación, 2009: 164).

<sup>27</sup> This share was calculated based on the labour requirements assessments presented by the CCC in the inventory of projects for the Costa Rican west coast quoted above (CCC, 2006). See also, MTSS (2008a:45).

For the representative of the Costa Rican Ministry of Labour interviewed, the delay in the initial approval of work permits for construction was influenced by “the intervention” of Nicaraguan unions and also the Nicaraguan Ministry of Labour. At the beginning of 2008, these unions -with the support of the Nicaraguan government- asked to be involved in two relevant stages of the recruitment process established in the BNA: first, they wanted to distribute a part of the work permits among their affiliates; and second, they also demanded to be able to inspect the places and labour conditions offered to the future temporary migrants. The first point was strongly resisted by the CCC, who argued that the employers needed to be free to hire whoever they wanted without extra intermediaries, and finally refused. The second point was subjected to negotiations. Finally, the Nicaraguan government agreed to delegate the responsibility to conduct inspections to the MTSS. During the time in which these issues were discussed, the authorization of work permits for construction was suspended (interview: MTSS).

From the point of view of the CCC representative interviewed, MTSS’s version about the delays in the authorization of work permits was just one part of the problem. For them, the real troubles began when the MTSS ordered new research to validate the quota requested by the CCC - calculated originally on the basis of its inventory of projects (CCC, 2006). This research was conducted during the first half of 2008, and its final report (necessary for granting the work permits for construction), was presented eight months after the enactment of the agreement. Instead of the 10,000 work permits promised initially to the construction sector, the MTSS recommend quotas of 2,000 and 3,000 work permits for 2008 and 2009 (MTSS, 2009a: 66; MTSS, 2010a: 21). At that moment:



“[...] the crisis came down. Thus, there was a general loss of financial support for the sector. Some investors began to be afraid and decided to postpone their new projects. Others decided to cancel their current activities. For that reason, when the permits for temporary workers were finally available, we did not need them anymore.” (Interview: CCC)

Delays in the granting of temporary work permits for Nicaraguan migrants and the faster changes experienced by the international and domestic economic context, made it impossible for the construction sector to take advantage of the BNA. As the CCC representative explained:

“[...] the following years we did not use the agreement. In fact, even today we are firing people, or trying to relocate those Costa Rican workers who have lost their jobs.” (Interview: CCC)

In the case of the agricultural sector, the story was a little different. The international financial crisis did not hit agricultural activities in the deep way it hit construction, but several months of continuous productivity decreases were experienced. The decline started in export fruit harvests and was extended to other traditional products like coffee. It was not until the last quarter of 2009 that most of the sector affiliates stopped reporting negative numbers and could slowly get back on their feet again (Estado de la Nación, 2010: 138-139).

With regards to the labour market, the shortages became less problematic than they had been during previous years. As a result of the economic decline in construction industry, there was an adequate stock of workers available. The internal

competition among employers for workforce stopped, as well as the rise of the salary rates of this sector. In this new context, the CNAA continued supporting the BNA. There were certain key exports for which productivity did not drop severely, such as pineapple or melon, which still needed temporary migrant workers in order to fill the jobs “usually rejected by the nationals” (Interview: CNAA). In this sense, as Henneby and Preibisch (2009: 5) have mentioned, labour shortages are not always about “the absence of labour, but the presence of workers prepared to reject the working conditions or wage levels offered.”

From the CNAA’s viewpoint, since 2007 the agriculture entrepreneurs have not needed to push the government to create other mechanisms to manage the demand for labour migrants in key activities. The granting of work permits did not suffer any important delay. By February 2008, more than 2 thousand work permits were recommended by the Ministry of Labour (MTSS, 2008b), and another 14 thousand work permits were authorized up to 2010. In agriculture it is possible to state that the BNA “ran smoothly.” Unlike the construction sector, agriculture producers had “coped with the government” in the past to bring foreign labour force. When the agreement came into effect, they were ready to submit their applications to the MTSS and start the recruitment of workers immediately (interview: CNAA).

In sum, during its first three years of operations the BNA has been used primarily by agricultural companies. The construction sector, the big promoter of the agreement, was not able to take advantage of it for the reasons explained. Finally, in 2009 and 2010 the Costa Rican Ministry of Labour used the BNA to grant work permits to Nicaraguan bus drivers (around one hundred permits). Also, the MTSS has been trying to extend this type of recruitment logic to the Ngöbe-Buglé indigenous Panamanians

working each year in coffee harvesting in Costa Rica's Southern and Central Valley (MTSS, 2010a: 19).

### **3.7 The agricultural producers involved in the BNA**

Initially designed principally to supply labour force to the construction sector, the BNA was finally used to recruit workers in agriculture. This research has taken into account the main agricultural producers involved in the recruitment of migrant workers through this agreement. In this section, a brief description of the Costa Rican rural economy will be presented in order to locate these producers and their labour demand for migrant workers from 2008 to 2010.

The contemporary organization of Costa Rica's agricultural sector has emerged from the changes that the national economy experienced starting in the mid-1980s, after a period of economic breakdown shared by the entire Latin American region. During that decade, the Structural Adjustment Programs (SAP) promoted by the national government under pressure by International Organizations like the International Monetary Fund succeeded in reorienting economic incentives and governmental institutional mechanisms towards the production of agricultural assets for global markets.

Accordingly, the production of basic grains and cereals for the domestic consumer was relegated to a secondary place of importance, while the production of 'traditional' export products (coffee bean, bananas and sugar cane), and 'non-traditional' exports (vegetable and fruits, and also certain ornamental plants and flowers) became the new priority. Currently, non-traditional agricultural producers have become key

players for the Costa Rican agrarian economy. For instance, in recent years their exports have easily surpassed US\$2,000 million per year, three times more than the amounts reported in late 1960s. Furthermore, during the past 25 years the group of non-traditional products grew 10 times, an impressive performance that, for instance, has positioned the productivity of pineapples over other former strategic export products like bananas (Garnier and Blanco, 2010:117).

Over the long run, the vitality of the agriculture products for export has been also reflected in basic agrarian labour market indicators. According to the 2000 census conducted in Costa Rica, the plantations of sugar cane, coffee, and bananas, counted for 40% of the overall workforce demanded by the agricultural sector. Non-traditional activities counted for another 25%. In both cases, most of the active economic population was composed of formal paid workers on middle to big farms, rather than individual workers ascribed to informal labour markets (Baumeister, Fernández, and Acuña, 2008: 74-75). In this economic sector the Nicaraguan migrants constitute more than 90% of the total foreign workers hired, becoming over time an essential labour force for the agrarian economy (Morales, 2007: 183).<sup>28</sup>

In a globalized political economy context, the main economic players tend to pressure states to engage in arrangements to protect their productive processes. Among these arrangements the claim for the introduction of flexible entry conditions for labour migrants could be understood as a useful tool to reconfigure labour-capital relations for their own benefit. In fact, two of the main producers who promoted the inclusion or

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<sup>28</sup> Along with Nicaraguans, in recent times the Ngöbe-Buglé indigenous people from Panama have become an important migratory group for the agricultural sectors. They participate in the coffee gatherings developed in different times of the year, from the southern Costa Rican border to the Central Valley.

reforms to the Costa Rican migratory law, as well as the development of temporary institutional mechanisms to bring labour migrants to the country, were one transnational fruit company with operations across the Central American Region and an important traditional plantation controlled by key members of the political party in charge of the government since 2006 (interview: CNAA). The table 1 presents the list of permits recommended by the MTSS under the BNA.

**Table 1 Temporary Work Permits Recommended by the MTSS (2008-2010)**

Product	2008	2009*	2010**	Total	Percentages
Sugar cane	2,340	2,500	1,490	6,330	39,0
Melon	1,982	1,500	1,485	4,967	31,0
Palm oil	518	1,000	400	1,918	12,0
Pineapple	121	500	478	1,099	7,0
Bananas	149	500	0	649	4,0
Citrus	330	500	0	830	5,0
Ornamental plants	0	150	2	152	1,0
Mango	66	0	0	66	0,5
Other	0	0	11	11	0,5
Total	5,506	6,650	3,866	16,022	100

Sources: MTSS (2008b); MTSS (2009a: 66); MTSS (2010a: 21); MTSS (2010b:5).

\* In 2009, the official accountability of temporal work permits recommended by the Ministry of Labour included 2,000 authorizations for Ngöbe-Buglé workers. I removed these permits from the chart.

\*\* Until November.

The most important agricultural producers recruiting migrant workers have been those related to sugar cane, melon, palm oil, and pineapple. These producers not only have been the main partners of the BNA during its first three years of functioning – concentrating the 89% of the work permits requested- but also the most powerful political actors within the agricultural sector. In terms of productivity, these goods are part of the main 20 types of products exported by Costa Rica during those years. For that reason, they should meet international high standards of production, “including the adequate treatment and handling of the products by manual workers” (interview: CCAA).

During the previous years of the BNA enactment, these productive activities showed steady growth that, after the economic crisis of 2008, started to decline in some cases as is explained in the Table 2. In 2010, 18 producers have been involved in the BNA: 7 in sugar cane; 3 in melon; 7 in pineapple; and 1 palm oil company (MTSS, 2010b). Most of these producers have recruited migrant workers throughout each year of the agreement’s functioning. In personal communications with these employers, it was possible to establish that most of the migrant workers recruited have been men. Usually, they are in charge of elementary hard jobs in these plantations, such as cutting cane and palm oil, and gathering pineapples and melons. In few cases, these employers mentioned to have recruited women to help with the package process of these types of goods. Besides, the most important plantations related to these products have been geographically concentrated in the Northern (in the counties of Liberia and San Carlos), and also in the Pacific coast (in the county called Aguirre).

**Table 2 Exports evolution according to product in US\$ Millions (2005-2009)**

Product*	2005	2006	2007	2008	2009
Pineapple	326	430	485	573	573
Palm oil	69	53	112	140	113
Melon	75	85	83	68	75
Ethyl alcohol**	31	65	111	75	45
Sugar	30	42	49	34	26

Source: PROCOMER, 2010.

\* The U.S. is the main destiny market of these products with the exception of the palm oil (which is exported to Mexico).

\*\*Along with sugar, the ethyl alcohol is the main sub-products produced in sugar cane plantations.

According to the CNAA the producers of pineapple, palm oil, melon, and sugar cane have supported the BNA over time. That situation became clear in October 2010, when the MTSS asked them to reduce the participation of migrant workers in their productive activities. This requirement has been stated in the document *Temporal Demand of Agriculture Workers: a Strategy to Deal with the Current Crisis*, where the MTSS, in order to cope with the unemployment rise experienced in Costa Rica 2009, suggested “the recruitment of nationals and legal residents” over foreign workers (MTSS, 2010b: 4). For the Department of Labour Migrations of this Ministry, this measure should be understood as a “reasonable request made in times of economic crisis.” It does not mean that “the guest workers program has being undermined;” just that “we need to be sure that the national workers could be well positioned in the domestic labour markets” (interview: MTSS).

In response to that request, the producers of melon, oil palm, pineapple, and sugar cane endorsed the importance of the BNA for the agriculture sector. At least three

reasons were mentioned to the MTSS. First, the jobs done by migrants are hard. Not everybody could be ready to face certain labour conditions. For instance, activities like cutting sugar cane need people physically and psychologically capable to work “several hours without any roof over your head,” and meet exhaustive schedules during the summer “and not become weak and dehydrated at the end of the day” (interview: CNAA).

Second, to train new national farm workers adequately has always been difficult, even when they have certain background on agriculture activities:

“We know that people can easily move from agriculture to construction or services. That situation was demonstrated where some of our workers start to work in the construction sector in the past years. But to move in the opposite way is difficult, even more when you are talking about national workers, who are not as productive as migrant workers.” (Interview: CNAA)

Third, though the migrant labour force is an important component of certain export companies, it is also necessary to establish that they required hiring them without breaking legal frameworks. That has become important, not because of the good will of the employers. In order to be taken seriously in certain markets, “they are required to demonstrate their respect for the labour rights of these people.” In this sense, the Costa Rican government needs to develop domestic legislation allowing producers “to operate under international trade regulations and certifications such as ISO, or Global G.A.P.” Some of these regulations include, for instance, not hiring children or not exposing workers to pesticides. These producers “are not in the position” to lose their contracts just because they hire illegal migrants for their activities (interview: CNAA).



### **3.8 Conclusion**

Temporary migration policies are not designed in an institutional vacuum. As a policy tool to manage the demand for labour in key productive sectors, they are exposed to the pressures imposed by economic and political actors. The BNA constitutes the most important effort supported by the Costa Rican government during the past decades to manage Nicaraguan labour migrations. Actually, at the beginning the agreement was thought of as a first step in the development of a comprehensive temporary migration program capable of meeting the anticipated labour requirements in the context of the expected economic prosperity due to the insertion of the Costa Rican economy in the global markets.

During the first three years of its operation, the importance of the BNA was defended by export agriculture producers as a mean to regularize the labour supply in key traditional and non-traditional products. Unlike the xenophobic reactions generated against long-term Nicaraguan migrants, temporary labour migration was promoted by the economic and political ruling class of that time in terms of a productive resource for the Costa Rican development. The chapter that follows will analyse whether this temporary labour migration program made it possible to recognize Nicaraguan migrants' health rights and incorporate them in the Costa Rican healthcare system.

## Chapter 4

# Migratory Policies in Costa Rica and the Status of Temporary Labour Migrants

### 4.1 Introduction

Modern welfare states are bounded political spaces. In fact, most of their protections and resources have been designed to benefit those who are accepted as legitimate members of the society. The rules of admission to different institutions like healthcare or pensions systems privilege the incorporation of national citizens, regardless of their particular institutional architectures and specific provision schemes. Yet, those officially designated as non-citizens, or outsiders, are not entirely excluded from these provisions, as argued in Chapter 2. However, additional eligibility rules are established and applied to these non-citizens. These eligibility rules are linked to the boundaries set around political communities in relation to such elements as territorial state sovereignty; national cultures; the observance of human rights, and most importantly, ideals of what citizens should be like.

For migrant populations, the way in which host societies organize their membership through citizenship-related categories affects their chances of being included in welfare institutions. It is well known that migrants considered as 'illegal' subjects are more likely to be rejected from the redistributive practices established by these institutions. Thus, the definitions of legal statuses such as refugee, asylum seeker, or permanent resident, not only draw different territorial and jurisdictional ambits for members of diverse nation-states but also shape the outsiders' right to have social rights

and obtain the same benefits as those enjoyed by the nationals. Legal status leads to the drawing of external and internal boundaries.

In this chapter I examine Costa Rica's migration policies with regards to the BNA. The migratory policies analysed here include national laws and policies, as well as other possible normative regional instruments applicable to migrants that are adopted by government authorities. The objective is to situate the residence and work provisions of this temporary migration program in relation to two modes of membership: one established in this host society towards outsiders (that is, the national mode of membership constituted around migratory control mechanisms and entitlements guaranteed by the nation-state), and the other one being the post-national mode of membership configured around the promotion and overseeing of human rights. These two membership modes were described in Chapter 2.

#### **4.2 An overview of Costa Rica's agenda-setting on migration**

The rationalization and institutionalization of administrative categories and procedures regarding the entitlement of migrants is a new, or sometimes non-existent, practice in most of the normative frameworks and political agendas constituted in Costa Rica. Although the presence of migrants, especially from Nicaragua, has increased in the past three decades, the constitution of a comprehensive set of political initiatives advancing the incorporation of labour migrants has not occurred yet. As Borge (2004), Morales (2008), and Jiménez (2009) have stated, the focus of Costa Rican policy-making with respect to migrants have been reduced to border control, as well as the development of other control-related mechanisms such as legal status and criminal

records surveillances. An overview of the contemporary evolution of instruments such as national migration laws and policies will help to explain the emergent character of the politics of belonging in this political community.

The emphasis on elementary control matters has remained constant over time despite the demographic changes experienced by the country due the newcomers' settlement. Throughout the 1990s, when the migratory flows between Nicaragua and Costa Rica reached their most significant historical peaks, the migration law in force dated back to 1986. Similar to any other migration laws, this one established basic administrative regulations such as: entry requirements for foreign populations; sets of conditions under which admissions should be rejected; parameters to regulate their lengths of stay in the country; and procedures required to obtain visas and safe conduct certificates. The law was reformulated once, in 1995, to authorize the official distribution of seasonal work permits for agricultural workers (Borge, 2004).

By 2001, the Costa Rican government began to promote the reform of this legal framework in order to "deal" with the potential "problems" brought by the migrant populations (Morales, 2008: 15). The Costa Rican Ministry of Governance and Public Security presented to the National Congress a new Migration Law that reinforced control mechanisms not well developed in the previous law, such as the surveillance of undocumented migrant populations, or the introduction of new regulation mechanisms to police criminal activities perpetrated by foreigners. More recently human trafficking has become the focus of concern and regulation. After four years of paperwork and debate, this law was finally approved in 2005, coming into effect in August 2006. However, this kind of legal instrument would not last long. Given its punitive nature, the law was challenged by different migrant rights advocacy networks from the first

moment in which it was presented to the public. Critics quickly pointed out that the law would reproduce discriminatory and xenophobic attitudes towards migrants, especially those coming from Nicaragua (Jiménez, 2009: 154).

Just three months after the law's enactment, the 'Defensoría de los Habitantes' (Costa Rica's Ombudsperson's Office) was commissioned by the new governmental authorities to conduct an assessment of this legal instrument. Based on the assessment, the Arias administration declared its intention to revise the law.<sup>29</sup> As viewed by the Ombudsperson, the main problem was that the "human rights perspective was almost overlooked by this law," while the topics highlighted were related to the policing of migrants and promoted surveillance of smuggling activities and the sex trade (interview: Costa Rica's Ombudsperson's Office).

In 2007, a new project to reform the migration law was presented to the National Congress. That reform was also part of the National Development Plan 2006-2010 of the Arias administration. This project called for efforts to:

"[...] promote an administrative model to organize migration laws according to a human rights perspective, that would make it possible for migrants to have access to Costa Rican welfare institutions and other public services offered by the State" (MIDEPLAN, 2007: 49).

Two years later, a new migration law was officially approved, coming into effect in March 2010. The changes introduced in the new law were actively promoted by the General Migration Authority (DGME), based on the evaluations carried out in 2006 by

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<sup>29</sup> Two years prior to taking office in 2006, while running for president, Oscar Arias had already criticized the migratory law that would be finally enacted in 2005 (Morales, 2008: 15).

the Costa Rican Ombudsperson's Office. In this sense, as Jiménez and Chaves (2010: 6) describe, the new legal instrument was the product of a collective effort which included the participation of political actors such as the Friedrich Ebert Stiftung Foundation; the National Network of Civil Organizations for Migrants; religious groups; the Inter-American Institute of Human Rights; public universities; and international organizations like IOM and UNHCR.

Even though the 2009 migration law was based on the former law (their structure and main administrative aspects remained the same), the participation of different actors from civil society prompted a debate about the well-being of migrants and the respect for their rights. In this sense, if the interpretative frameworks of the former Costa Rican migration laws were characterized by their emphasis on public safety matters, "the new one will be known by the mention of topics such as integration and social development" (interview: Costa Rica's Ombudsperson's Office). In fact, for the first time a national law incorporated the notion of integration with regards to international migrants (Jiménez and Chaves, 2010: 3): the second article of the law's first section established that "migration is a subject of public interest for the development of the country, its institutions, and its public safety;" while the third article stated that the law would promote the inclusion of migrant populations into Costa Rican society "based on principles of respect for human rights; cultural diversity; solidarity; and gender equity" (Asamblea Legislativa, 2009).<sup>30</sup>

At first glance, the new migration law introduces a couple of changes that, if well managed by governmental agencies and other political actors, could translate into the

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<sup>30</sup> When the data for the research was collected in fall 2010, the regulations in this law were not defined yet. At that time, it was not possible to know how the notion of integration introduced in the law would ultimately be applied by public institutions.

development of positive policy initiatives for migrants. Obviously, in the short term great transformations cannot be expected. It is necessary to recognize that currently there is no official national migration policy in Costa Rica. Up to the present, the policy-making body in charge of migration policy, the National Council for Migrations, has focused on the design and implementation of such initiatives as the coordination of the activities of the migration police, or the administration of customs and borders, corresponding to the historic emphasis on migration control characteristic of public agenda-setting on migration (interview: Costa Rica's Ombudsperson's Office).

In the context of the new migration law, the National Council for Migrations was reconfigured. From that point on, it would be composed of the following governmental and political institutions:<sup>31</sup>

- The Ministries of Governance and Public Security; Foreign Affairs; Planning; Labour, Education; and Health;
- The DGME;
- The Costa Rica Social Security Fund (CCSS);
- The Costa Rican Institute for Tourism;
- Two representatives of civil society organizations working on migration issues.

In order to support migrant integration efforts pursued by the Council, a special Migrants' Social Fund was created. As established in article 242, this fund would have two main objectives: a) to support the integration of foreign populations; and b) to attend to the needs of repatriation of Costa Ricans living abroad. According to the law,

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<sup>31</sup> Previously, the council had no representation from civil society organizations. When the information for this research was collected, the council's members were just beginning their work due to the recent transition between Costa Rica's government administrations. At that time, the first point of the council's agenda was the creation of a Migratory Court to solve DGME's legal administrative problems (interview: DGME).

40% of the resources collected by this fund would be assigned to the DGME; 25% to expenses related to the Public Health System; 20% to the support of the Public Education System; 5% to projects of community development; and the rest of the money to other agencies related to the Ministry of Governance and Public Security. The fund is to be financed by migrants who will be charged a US\$ 25 fee for a renewal of their migratory status. The resources from this fund were expected to be available by 2012 (Asamblea Legislativa, 2009; and Jiménez and Chaves, 2010: 22).

#### **4.3 Managing the demand for migrant labour in Costa Rica**

As described above, migration-related agenda-setting established during the past decades in Costa Rica has not been translated yet into institutional spaces to adequately incorporate migrant populations. With regards to the development of specific political initiatives to manage the demand for migrant labour, the institutional void pointed out earlier in terms of national laws and policies seems recurrent. Since the 1990s, only a handful of official actions have been taken in this direction, most of them in favour of the regularization of the legal status of agricultural workers during short periods of time. Sadly, in the long run, these actions have not turned into “effective mechanisms to deal with the increase of undocumented migrants,” and even less into strategies to protect the entitlements of some of the documented newcomers (interview: MTSS).

One program that deserves particular attention concerns seasonal agricultural employment permits for Nicaraguan migrants. Under this program, cards were issued to migrants working in the sugar cane harvest located in the northern part of Costa Rica, and in coffee plantations located throughout the Central Valley and the south. This



program came into effect in March 1995, but it had been discussed since 1993 by the Bi-national Commission constituted by the Nicaraguan and Costa Rican governments. The Costa Rican government had the responsibility of implementing this program, coordinated by the Costa Rican Ministry of Labour and Social Security (MTSS) and the DGME (Borge, 2004: 9).

In March 1997, (at the last meeting that the Bi-national Commission would have in that decade), the Costa Rican government agreed to protect non-citizen migrants working in the country. In this agreement, the Costa Rican government announced its intention to grant visas type B8 to migrants working in agriculture, construction, and domestic services. Its main objective was to complement –and improve at the administrative level- the actions already developed around the distribution of seasonal employment permits. The objective was to highlight that the labour rights of these workers should be protected in accordance with the Costa Rican national labour laws (MTSS, 2007).

One year later, the new Costa Rican government halted the distribution of seasonal employment permits. This program was not part of any national labour development strategy, nor was it part of any comprehensive labour policy on migration. With the cancellation of the program, the government showed its inability to create a reasonable administrative structure to manage any program of temporary work permits, especially during peak harvest times. The official justification for this action was that in five years of operation the program had not succeeded in creating an institutional framework to administer the recruitment of foreign seasonal workers, and more importantly, the country needed to avoid developing a “parallel labour market

composed of irregular workers” receiving “low wages,” and competing against national workers in the labour market (Borge, 2004: 9-10).

In 1999, laws and policies to protect the labour rights of Nicaraguan migrants working in Costa Rica were not on the agenda. The Costa Rican government declared an amnesty for victims of Hurricane Mitch fleeing from Honduras and Nicaragua. This action (partly demanded of Costa Rica by the international community), was taken by the government for humanitarian reasons, but also as a way to control the migrant population already living in the country. Thus, the Amnesty enacted on November 1999, benefited 153,316 Nicaraguans in a six-month period. It made it possible for them to obtain their legal resident status (Mora, 2004; and MTSS, 2007).

Between 2000 and 2005, Costa Rica did not develop any relevant political action regarding the management of the demand for labour workers living in the country. From 2002 to 2006, government officials from Nicaragua and Costa Rica sustained annual meetings with agendas of ‘good intentions’ regarding labour issues. This agenda addressed topics such as the need to create “innovative” strategies to deal with the migrant population; the problems regarding the unfortunate structural and technological conditions under which the DGME and the Nicaraguan National Department for Migrations had been working in recent times; and the expectations about the future role of international organizations like the ILO in the management of migratory flows between Nicaragua and Costa Rica (MTSS, 2007).

In December 2007, a new political initiative concerning the temporary migration of Nicaraguan workers to Costa Rica emerged: the BNA. As mentioned in the Introduction, the government justified the agreement as part of the efforts advanced by the Arias administration to create a new administrative model to manage migratory

flows in an “organized” way. Actually, it was presented as the first step towards the development of a “comprehensive” program on temporary migrations that could be applied to populations from other countries. Even though the BNA does not have the complexity of certain programs for labour workers developed in the context of the North-bound migration, it could be considered the only institutional effort by the Costa Rican and Nicaraguan governments in that direction (interview: MTSS). The next sections will focus on the description of the international framework in which the agreement was born.

#### **4.4 International legal instruments, regional migration agendas, and bilateral good diplomatic will**

At the national level, the politics of belonging is expressed through migration controls and entitlements established around national laws and policies on migration. But these politics are also influenced by the recognition of human rights ratified in several international conventions and treaties, and by their involvement in global liberalization agreements regarding trade and free mobilization of different types of assets - including workforce. This means that the politics of belonging is also shaped at an international level. In the Costa Rican case, the domestic institutional scenario is characterized by migration laws which emphasize control issues, as well as by the lack of a national policy on migrations, or clear initiatives to manage the demand for migrant labour. To what extent does this restrictive normative landscape reproduce international level?

Costa Rica has ratified most of the most relevant normative frameworks promoted by different United Nation agencies, as well as other institutions such as the Organization of American States (OAS), to protect the well-being of international immigrants. Formally the rights promoted by these global actors are based on a universal notion of 'personhood' instead of nationhood (as discussed in Chapter 2). Once supported by nation-states, the person enjoys the same legal status as those enjoyed by citizens under the national political constitution. The most important international legal instruments of this kind ratified by Costa Rica include the following:<sup>32</sup>

- The U.N. Universal Declaration of Human Rights.
- Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights (Protocol of San Salvador).
- Convention on the Elimination of all forms of Discrimination against Women.
- Convention on the Rights of the Child.
- Protocol Relating to the Status of Refugees.
- Convention on the Status of Refugees.
- Protocol against the Smuggling of Migrants by Land, Sea and Air.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

However, the support given by Costa Rica to issues such as the defence of children's rights, or the fight against criminal activities like smuggling, has not been equally extended to the protection of migrants' labour rights.<sup>33</sup> Actually, in terms of the international framework for managing diverse migratory flows emerging around the

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<sup>32</sup> For a complete account of international legal instruments ratified and non-ratified by Costa Rica, see IDHUCA (2006: 48) and Bolaños (2009: 8-9).

<sup>33</sup> Even in the new migratory law, this difference about the relevance of topics is present.

globe, Costa Rica has ratified just one instrument, the ILO Convention 111 on the Discrimination in Respect of Employment and Occupation. As Bolaños (2009) points out, at least three key conventions have been left aside by this country over time: a) the C97 ILO Convention concerning Migration for Employment, of 1949; b) 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; and c) the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 1990.

Even though the latter UN convention constitutes the most relevant non-ratified instrument to protect labour migrants, through the ratification of the C97 ILO it would be possible to recognize formally that the legal status creates situations of inequality and discrimination, including situations in which residence and work permits are granted temporarily. In C97 ILO appendix, formal requirements for the recruitment of migrant workers are developed; as well as labour conditions that should be overseen by the national governments (Bolaños, 2009: 9, 16; and Cranshaw, Benavente, and Aragón, 2009: 29-31).

When asked why Costa Rica had not ratified these conventions, two Costa Rican government officials interviewed in this study suggested the following. The most common argument against ratifying this convention is that the efforts of the government to change the migration law, in addition to the creation of mechanisms -like the BNA- to manage migratory flows, constitute a better strategy to protect the rights of labour migrants. From this viewpoint, the goal should be to improve the functioning of national laws and policies, rather than “to introduce new legal instruments that could not be applied properly to the national context” (interview: MTSS). The second argument

establishes that the ratification of the UN convention by Costa Rica could be interpreted as an “official approval and promotion of irregular migration.” In this case, the options would be “to protect those migrants with a regular migration status,” and after that, “to develop institutionally sound procedures to reduce the population with an irregular status” (interview: DGME).

The lack of interest shown by Costa Rican governments with regards to the ratification of international legal instruments focussed on labour migration seems consistent with the poor development of this particular topic in the agendas on integration conducted at the regional level. Along with Nicaragua, Costa Rica has been part of two multilateral spaces related to labour migration issues, the Central American Commission of Migration Councils (OCAM) and the Regional Conference on Migrations (CRM).

The OCAM was established in 1990, as part of the Central American Integration System (SICA); it is an organization that coordinates the economic and political processes of integration developed in Central America.<sup>34</sup> The OCAM has been in charge of creating common population control tools, such as the design of standard migration admission requirements, or the implementation of regional systems of information about foreign populations. Costa Rica has usually approved the actions of the commission without major hesitation, except for one important initiative: the inclusion of the country into an area of unrestricted mobility for Central American citizens. The creation of this area has been a key objective pursued by the OCAM since its inception, together with

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<sup>34</sup> The IOM office in San José, Costa Rica, became the Technical Secretary of the OCAM at the end of the 1990s. On the website of this commission, there are no ordinary or extra-ordinary reunions reported since 2007. See, <http://www.oim.or.cr/espanol/ProcesosRegionales/OCAM/OCAM.shtml>

the reinforcement of trade relationships among the members of the commission. At present, Costa Rica is the only country that does not support the creation of a shared legal framework which liberalizes the movement of Central American citizens (Cranshaw, Benavente, and Aragón, 2009: 25).<sup>35</sup>

The second significant multilateral space, the CRM, is a regional forum constituted by Canada, the U.S., Mexico, Belize, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, and the Dominican Republic. Its first meeting was in 1996, and each year since then, different topics on migration and related policies have been discussed.<sup>36</sup> Unlike the OCAM, the development of regional legal instruments is not part of the conference's actions. A broad spectrum of subjects covered in this deliberative space includes a) the protection of human rights; b) the promotion of organized and safe migratory flows; and c) the inclusion of participants from the civil society in the conference. In practical terms, the main achievements of the CRM have been the development of strategies designed to tackle human trafficking and smuggling; giving financial resources to different academic studies on migration; holding workshops and training sessions for the staff of the migration councils; and constituting regional mechanisms for the exchange of information among the members of the conference (IDHUCA, 2006; Cranshaw, Benavente, and Aragón, 2009).

The lack of international or regional background laws and policies on labour migration has left the development of temporary migrant programs reliant on both good

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<sup>35</sup> Thus, in terms of multilateral treaties related to migration for employment, the Costa Rican government could only be associated to the World Trade Organization's General Agreement on Trade in Services (GATS) and until now, the country has just made modest commitments towards this agreement. Under this international legal instrument, countries could liberalize trade in services, including the temporary movement of persons as service suppliers. See, Panizzon (2010), and Koslowski (2008).

<sup>36</sup> The IOM office in San José, Costa Rica, holds the Technical Secretary of the CRM.

diplomatic will and the financial support and technical advice provided by international organizations and cooperation agencies. Initiatives like the distribution of seasonal employment permits in 1995, or the 1997 agreement to protect non-citizens (mentioned above), were products of the Bi-national Commission meetings conducted between Costa Rica and Nicaragua during the 1990s. Actually, the BNA was approved in the context of the meetings of this commission, when the Commission was reactivated in 2006. In that year, representatives from both governments addressed three key issues: a) the importance of labour migrations for the economic development of both countries and the economic growth of the Central American region; b) the need to reduce the reproduction of 'irregular' migration dynamics as a requirement to improve immigrants' well-being; and c) the lack of joint agreements on labour migrations as a political problem both countries needed to address in the future (DGME, 2008; MTSS, 2007).

In this context of good diplomatic will between Costa Rica and Nicaragua, the crafting of a BNA received financial support from the Spanish Agency for International Development Cooperation (AECID) through the CODESARROLLO Program.<sup>37</sup> With respect to the last point, it is worth mentioning that the AECID offices in Managua and San José began this project in 2005; and two years later –coinciding with the enactment of the BNA- CODESARROLLO was implemented in communities of the Costa Rican-Nicaraguan border. From 2006 to 2010, AECID has invested more than US\$ 3 million in projects related to, for example, the promotion of better mechanisms to distribute remittances, or the temporary provision of medical services. With regards to the BNA, CODESARROLLO has contributed, albeit indirectly, through actions such as the

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<sup>37</sup> The CODESARROLLO (Co-Development) Program is an initiative implemented by AECID in different countries. Its main objective is “to promote positive effects between migration and development through the empowerment of Diasporas” (AECID, 2005: 118).



structural improvement of consulate or customs buildings and offices, the creation of new bureaucratic processes to grant work permits, or the supply of basic software and office equipment for Nicaraguan and Costa Rican customs (interview: IOM).<sup>38</sup>

#### **4.5 Logics of membership for temporary migrant populations**

The historical development of national agenda-setting on labour migration and the strategies to manage the demand for migrant labour, as well as the legal instruments and political initiatives established at international or regional levels, provide a background for understanding the ways in which the membership of migrants in host polities and welfare institutions will be organized. At this point, it is necessary to recognize that, for most Costa Rican citizens, this membership began as an involuntary civic status granted at the moment of birth, in accordance with the territorial principle of *jus soli*. For international migrants, by contrast, access to citizenship poses a problem precisely because they have left their country of citizenship to enter in a new -and sometimes problematic- context in which they are perceived as aliens or outsiders.

With regards to alien populations, states are responsible for establishing formal criteria by which migrants could be placed in certain citizenship-related social positions with regards to the nationals. In order to do that, nation states have to address two basic questions: who can get in and on what terms? After all, as one Costa Rican government official stated in an interview conducted for this research project, “the state will maintain, as part of its territorial sovereignty, the right to control the entry and stay of foreigners” (interview: DGME). In this sense, what is the legal status of the temporary

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<sup>38</sup> The IOM office in San José was in charge of managing AECID’s Co-Development funds. The representatives for IOM interviewed in my research were not authorized to reveal how the funds were distributed.

migrants employed under the Costa Rica-Nicaragua BNA? And most importantly, how is this status framed in the politics of belonging described above?

According to the conceptual scheme elaborated by Kivisto and Faist (2010: 226), one can distinguish between the foreigner or an *alien*; the resident alien or a *denizen*; and the naturalized alien or a *citizen*. Applied to the administrative categories used in Costa Rica's national migration law, this distinction allows identifying three basic legal statuses for international migrants that are summarized in Table 3. Alienship includes the administrative category of temporary migrants used in the BNA, other temporary residents like 'trans-border' workers, the so called 'special categories' including human trafficking victims, asylum seekers, and undocumented aliens. Denizenship includes migrants with permanent residence allowed to work legally in the country, their dependents, and recognized refugees. Citizenship is composed of naturalized aliens who in the Costa Rican case are allowed to maintain their citizenship of birth (as dual citizens).

Migratory statuses configure a hierarchical formal structure that establishes and, above all, justifies differential commitments of the host society towards migrants, as well as the development of social closure dynamics regarding their access to public goods and services. Accordingly, the extension of rights to migrants is indirectly restricted by their legal statuses, creating what Lydia Morris (2002) calls a stratified system of entitlements in which the formal social standing enjoyed by a naturalized migrant is better than the permanent resident or a trans-border migrant (see Chapter 2).

**Table 3 Migratory legal status according to administrative categories for migrants**

Legal status	Administrative categories for migrants
Alienship	Temporary migrants (including the workers recruited by the BNA, and other special categories of migrants)  Human trafficking victims  Asylum seekers  Undocumented aliens
Denizenship	Labour migrants with permanent residence and their dependants  Recognized refugees
Citizenship	Naturalized migrants (dual-citizenship is allowed)

Source: Asamblea Legislativa, 2009.

By definition, in different political communities the alienship status granted by policy instruments like temporary migration programs is much weaker than the status of the citizens, due the restrictions imposed on entry and residency rights. In spite that these programs share this common element, variations could be expected in the way in which host polities combine the restricted notion of alienship with certain sets of welfare entitlements. In the Costa Rican context, there are two basic reasons to assume that the contemporary agenda-setting on seasonal labour migrations (discussed in sections 4.2 and 4.3 of this chapter) has not allowed an adequate extension of rights to this type of non-citizens.

First, there seems to be little regard for the specific characteristics of the migrants grouped in the different legal statuses, especially in the case of temporary kinds of

membership having restrictions on residency and mobility in the labour market.<sup>39</sup> One of the collateral effects of the historical development of migration laws (focused on control matters, as well as the lack of a national policy on labour migrations) has been poor attention given to migrants categorized as trans-borders or temporary migrants. Undocumented aliens have been the main migrant population targeted, and not necessarily because the host polity wanted to improve their well-being.

Second, in Costa Rica the incorporation of labour migrants in key welfare institutions depends largely on their individual 'incursions' into labour markets. A job, especially a formally paid one, allows migrants to be automatically enrolled in the social security system.<sup>40</sup> With the exception of emergency room services (which in life or death situations are universally provided), the provision of healthcare services is insurance-based for all documented migrants regardless of whether one is categorized as a temporary migrant or a permanent resident.<sup>41</sup> Here, the triggering factor allowing the membership of migrants will be their insurance status guaranteed by labour contracts, rather than their legal status. As will be seen in the upcoming chapters, the discussion about migration issues in the Costa Rican public health system is linked mostly to concerns about how to turn migrants into 'visible payers' within its financial structure.<sup>42</sup>

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<sup>39</sup> In a similar vein, despite the introduction of such notions as "integration" or "social inclusion" in the new Costa Rican migration law, at least in the short term it is unlikely that any policy instrument focused on temporary migrant populations –in general terms– would be developed (interview: Costa Rican Ombudsperson's Office).

<sup>40</sup> The Costa Rican Social Security System, as will be described in the next chapter, includes provisions in three areas: healthcare; economic benefits (pensions and monetary resources); and social benefits (monetary resources and public services for poor and vulnerable populations).

<sup>41</sup> Undocumented migrants just have access to emergency room services.

<sup>42</sup> As Lydia Morris (2002: 146) has stated in Foucauldian terms, the granting of rights for migrants is fused with control and surveillance interests developed by the States, or in other words, with "the available technologies of government" present in the "institutional framework of their delivery."

As argued above, the ratification of some international conventions by the Costa Rican government has not affected the treatment of labour migrants in Costa Rica. Currently, the restrictions imposed on the rights of aliens resident in this political community are not challenged by the emergence of new modalities of supranational membership, such as “postnational memberships” (Soysal, 1994 and 2000; Jacobson, 1996) or “nested citizenships” (Faist, 2001 and 2009) identified in the European context since the 1970s. At least for temporary migrants, discourses celebrating human rights and political structures coordinating processes of economic integration seem incapable of transcending the rhetorical realm of common purposes promoted by international organizations such as “enhancing the human capital of migrants;” “letting them get the same opportunities already enjoyed by the nationals;” or “intervening in unfair situations of discrimination.”<sup>43</sup>

#### **4.6 Admission terms for migrant workers under the BNA**

In sum, the politics of belonging developed during the past decades in Costa Rica has been constituted around general and individual logics of membership. In this agenda-setting the discussions about the experiences and potential problems faced by different migrant populations have been replaced by the concern about undocumented migrants. At the same time, the incorporation of migrant populations into welfare institutions has become largely “contingent upon economic value,” borrowing the expression used by Davy (2005: 137). This economic value dependency is because

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<sup>43</sup> These phrases are part of a shared discourse presented in the series of interviews conducted with international organization representatives in response to my question regarding their understanding of the notion of ‘integration’ introduced in the new migration law. In this case, I took examples from my conversations with IOM; and UNFPA.

admission into the social security system depends mainly on their labour status – both as a formal requirement that must be attained by any other citizen in the country, and also as a way to demonstrate they are not a financial burden on the national population.

The admission terms established for temporary migrants in the BNA reproduce the same logic of membership already developed for all labour migrants. Eight out of the ten general clauses established in the agreement (DGME, 2007) relate to entry restrictions for labour migrants, as well as the recruitment steps to be followed by employers interested in this workforce:

1. The Costa Rican government will authorize an entry of Nicaraguan temporary migrants over 18 years old. Their entry will be subjected to the approval and surveillance of the Costa Rican Ministry of Labour and Social Security (MTSS), and the General Migration Authority of Costa Rica (DGME).
2. The recruitment process will begin with a letter submitted to the MTSS by employers interested in the foreign labour force.
3. Employers can recruit workers living both in Nicaragua and Costa Rica. The recruitment of Nicaraguans already living in Costa Rica will be possible if their current legal status is that of a tourist. The BNA does not apply to undocumented migrants.
4. For those workers residing in Nicaragua, the recruitment process will require the authorization of the Nicaraguan Department for Migrations and the Nicaraguan Ministry of Labour (MITRAB).
5. With respect to the latter, the MITRAB should send a list of authorized temporary migrants to the DGME before their entry to Costa Rica.

6. Employers are responsible for delivering to temporary migrants their passports or safe-conduct certificates with official temporary permits, as well as other travel documents.
7. The DGME will exempt the payment of visa fees for temporary migrants.
8. Employers should pay the DGME an entry fee for each hired worker.

Only the two following general clauses included in the BNA are about workers' entitlements:

1. Airfare and other transportation expenses of temporary migrants (between countries, and inside Costa Rica), should be covered by the employers.  
Employers must also offer adequate housing conditions to the workers in Costa Rica.
2. The Costa Rican government will oversee the protection of workers' labour rights and their inclusion in the social security system.

As can be seen, the BNA was designed as a dry normative procedure to regulate the admission of temporary migrants in which employers are central figures throughout its different phases, while the state plays a monitoring role – a comfortable position in a context of neoliberal policies. The agreement has been formally supported by government institutions in Nicaragua and Costa Rica, and has been celebrated as a means “to reduce the bureaucratic paperwork” regarding the entry of workers; “to encourage the participation of private entrepreneurs;” and to improve cooperation between immigration and labour officials from Costa Rica and Nicaragua (OIM, 2009: 7).

Under normal circumstances, the distribution of work permits for non-residents is supervised by DGME, which is in charge of evaluating individual requests determining the legitimacy and fiscal status of future employers (for example, whether they have any pending tax debts), and the migratory status of the applicants (for example, the validity of their passports). The length of evaluation varies according to the applicants' characteristics, and sometimes delays occur as a result of administrative difficulties faced by this public agency -such as a lack of functionaries to check and process all the documents in a timely fashion (interview: DGME).

Under the BNA, admission of workers is based on quotas. Two MTSS subdivisions, the National Department of Employment and the Labour Migration Department, are responsible for negotiating with associations of employers the composition of the temporary migrants' quotas: a) the types of productive activities benefited (construction and agriculture in this case); b) the occupations required; and c) the amount of workers required in each case. When the agreement began in 2007, the Costa Rican Chamber of Construction and the Costa Rican Agricultural and Agro-industrial Chamber, were the main employers' representatives involved in the negotiations with MTSS (OIM, 2009:7).<sup>44</sup> In the first official negotiations, the estimated workforce was based on information submitted by the chambers' affiliates based on the quantity of workers needed per square meter of plantations each season (in agriculture), and the number of overall square meters of construction expected for the west coast over

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<sup>44</sup> As outlined in above, in 2008 the Chamber of Construction withdrew from the accord.



the subsequent three years.<sup>45</sup> In both cases, the type of person requested was low-skilled with previous experience in similar jobs (interview: MTSS).

Following the agreement, once the quotas of worker are established, each employer should submit the following items to MTSS: a formal request letter describing their productive activities, information about the place in which the work will be developed, the name of the person in charge of administration, housing conditions offered to temporary migrants, as well as the number of workers that are requested and their length of stay. The Ministry has 15 days to review the requests, return them to the employers for corrections, if necessary, and finally, send an official statement about the quantity of work permits authorized per season or year to each applicant. After that, the MTSS elaborates an official list along with the list of employers participating in the accord, and sends it to the Nicaraguan Ministry of Labour and the DGME (OIM, 2009).

At this point, employers (or private intermediaries working on their behalf) can initiate the recruitment of workers. For each worker the employer should prepare a labour contract, and fill out work permit forms. All the contracts and permits have a standard one-page form, containing basic information about future temporary migrants, such as their names, date of birth, ID numbers, photographs, the period of time they will be working for the employer, their proposed place of residence, salary rates, and payment arrangements. In the case of the recruitment of workers residing in Nicaragua, employers must send the workers' information to the Nicaraguan Ministry of Labour in order to check their criminal records and other types of legal issues affecting their

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<sup>45</sup> Due to 'problems in their database', the MTSS was not able to report details about the way in which these estimations were done. The Costa Rican Agricultural and Agro-industrial Chamber could not provide this information without the prior authorization of their affiliates. In the case of the construction industry, the information is offered in CCC (2006).

departure. If they do not have an appropriate passport, safe-conduct certificates should be prepared in order to allow their migration. On the other hand, the recruitment of workers living in Costa Rica does not require an intervention by Nicaraguan authorities. In this case employers just have to send labour contracts and work permits to the DGME, as well as the photocopies of workers' passports and visas (OIM, 2009).

Employers must pay a fee for each authorized work permit. These fees are reimbursed when temporary migrants return to Nicaragua at the end of their labour contracts.<sup>46</sup> Finally, employers are required to submit a report on the performance of these workers to the DGME. If employers wish to extend their workers' work permits for another period they are to submit their requests to the MTSS (OIM, 2009).<sup>47</sup>

#### **4.7 The right to labour for migrants under BNA**

What the category of a temporary migrant introduced in the BNA does is establish, in the host polity, a temporary situation of partial formal equity concerning the aliens' rights of residence and employment. Compared to other non-citizens like undocumented migrants, the workers hired under the BNA would receive preferential treatment: being covered by labour rights originally intended to apply to protect national citizens; and being insured by the Costa Rican social security system. In this case, the extension of rights for temporary migrants becomes driven primarily by contractual restrictions, as well as by their financial capability to contribute to welfare institutions - rather than by universalistic aims.

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<sup>46</sup> Initially the fee amount was US\$ 100 per each temporary worker, but in 2008 it was reduced to US\$ 20 (interview: DGME).

<sup>47</sup> The workers will not receive any sort of special temporary worker ID. Their passports or safe-conducts are just stamped.

However, without a major legal framework and social policies focused on labour migrations, the explicit and implicit contractual limitations imposed on temporary migrants through the agreement result in potential access barriers to welfare state institutions and provisions. The BNA has significant limitations. First, as stated by Bolaños (2009: 17-18), the agreement does not allow for an evaluation of the labour contracts of workers in order to adjust them to the national labour codes of Costa Rica and Nicaragua. For that reason, there is no clear understanding of how to protect this itinerant population when employers violate the Costa Rican labour and social security legislations or how to compensate these migrants -if necessary- once their work permits have expired. At least in Costa Rica, the judicial processes on this matter tend to be inefficient, and their resolution takes longer than the periods of stay approved for a temporary migrant.

Second, in the labour relationship established through the BNA, employees are placed in a disadvantageous position because it is implicitly assumed that each temporary migrant will be assigned to a single employer. Even though this point was not well developed in the agreement, the contractual terms set out a clear restriction on the movement of workers to productive sectors other than agriculture and construction, and also, makes it impossible for workers to change employers, or to return voluntarily to Nicaragua before the end of their labour contract (OIM: 2009: 10). As Hennebry and Preibisch (2009) commented about the Canadian experience, this type of restriction works to the advantage of employers who are assured a stable and predictable supply of workers. This practice would not be acceptable for national workers, yet it is imposed on

foreign workers.<sup>48</sup> In this sense, it is not clear in the BNA what could happen in situations when an employer fires a worker without any reasonable justification. According to the national legislation, they can dispose of workers when, for example, they misbehave, or deliberately break the established work schedules. But in the case of the BNA, there are no special parameters to evaluate the situation of temporary migrants or to decide if a case of dismissal of a worker is or is not fair. There are no mechanisms set in place to appeal the decision to repatriate the worker.

Third, although the employers are assigned the central role in the agreement, their participation is not subjected to any selection process. It seems sufficient to maintain a clean record of tax and social insurance payments to be able to request workers. The MTSS does not evaluate other characteristics of the future employers such as the development of good practices towards their employees, or the way in which they treat issues of occupational health. In fact, before the recruitment process, no inspection is conducted by the MTSS to verify whether the employers are effectively ensuring good housing and occupational health conditions for the future employees (interviews: MTSS; IOM). Moreover, the agreement does not open institutional spaces for the participation of unions from Costa Rica and Nicaragua in order to oversee some possible flaws in these procedures.<sup>49</sup>

The lack of state regulation becomes particularly evident in the case of private contractors. According to the BNA they could be hired by employers to recruit and mobilize temporary migrants both in Costa Rica and Nicaragua, but at least in agriculture, the general information available concerning the characteristics of these

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<sup>48</sup> Also see Basok (2003).

<sup>49</sup> If done, these inspections would be conducted after the hiring of temporary migrants. In the next chapter this point will be explained in more detail.

private actors, their contractual frame of operation, or their practices in local contexts, is quite limited.<sup>50</sup> Among the few things known about this issue is that they form a group which includes anyone ranging from individual lawyers to small companies (interview: CCAA).

In addition to these formal limitations, the Costa Rican labour and migration authorities have had quite a few problems creating an 'organized' model for controlling labour migratory flows under the BNA. The most common complaints are about delays in the granting of passports, safe-conduct certificates, and work permits of the workers and also about incomplete reimbursement of the fees paid by the employers to obtain the work permits. These problems discourage the participation of employers in this temporary migrant program, "inducing the hiring of undocumented migrants, trans-border aliens, or Nicaraguans with tourist visas" (interviews: MTSS; CCAA).

Furthermore, it is difficult to establish the exact number of work permits issued by the DGME since 2007. Under the BNA, the MTSS recommends the hiring of a certain number of migrant workers per season or year, but the DGME makes the final decision over the granting of work permits for those migrants already endorsed. When the fieldwork for this research was conducted in fall 2010, the information about the exact quantity of permits granted by the DGME was not available. In the DGME's databases, the variable of temporary worker does not distinguish between a temporary worker attached to the BNA and the other categories of temporary workers. Nor does it establish their average length of stay, and so their exit from the country cannot be estimated properly, and consequently, it becomes impossible to know how many of these workers are hired year after year (interview: DGME). In fact, the information about temporary

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<sup>50</sup> It was not possible to obtain information from the MTSS about this subject.

workers has not been included in any common database, and official records have been lost.<sup>51</sup>

#### 4.8 Conclusion

Similar to temporary migration programs worldwide, the Costa Rican temporary migrant programs like the BNA are policy instruments driven primarily by economic goals, and as seen in Chapter 3. What varies from one country to the next is the way these programs articulate rules of membership for labour migrants expressed through migration laws and policies –or *politics of incorporation*, as explained in Chapter 2. How can we characterize the BNA experience? As a destination country for temporary workers, it can be argued that Costa Rica has not yet developed adequate institutional mechanisms protecting the status of these migrants. In spite of the importance of labour migrations for its economic growth, the country does not have a national policy on this issue. Besides, the migration laws traditionally enacted have focussed mainly on control and surveillance matters. As a result, most discussions on issues of migrants have focussed on undocumented aliens. The inclusion of other non-citizens residing and working legally in the country seems to be absent from the mainstream state-directed debates. On the other hand, this situation has not been challenged yet by the emergence of any kind of post-national mode of membership promoted at the international level.

Consequently, the BNA has become anchored to a national mode of membership reproducing *precarious migratory status* for Nicaraguans (see Chapter 2). The status is not

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<sup>51</sup> In a personal communication with the Department of Institutional Planning of the DGME, they explained that “99% of the requests about temporary migrants are not included in the Integrated System of Foreign Affairs.” Besides, in the DGME’s regional offices there is no information for the years 2007 and 2008, “because of the changes done with the transition of Administrations.”

only precarious in the sense that migrants' work and residence depends on a third party, namely employers (one of Goldring, Berinstein and Berhard's indicators of precariousness). In general terms, it is also precarious because their incorporation into the host society is not well supported by major policy frameworks promoting the social inclusion of labour migrants. In this context, their status becomes reduced to the terms under which their recruitment and contracts were set up; and as a result, the BNA constitutes merely a dry procedure to hire temporary migrants. Thus, temporary migrants' status is shaped around minimum legal requirements needed by employers to legally bring a foreign workforce when production needs call for additional labour. In other words, it is a contractually-based migratory status.

In their turn, the migrant workers are treated as any other citizen worker in two aspects: they are covered by the Costa Rican labour laws, and they can have access to public social insurances. However this is just a temporary situation of apparent formal equity created as long as they are entitled to reside and work legally in the country. The problem with this migratory status is that the type of incorporation to host political communities and welfare states is justified upon the economic value of the person, as will be explored in detail in the next chapters. In this sense, it configures a "hybrid legal character of alienage" in Linda Bosniak's terms (2006). This ambivalent position is evident in basic flows of the BNA such as the impossibility to adjust workers' labour contracts to the national labour codes of Costa Rica and Nicaragua, the advantageous position that employers have over employees, the lack of controls on the employers' practices, or the problems concerning access to social insurance during short periods of work.

The elements mentioned above, along with the problems faced by labour and migration authorities in creating an 'organized' model for controlling labour migration flows, have not favoured the configuration of any legal status capable of reversing the emergence of a disenfranchised group of individuals who are, paradoxically, part of the economic and cultural life of the host community in which they live without forming a part of the political domain in which their entitlements can be protected.



## Chapter 5

### **Alienage and the Limits of “Universality” in the Costa Rican Social Security System**

#### **5.1 Introduction**

In Costa Rica, public discussions of the incorporation of labour migrants have been displaced by policing concerns, usually related to the control of undocumented aliens. Thus, the space to elaborate political action to benefit migrants has become highly constrained. In theory, political initiatives to manage the demand for labour migrants like the Bi-national Agreement Costa Rica-Nicaragua could fill the institutional void. The agreement promised, at least at the rhetorical level, to organize migratory flows in favour of national economic development *and* the protection of migrants’ rights. For these migrants their legal status allows them to get access to the healthcare system by virtue of their enrolment in the social security system. As the agreement stipulates, for the duration of their stay they are granted work permits and they should be treated like any other national salaried workers.

But in reality can Nicaraguan temporary migrants receive equal treatment? They have been granted a precarious migratory status founded in its ‘alienage’ condition (to use Linda Bosniak’s terms as discussed earlier). In a host polity, the condition of being an alien locates temporary migrants in ambivalent positions where they, as non-citizens, have access to certain citizens’ entitlements. Like political communities, social security systems have to define who is in and who is out of their institutional domain, as well as the terms of affiliation for each associate. Membership constitutes the first resource

distributed here, and it is upon the way this basic boundary is drawn that other resources -- are distributed.

Accordingly, this chapter examines to what extent criteria for membership in the Costa Rican social security realm, as well as the subsequent extension of public health insurances and related benefits, are influenced by the migratory status granted to temporary migrants. Moreover, the chapter also analyses what type of actions were taken in the context of the Bi-national Agreement to oversee the de facto social security protections granted to these workers.

It should be pointed out that the right to healthcare is not guaranteed in Costa Rica universally. There is no domestic or international legal framework that would extend this right to all Costa Rican nationals and even less so for migrants. In fact, at the constitutional level, the right to health is not directly recognized in Costa Rica. What is explicitly recognized is “people’s right to social security” (Sáenz, Bermúdez, and Acosta, 2010: 4), and it is by virtue of this guarantee that healthcare entitlements and benefits are allowed for temporary migrants in the Bi-national Agreement.

As explained next, temporary migrants have been granted partial membership to the Costa Rican social security system. For labour migrants in general terms, citizenship-related arrangements function as a key social closure principle, which is combined with other affiliation criteria applied to the nationals such as labour status or kinship. In the Costa Rican case, the extension of social security rights and benefits is configured around a stratified logic excluding or including different types of social groups.

## 5.2 Labour status, social security and migrant populations

Many modern welfare states have committed themselves to principles of social justice aimed at improving and equalizing a populations' quality of life. Different welfare states promote the development of communities of fellows who enjoy:

“[...] a general enrichment of the concrete substance of civilised life, a general reduction of risk and insecurity, and equalisation between the more and the less fortunate at all levels-between the healthy and the sick, the employed and the unemployed, the old and the active, the bachelor and the father of a large family.” (T.H Marshall, 1992: 33)

Yet, different societies define differently what aspects of this quality of life should be the most important and who should benefit from the efforts to improve them. Social security systems constitute the most relevant institutions where welfare states' ideals of social justice have taken a concrete form. For example, the emergence of the contemporary Costa Rican social security system during the 1940s allowed not only the extension of social benefits to male salaried workers, but also the diffusion of a notion of a 'unified' working class shared by lower and middle socioeconomic sectors and accepted as part of Costa Rican national identity. During the following years, the boundaries built around this specific community of fellows were reconfigured to include other members such as the closest relatives of these workers or persons who were not able to pay quotas.<sup>52</sup>

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<sup>52</sup> See the narrations elaborated by Barahona (2004), as well as Miranda and Zamora (2004), about the development of Costa Rica's Social Security System.

The development of these systems has brought important historical transformations to different institutional spaces. One of the most relevant changes occurred in the context of labour markets, with the establishment of common regulations governing contractual relationships established between employers and employees, and the development of protections like minimum wages or social insurance. In those contexts where these kinds of regulations and protections were effectively guaranteed by the state, the jobs performed by workers became an important factor in determining their social standing. In other words, the occupations went from being practices of mere economic survival to conditions attached to a status involving the recognition of certain collective rights and benefits (Castel, 2004: 42). In that way, the consolidation of one's *labour status* became the entry door to access social citizenship.

In order to clarify how the incorporation of individuals and social groups to social security systems is arranged around labour status, it is useful to distinguish *non-contribution* based memberships from those based on *contribution* (Baldwin, 1997). The former are granted 'free of charge' to beneficiaries and are usually financed by general-tax sources. Under this membership logic, the social benefits are broadly extended across the population, or in cases of need, distributed through means-test to vulnerable populations. Examples of non-contribution based benefits include getting access to free primary education or immediate attention in hospital emergency rooms. At the organizational level, the incorporation to social security has been justified around universal or humanitarian principles.

By contrast, membership tied to contribution relies on the individuals' capability to pay quotas to the financial systems of welfare states. Actually, the key provisions offered through social security, as well as their main financial sources, are in most

countries subject to insurance paid through wages. In this case, the extension of benefits is organized around people's participation in labour markets and subsequently tied to their labour status. Examples of provision connected to the labour status include getting access to pension, specialized medical services, or the occupational risk insurance<sup>53</sup>. This type of membership is justified as a privilege earned by an individual through her or his work – a privilege that in certain cases is extended to workers' closest relatives. All the contributors to social security constitute a community of fellows founded primarily on the "socialization of workers' earnings" (Castel, 2004: 43).

The granting of memberships on a non-contribution and contribution basis varies with regards to the legal status of the potential beneficiaries, especially alienage. On the one hand, the universal ideal around which the former membership is arranged is constrained by considerations of nationality. In this case, access to the non-contribution based common pool of resources, devised originally to protect nationals, is subjected to similar considerations in relation to the acceptance of non-citizens into the political community. Accordingly, as Baldwin (1997: 111) has argued, national migration authorities adopt the classic function of a "watchdog" of the social security systems. Yet, there are few exceptions, like the access to healthcare in emergencies or humanitarian situations.

On the other hand, restrictions regarding nationality are relaxed in the contribution based membership. Here, the main requirement for the inclusion of non-citizens into the social security regime tends to be labour status rather than the individuals' nationality. Except for undocumented migrants, who in formal terms are

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<sup>53</sup> In Costa Rica, the distribution of these resources could be either proportional to your financial contributions, for example in the case retirement funds, or flat-rate, as in healthcare attention.

legally forbidden to participate in the labour markets of the host country, the rest of alien workers are not totally excluded from the welfare state. According to Joppke (2010: 89), “aliens fare notably worse with respect to non-contributory and thus genuinely redistributive welfare benefits,” which means, basically, that the incorporation of migrant populations into welfare state institutions tends to become less difficult when *quid pro quo* arrangements linked to labour status are involved.<sup>54</sup>

This tendency had been noticed already by Yasemin Soysal (1994) for the case of those generations of temporary migrants who decided to settle down in Western Europe after the Second World War. Their nationality was not used to deny them membership in these political communities and their social security systems. In fact, as Soysal points out, the extension of social benefits to these migrants who lacked political rights in their new communities poses a challenge to T. H. Marshall’s ‘evolutionary’ citizenship model, that is the model that depicted citizenship rights evolving from civil to political to social (as discussed in Chapter 2).<sup>55</sup>

In the Costa Rican case, the discussions about the access that migrant populations should have to the public health services revolve around the domain of the contribution based memberships distributed through the social security system. Along with legal status, labour status has become an elementary requirement to claim the right to the healthcare. The next two sections will explain how the granting of public health insurance for migrants in Costa Rica is mutually conditioned by both statuses. The first section will explain the types of health insurance that exists in the country’s social

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<sup>54</sup> This argument has been also developed by Banting (2000), and Banting, Johnston, Kymlicka and Soroka (2006). In both works it is suggested that expansive welfare states such as social-democratic and conservative corporatist types have been more amenable to include migrants into their employment-based social insurance schemes.

<sup>55</sup> Other similar examples of the extension of contribution based benefits to labour migrant populations are described in Morris (2002) and Ruhs (2009).

security system, as well as the way in which they are granted. Subsequently, the chapter analyses the difference that a condition of being an alien makes in determining access to health insurance.

### **5.3 Getting access to public health insurances in Costa Rica: stories about universal coverage**

The Costa Rican social security system has established social protections composed of three main public insurance regimes: a) health and maternity insurance, in which economic transfers and medical benefits are extended; b) the pension regime, where social groups are covered in situations related to disability, ageing, or death; c) and occupational risk insurance, which contains sets of safeguards for salaried workers in cases of labour-related hazards and accidents. These types of provisions, practically monopolized by the State, have been managed by two public institutions, the Costa Rican Social Security Fund (CCSS), and the National Insurance Institute (INS). The CCSS is in charge of the health and pension insurances, becoming in that way the main actor of social security; while occupational risk insurance has been administrated by the INS (and since 2011, by private insurers too).<sup>56</sup>

Over time, the public character of the social protection of health has been preserved in spite of the introduction of certain neoliberal and new management-oriented reforms. The healthcare system works in a co-operative way, at least with regards to the extension of basic medical benefits. All those insured, regardless of the

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<sup>56</sup> The other few universal social programs included in the realm of Costa Rica's social security such as primary school cafeterias, shelters for children or communitarian nurseries, are not managed by the CCSS or the INS (CCSS, 2004).

amounts of their contributions or the type of insurance, have access to the same offer of goods and services, from primary care attention, to other more specialized types of attention. The financial sources of this insurance rely largely on workers' contributions - 90% of the Costa Rican social security system's finances are based on contributions (Sáenz, Bermúdez, and Acosta, 2010: 3). Their most relevant types of insurance follow a tripartite Bismarckian model in which the quotas are divided between employers, employees, and the state. On average, more than 60% of the economically active population was covered by public health insurance from 2005 to 2009 (CCSS, 2010a:3). Furthermore, three types of insurance using a means-test principle have also been developed to cover poor and indigent persons.<sup>57</sup>

Compared to the rest of Latin American countries, the combined public health insurance available in Costa Rica has achieved one of the best rates of coverage - only around 10% of the citizens remain unprotected (Mesa-Lago, 2009:7).<sup>58</sup> Behind this number, the official story about the recent constitution of the social security system has been usually told in terms of a progressive and universal recognition of health rights for different social groups (Sagot, 1991; Zamora, 1997; Miranda and Zamora, 2004). As described by Sáenz, Bermúdez, and Acosta:

“The Costa Rican State is about to celebrate its 70th year of healthcare management. It all started as social security for public sector workers, but eventually, the structure of the system was consolidated until it turned into one of the most effectively universalized healthcare systems in Latin America, both

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<sup>57</sup> In Costa Rica, those who are enrolled in any kind of healthcare insurance (on a contribution or non-contribution base) are simultaneously enrolled in the pension regime.

<sup>58</sup> For instance, 8% of the Nicaraguan population had public health insurance in 2009, the same percentage covered in Costa Rica during the 1940s (Mesa-Lago, 2009:7).



financially and geographically, allowing it to achieve infant mortality and life expectancy indicators comparable to those of European developed countries.”

(Sáenz, Bermúdez, and Acosta, 2010: 3)

Accordingly, when the CCSS was constituted in 1941, urban salaried workers were the first members of this community of fellows. After that, the Law of Universal Health Insurance was enacted in 1961 and the health insurance became mandatory for agricultural salaried workers. Additionally, and following a breadwinner family ideal, the medical benefits earned by these workers were extended to their closest relatives. During the 1970s the management of all public hospital facilities was translated to the CCSS (an important step in the coordination of a unified public healthcare system)<sup>59</sup> and two types of health insurance were created: one for the poor population unable to contribute to social security, and another for people who wanted to be voluntarily insured regardless of their labour status or their financial ability. In the next two decades, special insurance schemes were designed to cover certain workers’ guilds and peasants, and also primary and secondary students became subjects of universal protection. Finally, in the 2000s through the Workers’ Protection Law health insurance became mandatory for all self-employers.<sup>60</sup>

Even though this evolutionary story about extension of health benefits is accurate, at least in terms of the scope of the national population covered, it is not possible to affirm that membership in the Costa Rican social security system is based on

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<sup>59</sup> In the past these healthcare facilities were managed by an institution called *Junta de Protección Social* (Social Protection Board).

<sup>60</sup> See Mesa-Lago and Martínez (2003); Rodríguez (2006); and, Sáenz, Bermúdez, and Acosta (2010)

universal principles of recognition of health rights. Instead, the admission of new groups over the years should be understood as a reconfiguration of the logic of community belonging, and also of exclusivity, which have helped to shape this institutional space. At present, what we have is a social security realm in which different principles of social closure are functioning simultaneously. According to the distinction between contribution and non-contribution based memberships, access to the Costa Rican social security system should be understood in the following way. First, there are health insurances in which the principle of social closure is based on the labour status, or in the individual payment capacity. They include four types of the so-called 'direct' insurances. These direct public insurances depend, in the first place, on the contributions of current and former salaried and self-employed workers. In addition, there is a type of voluntary insurance, in which persons pay quotas irrespective of whether or not they are inserted in the formal labour market. The contribution based membership covers the following categories of social groups:<sup>61</sup>

1. Salaried workers: people working in the formal labour market (including both the public and private sectors). For these employees the insurance is mandatory, and the quotas are calculated based on an individual's wages (an equivalent of 15% of the salary should be paid). Employees pay 5.5% of the quota, employers 9.25%, and the state 0.25%.
2. Self-employed workers: people developing economic activities by themselves in formal or informal labour markets. For these employees the insurance is mandatory. The quota equals 18.75% of workers' wage-incomes. The employee's contribution varies according to their occupation, going from 10.5% up to 18.5%.

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<sup>61</sup> The percentages of contributions are explained in CCSS (2006: art. 2 and 63).

The state contributes with 0.25%, and also pays the difference not covered in certain job categories (for example, if the worker paid 10.5%, the state will contribute with 8%).

3. Voluntarily insured persons: including those who are not enrolled via any economic activity but are able to pay for public insurance. The amount of the quota will be determined according to the payment capability of the candidates, and the state's contribution will function in the same way as the self-employed insurance.
4. Retirees ascribed to the Disability, Ageing, and Death Pension Regime (IVM), and other public pension regimes. Access to the healthcare system for this population has been granted based on their condition as former salaried workers. Each retiree pays 5%, the pension regimes contribute with 8.75%, and finally the state 0.25%. In total, the quota is 14%.

Moreover, in this domain it is possible to include one type of 'family' insurance covering closest relatives of the directly insured individuals mentioned above. This insurance legitimizes a kinship sort of social closure principle which is rooted mainly in labour status – as an extended membership earned by workers through their jobs. The beneficiaries are the spouses of the direct insured (when they do not have their own incomes); their sons and daughters under 18 years of age (or 25 in the case of full time students); and eventually their siblings or parents experiencing situations of disability.

On the other hand, the Costa Rican social security system has distributed memberships not linked to contributions. They are part of protections based on means-

test principles of social closure supporting vulnerable populations at a basic level. This non-contribution based membership covers the following categories of social groups:

1. Indigent and poor households: those persons experiencing deprived conditions of life, as well as those households who fell below the poverty line. They can be covered by a direct type of protection called 'by the state' insurance. In this case, the state pays the quotas to the social security system – its amount is calculated according to the legal minimum wage.
2. Pensioners of the non-contribution retirement regime. This regime has been developed to protect poor aging populations.
3. Closest relatives of the pensioners mentioned above.

All these insurance types allow access to the same basic medical goods and services offered by the healthcare system. As described by Sáenz, Bermúdez, and Acosta (2010: 8), the benefits include: a) prevention actions, treatment and rehabilitation; b) surgical and other specialized medical services; c) outpatient and hospitalization attention; d) provision of medicines; e) clinical laboratory services; and f) oral health assistance. There are additional benefits such as eye glasses, orthopaedic appliances, and financial help for patient transportation or funeral arrangements, that are only covered by direct insurances. On top of this, economic transfers related to permanent or temporary illness disabilities and maternity licenses are granted to salary workers and self-employees. The Tables 4 and 5 outline different benefits extended to different social groups protected by the public health insurance.

Labour status, personal payment capacity, and kinship constitute the most relevant principles around which the granting of health rights has been organized in the Costa Rican public healthcare system. From 2005 to 2009, around 30% of the national population were members of this system under the categories of salaried workers, which are the most relevant group, self-employed, and voluntarily insured persons. Pensioners, who were former social security contributors and have subscribed to the IVM and other special pension regimes, account for another 5% of the insured population. Finally, closest relatives of these social groups account for 39% of the affiliates of this healthcare system (CCSS, 2010a).

**Table 4 Contribution based distribution of membership to the healthcare system**

<b>Population covered</b>	<b>Principle of social closure</b>	<b>Type of insurance</b>	<b>Medical benefits</b>	<b>Extra-benefits</b>	<b>Economic transfers</b>
Salaried workers	Labour status	Direct	Yes	Yes	Yes
Self-employed	Labour status	Direct	Yes	Yes	Yes
Voluntarily insured persons	Personal payment capacity	Direct	Yes	Yes	n/a
Pensioners (IVM and special regimes)	Labour status	Direct	Yes	Yes	n/a
Relatives of these groups	Kinship	Family	Yes	No	n/a

**Sources:**

Ley Constitutiva CCSS (Asamblea Legislativa, 1943).

Manual de Procedimientos del Seguro por el Estado (CCSS, 2008a).

Reglamento del Seguro de Salud (CCSS, 2006).

Reglamento para la Afiliación de Trabajadores Independientes y Asegurados Voluntarios (CCSS, 2002).

In sum, around 74% of the membership in Costa Rica’s healthcare system are related –directly or indirectly- to labour status and the personal payment capacity (in the case of kinship, the granting of rights is justified as an extension of the contributors’ rights). Those having a direct type of insurance enjoy full access to the healthcare available, while the closest relatives of the direct insured are just able to receive medical benefits. When the extension of healthcare benefits is arranged through a non-contribution base, the logic of organization is the following:

**Table 5 Non-contribution base distribution of memberships to the healthcare system**

<b>Population</b>	<b>Principle of social closure</b>	<b>Type of insurance</b>	<b>Medical benefits</b>	<b>Extra-benefits</b>	<b>Economic transfers</b>
Indigent and poor households	Means-test	By the State	Yes	No	No
Pensioners (non-contribution regime)	Means-test	Direct	Yes	Yes	n/a
Relatives (non-contribution pensioners)	Kinship	Family	Yes	No	n/a

**Sources:**

- Ley Constitutiva CCSS (Asamblea Legislativa, 1943).
- Manual de Procedimientos del Seguro por el Estado (CCSS, 2008a).
- Reglamento del Seguro de Salud (CCSS, 2006).
- Reglamento del Programa Régimen no Contributivo de Pensiones (CCSS, 2008b).

From 2005 to 2009, around 16% of the overall national population was covered by a non-contribution based membership. Over 11% of those insured have been composed of people categorized as indigent or poor according to the means-test applied by government officials. The other 5% of the population protected are those poor retirees who are part of the non-contribution Pension Regime, as well as their closest relatives. In

this case, the extension of benefits is based on means-tests and kinship (CCSS, 2010a). Of these three groups, only the pensioners have full access to the healthcare benefits. The others have access to medical benefits.

Approximately 10% of the national population do not have any type of public health insurance. For them, access to the public healthcare system is allowed under the category of 'non-insured' as long as the persons pay for the medical goods and services they receive. In the case of the emergency rooms care, the payment is due when the person is officially discharged. In order to receive care from other healthcare facilities, the payment is due before the person is admitted. In these cases the person can apply to obtain public health insurance (Mesa-Lago and Martínez, 2003: 38).

Finally there are special populations whose membership in the social security realm is not based on the affiliation with any kind of public insurance. Their right to health is universally recognized by the state. They are children and adolescents; pregnant women; battered women; and persons with infectious diseases. In the case of children and adolescents the extension of health benefits is assumed as a matter of recognition of human rights. The same principles apply to pregnant women in an effort to protect the future newborn's life. These groups are protected by the Costa Rican Childhood and Adolescence Code, and the Adolescent Mothers Protection Law. The protection of battered women is also seen as a matter of rights, and is enforced through the Law Against Domestic Violence of 1996. The healthcare for persons with infectious diseases is assessed as a matter of public health security and is included in the Costa Rican General Health Law.

#### **5.4 The difference that being a migrant makes**

Not all migrants are equally entitled to receive public health insurances from the Costa Rican social security system. In fact, the rates of coverage achieved for this population are not as high as those achieved by the national citizens. At the beginning of the 2000s, the percentage of immigrants non-covered by any type of insurance almost doubled the percentage reported for nationals. Similarly, the number of immigrant economically active population –and closest relatives- that were insured was lower (Gatica, 2007: 127). Thus, it is necessary to question the idea of Costa Rica's universal recognition of health rights once again, and to adjust for unequal opportunities of formal incorporation faced by migrants.

As seen in the previous section, membership in this social security realm is based on a contribution and non-contribution logic. Both memberships have not only settled parameters to extend health benefits but also principles of social closure. In Costa Rica, the most relevant principles regulating access to the healthcare system are those related to labour status and personal payment capacity; followed by kinship (especially when it is understood as an extension of the rights of salary and self-employee workers); and finally means-test. In a few cases, the extension of benefits is universalized (children and adolescents, pregnant and battered women, and persons with infectious diseases).

The membership principles help to understand the social closures principles with regards to national citizens. In different moments, they have been used as a means to stratify access to benefits and to legitimize the exclusion of certain populations from the social security realm. For international migrants, it is necessary to add an extra distributive principle: legal status. Taking this principle into account helps to shed light on one of the most important characteristics of the Costa Rican social security system. At



the formal level, its boundaries are designed to be 'fully' inclusive with regards to denizens or naturalized foreigners, but just 'partially' inclusive or totally exclusive with regards to aliens. In other words, once a permanent resident, refugee or naturalized migrant has received public health insurance, the benefits he/she obtains are equal to those usually extended to the nationals. For aliens, membership in the social security field varies according to the administrative category in which they are located, ranging from their exclusion to a partial extension of social benefits.

In general terms, as summarized in table 6, there are two ways in which migrants can have access to the Costa Rican healthcare system. If they are irregular or undocumented migrants, they cannot obtain any public health insurance. In this situation, they are expected to pay for the medical goods and services they receive from public healthcare facilities (obviously, this rule does not apply to children and adolescents, pregnant and battered women, and migrants with infectious diseases). If migrants' legal status qualifies them as regular, access to healthcare can be attained through one of the public insurances available for the rest of national citizens.

In the case of denizens (refugees, and permanent residents), as well as naturalized migrants, nationality is not a condition influencing their formal access to public health insurance. Instead, the triggering factors are residence, and their capability to contribute to the social security system. The alienship administrative categories present another scenario. First, they vary by legal status. The worst position for an outsider is to be categorized as an irregular or undocumented person. They are entitled neither to reside in the country, nor to work legally and be protected by national labour laws. Accordingly, their enrollment in the contributive types of health insurance is

banned. In addition, they are also excluded from receiving social benefits through means-test mechanisms.

**Table 6 Extension of public health insurances for migrant populations by legal status**

Type of insurance	Legal status by administrative category					
	Alienship			Denizenship		Citizenship
	BNA-temp. migrants	Asylum seekers*	Undocumented	Permanent resident	Refugee	Naturalized
Direct (labour status)	Yes	No	No	Yes	Yes	Yes
Direct (personal payment)	n/a	No	No	Yes	Yes	Yes
Direct (means-test)	No	No	No	Yes	Yes	Yes
Familiar (kinship)	No	No	No	Yes	Yes	Yes
By the state (means-test)	No	No	No	Yes	Yes	Yes

\* Asylum seekers have access to Costa Rica's healthcare system through the UNHCR-CCSS Agreement. **Sources:** based on ACNUR (2003); Asamblea Legislativa (1943); CCSS (2002, 2006, 2008a, 2008b).

Asylum seekers have the right to reside in Costa Rica, but like undocumented migrants they have no right to work or to apply for the means-test related types of health insurances. What has improved their possibilities to receive medical attention, compared

with undocumented migrants, is an agreement established since the 1980s between UHNCR and the CCSS. According to this agreement the UNHCR pays a flat rate quota to guarantee the provision of basic medical goods and services for asylum seekers (ACNUR, 2003; interview: CCSS).

Finally, migrants authorized to stay temporarily in the country, such as students, temporary migrants, or trans-border workers, are best positioned with regards to the other two categories of alienship mentioned above. They are allowed to reside in the country for short periods of time, and their residence permits are usually attached to work permits. As salaried employees or self-employed, their adherence to some public health insurance is mandatory. Regardless of their good standing in the alienship domain, what these populations obtain is partial membership in the social security realm, as will be explained in the next section for the case of the Nicaraguan temporary migrants.

In sum, citizenship-related legal status helps to explain the different levels of coverage between national citizens and outsiders. In the case of Nicaraguan labour migrants, as has been described in Gatica (2007: 124) and FLACSO (2003: 25), obtaining an 'enabling' legal status to get access to public healthcare has not been easy. This point is central for the Costa Rican context, because there is an important number of undocumented Nicaraguans inhabiting the alienship jurisdiction who have come from rural and poor communities without any sort of official identity document or passport issued by the Nicaraguan government. This fact makes it difficult for these people to receive proper care and diagnostic tests even in emergency rooms (interview: CCSS).

At the same time, it is not easy to obtain a secure legal status. For instance, the *jus sanguinis* imperative still dominates the inclusion of migrants in the denizenship domain.

As a result, in order to obtain permanent residency the candidate needs to get married to a Costa Rican citizen or demonstrate the existence of a blood tie (to be his or her son or daughter for instance). A second important example concerns the granting of temporary residencies. In this case, the extension of the residency is attached to access to official work permits, and consequently, to the approval by the MTSS. Due to the bureaucratic delays characteristic of this agency, sometimes the granting of work permits is not done on time, or is refused since the number of annual authorizations is limited. Once the work permit is obtained, the migrant is allowed to stay in the country from 90 days to 2 years, and the renewal of this residency is dependent on the migrants' ability to demonstrate they have found a stable job and a good monthly income (interview: DGME).<sup>62</sup>

### **5.5 The incorporation of Nicaraguan temporary migrants into the Costa Rican social security system**

Labour migrants officially hired under the Bi-national Agreement Costa Rica-Nicaragua have been accepted as legitimate members of the Costa Rican public healthcare system. The tenth clause of this agreement establishes that temporary migrants are to be treated "on equal terms." Thus, the duty of the Costa Rican government is to protect the labour rights of these workers, and also to oversee their due enrolment into the CCSS (DGME, 2007). The duty of temporary migrants with regards to social security, as with any other national salaried worker, is to pay the quotas of the

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<sup>62</sup> The new Costa Rican migratory law establishes that all the persons doing immigration procedures related to the granting or renewal of permanent or temporal residence should be enrolled in the CCSS.

pension regime (IVM), the occupational risk insurance, and the direct type of public health insurance designed for salaried workers. In theory, as with any other contributors to social security, temporary migrants should obtain the same type of rights and benefits already enjoyed by national salaried workers.

But, as was seen in Chapter 4, the legal status of these migrants is not the same as the status of national citizens. In many political communities temporary labour migrants, like other migrants categorized as 'asylum seekers' or 'trans-border migrants,' carry over their shoulders what Linda Bosniak has called a legal hybrid condition of alienage. In such cases, what kind of 'equal' treatment could Nicaraguan temporary migrants receive?

When applied to the incorporation of temporary migrants into a social security system, the legal hybrid condition of alienage carried by temporary migrants, means that their membership is limited in scope by work permits that are just temporarily legal. In this sense, even though temporary migrants are formally covered by the same types of public insurance that is granted to Costa Rica's national salaried workers, the logic of extension of benefits is different in a number of ways:

1. In terms of public health insurance for salaried workers: a) the access to medical goods and services is allowed without any kind of restriction; b) extra benefits, for example orthopaedic appliances, can be provided in special cases; and c) in legal terms economic transfers concerning illness disabilities and maternity licenses should not be denied, but in practice their protection scope is reduced to short periods of time -until migrants' labour contracts and residence permits expire.

2. In terms of occupational risk insurance: in case of injuries occurring in the work place temporary migrants are entitled to get access to the healthcare facilities managed by the INS and the related economic transfers helping to compensate them for their inability to work. These benefits are extended until the expiration of migrants' labour contracts and residence permits.
3. In terms of pensions: all temporary migrants pay quotas to the IVM regime, but they will have difficulty receiving the same rewards as national citizens. First, in cases of disability a worker should have contributed at least 12 quotas to the regime (one year's worth), a situation difficult to attain for a new temporary worker. Second, if the temporary worker is not able or interested in becoming a permanent resident or naturalized citizen, their contribution to a retirement fund will not pay off. Furthermore, in case of death, their closest relatives living in Nicaragua will not receive any benefit.
4. Due to the recruitment and hiring terms applied to temporary migrants, it is not expected that their right to receive medical benefits and other entitlements is extended to closest relatives residing in Nicaragua.

In the context of the Costa Rican social security system, the development of a contribution based membership for national salaried workers has strengthened their labour status, improved their social standing, and enhanced the well-being of their families. Regardless of the fact that the Nicaraguan temporary migrants formally share the same type of social insurance, in practice their condition of alienage tends to undermine their labour status to a market-driven conditional privilege subjected to the

employers' needs and the cyclical rhythm of their productive activities. After all, as stated by one official interviewed in this study, in Costa Rica:

“[...] taking care of those migrants [workers recruited through the BNA] should not be a problem for us... I mean, if they have legal jobs and pay into social security. So, as long as they are productive to our society, it will not be fair to deny the medical care during the time in which they will be working in the country. They should be treated just as any other worker.” (Interview: CCSS)

There is no joint policy between Costa Rica and Nicaragua concerning the long-term monitoring of the well-being of these workers. In 2007, there was some interest in creating initiatives to guarantee healthcare for these migrants in both countries, but “the lack of political will” and the scarcity of resources made this objective impossible. In fact, in the last decade the only public healthcare campaigns concerning Nicaraguan labour migrants in Costa Rica have been advanced in trans-border communities with the support of international organizations and the local communities (interviews: MTSS, IOM).

Due to the poor state of the Nicaraguan public healthcare system, as well as employment instability for the return migrants, chances that temporary migrants would have access to private or public medical services upon their return to Nicaragua are poor. Asked if Costa Rica considered developing special health protection regimes for labour migrants through new public insurances schemes, or at least modifying schemes already in existence, representatives of the Costa Rican health sector interviewed in this study offered two arguments. First, in the context of the Costa Rican social security realm the creation of special protections for labour migrants was seen by them as

unnecessary. In fact, in their eyes, this kind of initiative would not be well received by the nationals “because we would be creating special privileges for a specific social group.” Instead, a “more equalitarian solution will be to look for the assimilation of these new groups” into the national social security system, “a system that in the past has proven to be able to provide for the needs of this population through principles of universality and solidarity” (interviews: Ministry of Health; DGME).

The second argument put forward by these officials focused on the temporary migrants’ enrolment in some type of contribution based social insurance. In this sense, “the duty” of labour migrants was “to contribute to improve the financial health of social security.” Once labour migrants have contributed to the system, in a kind of trickle-down effect, “they could enjoy like any other normal worker benefits produced through their economic efforts.” Accordingly, the new migratory law was celebrated as an important step in this achievement, because all applicants for permanent residency in the country must be already enrolled in the CCSS (interviews: CCSS, former Minister of Health). As was explained:

“[...] at present, due to the financial problems faced by the social security system the key for migrants’ access to healthcare depends on their payments to the financial system. In the case of health and maternity, our goal is not to increase the percentage of population covered. The statistics show that our different types of insurances cover 90% of the population. Our goal is to improve our collection of quotas, and to enrol more financial contributors to the system, including, of course, migrants.” (Interview: CCSS)



## 5.6 Overseeing the labour status of Nicaraguan temporary migrants

Once we acknowledge the way in which the labour and migratory statuses influence the type of membership offered to Nicaraguan temporary migrants under the Bi-national Agreement, we need to examine measures taken by the government to oversee the application of the accepted principles in practice. In spite of the limitations highlighted in the previous section, temporary migrants do have a better standing than other aliens such as irregular or undocumented migrants. At least through the agreement, the state allows temporary migrants to work legally in the country, and be enrolled in the CCSS for short periods of time. But, are the main normative frameworks and policy actions of this host polity adequately developed to make it possible to oversee the compliance with the law in social security matters?

Since temporary migrants' access to healthcare relies on their ability to contribute to social security as salaried workers, and not on any universality principle, the protection of their labour status becomes essential. In fact, the need to protect this status increases in cases when dangerous, demeaning, and dirty occupations are involved. As has been described by Gatica (2007: 124) and FLACSO (2003: 25), in these types of jobs, usually performed by labour migrants, infractions on workers' rights tend to be reproduced in ways different from the experiences of the national workers. For instance, employers do not pay on time their part of the insurances quotas; they do not enrol their foreign employees in the protection regimes like those regarding occupational risks; and their contractual practices include high rates of turn over in order to avoid the creation of long-term legal relations with employees.

In theory, there are different national normative frameworks that could be applied to avoid this kind of abuse. The main one would be the Labour Code. In

addition, there are specific governmental agencies that are involved in the design of labour policies focused on health and the development of strategies to inspect workplaces, such as the Costa Rican Occupational Health Council, the MTSS, the INS, and the CCSS. The next paragraphs will shed light on whether and to what degree these different laws and policies include issues relevant to labour migrants and their scope of protection for Nicaraguan temporary migrants.

The Labour Code is the most relevant legal instrument protecting workers' labour status in Costa Rica (Asamblea Legislativa, 1943a). It regulates the most elementary employment conditions that should be settled between employers and employees in public and private labour markets. Regarding labour migrants, Article 14 of this Code establishes that its legislation is effective for all the workers residing in the country regardless of gender or nationality. However, as Bolaños argues (2009: 11), the Code is subject to two basic constrictions. First, the judicial enforcement of the law in the case of labour migrants is usually subjected to bureaucratic and long-term administrative processes. Second, the Code institutes just a minimum floor over which labour relationships should be developed fairly. It will be the duty of other institutions, with their own normative and regulatory guidelines, to regulate other important dimensions of temporary migrants' well-being.

The limitations of the Labour Code with regards to labour migrants have been recognized by government authorities in the past. Actually, the 2006-2010 National Development Plan designed by the Arias administration included a legislative project to create a chapter on labour immigration in the Labour Code. This project was presented as an important element "to develop patterns of migratory mobility according to the

needs of the national productive sectors and to guarantee migrants' labour rights, as well as their enrolment in the financial systems of social services" (MIDEPLAN, 2007: 70).

From the perspective put forward by MTSS, the proposed changes to the Labour Code were promoted as a "complementary element" to the development of the Bi-national Agreement. On the one hand, the Agreement would allow migrants to work legally in the country for short periods of time. On the other hand, introducing a chapter on migrations in the Labour Code would improve the legal protection offered to labour migrants in general - from those included in the migration law under the so-called special categories to all those migrants who were already working permanently in the country. In the end, the legislation did not receive "the political support needed" to move formally to the national congress for further discussion. Simply, the national congress "was not the right place and time" for this initiative (interview: MTSS).

Different government agencies are in charge of overseeing that workers' right to social protection are respected. First, the Occupational Health Council (CSO), an agency from the MTSS, is in charge of assessing occupation health risks. The Council was created in 1982 with the following objectives: a) to improve the occupational health conditions of work places around the country; b) to conduct research; c) to design and support specialized normative regulations; d) to inform employees on their health and safety rights; and e) to train employers on ways to prevent occupational hazards. In theory, the work of the Council should be coordinated with the MTSS, the Ministry of Health, the CCSS, the INS, and representatives from employers and workers sectors (Asamblea Legislativa, 1982: Art. 274).

Yet this Council has taken virtually no action with regards to the promotion of normative frameworks, policies, or studies on labour migrations. The current

Occupational Health National Plan was released in 1998 to pursue the CSO's objectives, and it does not include discussion on labour migrations (MTSS, 1998). In terms of productive sectors, the CSO's work has been distributed between agriculture, construction, and industry (MTSS, 1998). In agriculture, the most relevant action taken during the past decade was the elaboration of the technical study series called *Security and Occupational Health in Agriculture*, published in collaboration with the ILO in 2004.

The technical studies focussed on different agricultural commodities - including sugar cane, pineapple, melon, and palm oil - and their main objective was to evaluate the types of risks involved in their production, according to the way in which labour processes are organized.<sup>63</sup> Even though the studies were supported by the Costa Rican Agro-industrial and Agricultural Chamber (CCAA) and conducted on different plantations, they did not evaluate the overall occupational health conditions of the Costa Rican agricultural sector, and the issue of labour migrations was not explored. Thus, the technical studies represent "one of the main guides that we have to create health policies, even though important topics such as labour migrations were forgotten" (interview: CSO).<sup>64</sup>

A second key governmental agency involved in the protection of workers' social security is the INS. This Institution has promoted annual campaigns regarding the "management" of health conditions at work places. Its goal is "to create a corporate

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<sup>63</sup> Each technical study had 5 secondary objectives: a) to describe the different steps and production means involved in each crop; b) to identify risks by type of job positions; c) to create risks profiles for each crop; d) to analyse each job position with regards to the psychological, environmental, and material contexts; and e) to establish policies on occupational health and safety in agriculture. The studies identified different types of risks, such as chemical, mechanical, or biological, among others. See: OIT (2004).

<sup>64</sup> In addition, since 2007 the country does not have databases on fatality statistics for agricultural activities (interview: CSO). Nowadays this Council's actions have been reduced to disseminate general advices, policy guidelines, and information about occupational health.

culture on occupational health” in which employers and employees would “be made aware of the labour legislation and of relevant practices and strategies to prevent the exposure to certain hazards produced by environmental and human factors” (interview: INS). In addition, as was explained above, the Institute is the main administrator of the occupational risk public insurance, which is mandatory for all salaried workers in Costa Rica. Actions assumed by this government agency include: conducting inspections in work places to verify that all workers have been insured, and the handling of legal complaints filed by workers.

The INS has not taken any specific steps with regards to labour migrants. Neither the campaigns of public awareness of labour rights, nor the preventive measures to manage labour hazards, took into account the particular needs attached to the condition of permanent or temporary labour migrants. Records on the number of inspections conducted by economic sector, the amount and type of work complaints received , or the economically active population covered by these outreach programs do not use nationality as one of the variables.<sup>65</sup> When asked about the lack of distinctions among migrants, the INS’s representative commented:

“There should not be special treatment for them. They are like any other worker, and the employers have to respect their rights. When they fail, we intervene to take care of the worker. We follow the statutes of the Labour Code, and we cannot create differences based on gender, race, or class, or nationality. Our social

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<sup>65</sup> This is the only data provided by the Actuarial Department of the INS. The access to general data about occupational risks with regards to the agricultural sector was denied. Even though this agency is a public institution, they argue that in order to be prepared for the privatization of the type of insurances offered by them, they have the right to hold information.

security system is based on the idea of solidarity and equal treatment for all their members.” (Interview: INS)

Like the INS, the CCSS and the MTSS also have to inspect workplaces to verify that salaried workers are enrolled in the social security system, and that their labour rights are respected. In the CCSS case, the Inspection Department is part of the Financial Management sector.<sup>66</sup> Its main objective is to oversee the enrolment of salaried workers in the public health insurance and the IVM pension regime. Their typical actions include confirming that this type of worker has been adequately subscribed by employers to the social security system, and also that they are not engaging in underreporting practices like manipulating payrolls in order to file lower incomes and contribute less to the workers’ public insurances. Usually, the CCSS’s inspections are conducted to resolve denunciations made by workers. Around 300 inspectors are dedicated to this activity, and approximately half of them are located in the Central Valley and their urban economy related activities. Recently, the Inspection Department has started a strategic program on inspection called “PRESSING” that will cover specific geographical areas selected by the CCSS regional offices (interview: CCSS).

Even though “it is well known that in Costa Rica there are many employers hiring illegal foreigners, or denying their access to social security,” the Inspection Department of the CCSS has not designed and implemented comprehensive plans concerning labour migrations. During the years in which the Bi-national Agreement Costa Rica-Nicaragua has operated, there has been no concrete strategy to inspect

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<sup>66</sup> The CCSS is divided into three different management sectors: administrative, medical, and financial.

employers and productive activities involved in this program. In addition, the databases on workers' individual complaints handled by the CCSS make no reference to nationality. Thus, the inspection forms only list such information as the type of economic activity, the amount of employees hired, the number of quotas reported to the social security, and so on (interview: CCSS).<sup>67</sup>

Compared to the CCSS, the MTSS Labour Inspections Department has more legal responsibilities concerning the protection of workers' rights. Labour Inspections officials routinely inspect whether workers are subscribed in the public insurance in health, occupational risks, and pensions and evaluate workplaces in order to corroborate the compliance of all the basic norms related to occupational health. In these activities, the development of collaborative initiatives with the INS and the CCSS has been difficult "because these institutions follow their own interests and rules." Other complementary actions include the handling of workers' legal complaints such as the incorrect payment of holidays and extra working hours, vacations, or the non-payment of wages on time (interview: MTSS).

As usual in the governmental institutions in charge of protecting workers under social security, the Labour Inspection Department has not developed research or policies on the topic of labour migrants. Even their databases do not include references to nationality or workers' legal status (interview: MTSS). This is the case with the main studies conducted by the Department on labour infractions in the period between 2000 and 2007. For instance, their findings showed that in 95% of the sites inspected, the most common infractions were linked to the enrolment of workers in occupational risk

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<sup>67</sup> For legal reasons the records on individual cases managed by de CCSS are not public. They contain personal information about the complainants and the employers.

insurance, the extension of receipts to workers (receipts about the payment of salaries and the quotas to the social security), the absence of basic medical equipment to provide first aid, and the payment of salaries under the legal minimum wage established by the government (MTSS, 2009b: 28). Nothing is said about specific groups of workers, like migrants, or even about specific economic activities. The information was collected and arranged according to provinces' large economic sectors, a limitation recognized even in these reports (MTSS, 2009b: 30). These types of studies have been used to identify the main issues and are used to justify main policy initiatives as part of the MTSS action plan. For example, throughout 2010 most discussions were on the topic of legal minimum wages.

Another important limitation of these studies and their corresponding databases is that their findings cannot be generalized. This point is important because it is related to the biggest problem faced by this Department: their poor coverage capability. During the 2000s, there were around 100 inspectors working across the country, plus another 50 co-workers doing related activities like legal conciliations. In relative terms, they have been covering just 6% of the overall Costa Rica's employers, most of them cases in which employees have presented formal or legal complaints – on average, each inspector is in charge of over 20,000 economically active people (MTSS, 2009b: 25). Obviously, the number of inspectors available “is not enough to protect the worker population in general regardless of whether or not they are nationals.” In addition, the lack of vehicles or adequate geographic information systems makes it even harder for the inspectors to do their job (interview: MTSS).

In this context of general scarcity, the competence to oversee economic activities in rural areas of the country has been affected the most. Not only are there less human



and material resources available than in urban areas, but also the inspections tend to be more difficult due the types of jobs involved. The inspectors have to deal with “tough environments,” and workers that are not placed “under the same roof doing their jobs like in a factory.” Furthermore, when there are no specific legal denunciations, the inspectors act “in an empirical way, based on their local knowledge about possible places in which there could be violations of workers’ labour rights.” In relation to the agricultural activities involved in the Bi-national Agreement, it is not possible to identify strategies or systematic efforts to oversee temporary migrants’ well-being. Maybe, it could be “more realistic” to affirm that in the past some crops like melons or pineapples could be subjected to inspections, but “the main goal has not been the protection of labour migrants. In fact, from the point of view of the inspector the migrant is seen as just another worker that should be protected” (interview: MTSS).

## **5.7 Conclusions**

It is generally assumed that the Costa Rican social security system operates on a universal principle guaranteeing access to public health insurance to almost everyone. Even though this assumption is not entirely wrong –after all, just around 10% of the nationals are not covered by any insurance- citizenship principles and practices which shape this institution prevent it from being universal. Instead, membership in the social security field depends on a progressive extension of entitlements based on different social closure principles: labour status, kinship, and means-test. In other words, the system has been configured around a stratified logic. Thus, during the 1940s the main members of the system were urban salaried workers. Over time, the creation of new

health insurances allowed the incorporation of different social groups. Rural workers, non-salaried workers, the closest relatives of all insured workers, or poor families, have also been accepted to the social security field. In all these processes, different contribution and non-contribution types of subscription have been distributed among different social groups.

Nowadays, the migratory status constitutes another important principle of social closure that deserves attention, especially when analysing the experiences of different alien populations. Even though temporary migrants recruited under the BNA are formally entitled to receive the same kind of health insurance and benefits enjoyed by national salaried workers, in practice they can only obtain a *partial kind of membership* (see Chapter 2). Unlike citizens, these workers cannot extent their rights to closest dependant relatives. Besides, due their condition of being a temporary worker, they are not allowed to receive extra benefits and economic transfers granted to national workers (see table 5). Also, the time served in Costa Rica and the quotas paid to its social security system are not recognized by the Nicaraguan social security system upon migrants return to their home country. Finally, medical services they are entitled to receive are granted as long as they are recognized as productive guests. For that reason in cases of work-related disability or long term diseases, these workers would be unprotected unless they reside and work legally in Costa Rica.

The logic of membership and extension of benefits to temporary migrants described above is an expression of their precarious status. As a factor influencing the extension of social rights, this status reverses the ideal core conception about the emergence of social citizenship identified by T.H. Marshall, in which:

“Social rights in their modern form imply an invasion of contract by status, the subordination of market price to social justice, the replacement of the free bargain by declaration of rights” (Marshall, 1992: 40).

On the other hand, the government’s operative capacity to oversee the working conditions of temporary migrants brought under the BNA is severely restricted. In terms of occupational health, the country has not advanced much research or collected data on the agricultural sector. Neither has it set a strategy to evaluate different labour policies promoted by the government. In addition, the capacity of the MTSS to conduct inspections is severely restricted due to the lack of financial resources, basic equipment, and inspectors. Other state agencies like the CCSS, who are in a better position to inspect labour sites, seem to reduce the discussions on the protection of workers’ rights to a debate about how many people are, or should be, enrolled in social security.

Although this limited approach to ‘planning’ and ‘technical’ issues can be overcome, from the interviews with the governmental officials it can be assumed that the temporary migrants will remain ‘invisible’ in public policy. In all the legal frameworks and governmental departments consulted in this study, specific problems faced by different legal categories of migrant workers have not been distinguished from the problems faced by national workers. Even their most important databases, such as the list of persons enrolled in the CCSS’s public insurance schemes, do not include variables facilitating the identification of migrants.

As a result, until more reflexive government practices and new official epistemologies can be developed on the topic of temporary migrants, the politics of belonging developed with regard to labour and social security remain bounded in institutional frameworks geared towards the national population. The potential particular needs of temporary migrants are in some way *assimilated* to the needs of the general population of national workers (see Chapter 2). The 'equal' treatment that they receive according to the Bi-national Agreement has not been subjected to any special assessment by the governments of the countries involved in the treaty. At the same time, public officials do not think it is necessary to change this orientation. They consider it illegitimate to have 'affirmative action' policies for Nicaraguans. Instead, they believe that as long as these migrants contribute to the financial well-being of the insurance system, they have sufficient access to its benefits. For migrants, as it can be clearly seen, their access to social justice is subordinated to their market price.

## Chapter 6

### Limits of “Solidarity:” Healthcare Policies and the Indifference towards Aliens

#### 6.1 Introduction

As seen in the previous chapter, the right to obtain public health insurance is not strictly speaking universal. Over time, the institutional development of different health insurances has become a process of reconfiguration of social closure done around labour status and personal payment capacity, kinship, or means-test proofs. At the administrative level this logic of protection has been organized largely around categories related to socio-economic status (paid workers, for example) or economic dependence (close relatives).

In this scenario, the health insurance coverage has succeeded in terms of the social groups protected, and also in terms of its geographical reach. But it is necessary to say that these protections have primarily benefited national citizens. In fact, the extension of these insurance regimes has been organized around distributive concerns rather than around the particular needs of minority groups. In this sense, migrant populations, especially those having legal statuses such as undocumented or temporary migrants, have been entitled -in the best case- to partial types of membership.

After universalism, solidarity is usually mentioned as another founding principle guiding the historical development of Costa Rican public health insurance. In a nutshell, this principle asks those with higher resources to help less fortunate people, as well as to offer similar standards of medical attention to the insured regardless of the amount of their contributions. Due to the relevance of the contribution-based memberships, the

quotas received from better-off affiliates can partially subsidize the benefits granted to the persons located at the bottom –including both non-contributing and contributing members.

In this chapter, the principle of solidarity will be assessed in order to establish if in the healthcare policy context temporary migrants' vulnerabilities, derived from their precarious migratory status and their partial affiliation to the social security realm, are addressed. It will explore the degree to which the national population has been supportive of such minority groups as labour migrants in the context of a stratification process influenced by citizenship arrangements. Furthermore, it will also analyse how the social boundaries established around the citizen/alien divide in the social security realm are reflected in the development of healthcare services and health promotion strategies directed at temporary migrants.

At the theoretical level, the chapter explores how issues of diversity have been treated in the Costa Rican healthcare system. As explained in Chapter 2, the politics of incorporation shaped around citizenship parameters creates paths of belonging concerning the configuration of common identities and beliefs usually founded on notions of state sovereignty, territorial ascription, and national pride. Since migrants are exposed to dynamics of subordination and repression in host societies, whether or not notions of belonging have been recognized through the politics of incorporation influences the chances of gaps between stigmatized categories of persons and the rest of the community being closed. Compared to assimilationist paths of belonging, reflexive governance practices based on multiculturalist ideas improve the possibility that new appreciations of difference would open doors to recognition of the special needs of

minority groups such as migrants. The next sections analyse which of these trends were developed by the Costa Rican healthcare system.

This chapter is based on the research conducted at national and local levels. At the national level, the objective has been to determine to what extent migration issues have been included in the healthcare system's policy agenda. The presence of these issues on the agenda can be taken as an indicator of the System's ability to assess health determinants for labour migrants and re-evaluate their risks. At the regional and local levels, healthcare providers were consulted about how just or unjust they believe the system is with regards to the care of these patients. The objective was to capture decision-making processes in communities characterized by an important presence of settled and temporary Nicaraguan migrants that could create reparative actions concerning vulnerable entitled social groups with precarious status. The locations were selected based on the presence of employers whose operations included temporary migrants hired through the BNA.

## **6.2 Background**

Located in Central America, one of the poorest regions in Latin America, Costa Rica has witnessed similar economic and social problems as its neighbours. Yet, somewhat paradoxically, the Costa Rican Public health sector experienced an early development that in recent years has expressed itself in types of health transitions characteristic of more economically advanced countries.<sup>68</sup> The unique evolution of this

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<sup>68</sup> The Costa Rican public health sector encompasses not only the Healthcare System (whose operation relies basically on the CCSS, under the supervision of the Ministry of Health), but also other public institutions in charge of conducting studies on public health and developing basic services like water and sewer, housing, environmental regulations, and anti-poverty programs.

healthcare system is part of a legacy of institutional efforts put in place between the 1950s and the 1970s. These included an impressive expansion of basic infrastructural services including access to clean water and sewerage; the construction of public health and medical facilities for rural and urban communities; the development of health interventions in primary care and immunization; the reduction of infant mortality rates and infectious diseases; and a steady increment in insured workers and beneficiaries of medical care under social security (Miranda and Zamora, 2004).

Important policy actions taken during those decades continue to influence the contemporary development of the health sector. Key initiatives regarding the provision of primary healthcare were implemented by the Ministry of Health. The National Program on Rural and Community Health helped to constitute the so called 'Sanitary Units' in diverse small rural communities (less than 500 inhabitants), in order to provide basic infrastructure and services such as vaccination programs for children, medication against intestinal parasites, or prenatal and maternity care for women. Also, the 'Hospital without Walls' program established clinics with active participation of local communities. The staff of these clinics included medical specialists such as physicians and nurses, and professionals from other disciplines connected to public health (Salas, 2010).

In addition, there were preventive actions developed by other government agencies of the health sector. For example, the Institute of Welfare Services (IMAS) supported the creation of Education and Nutrition Centres for Children (CEN-CINAI). Both centres played an important role in the distribution of foodstuffs for poor urban and rural communities, and the provision of nutrition services for children and pregnant mothers. Taken together, the primary care implemented by the Ministry of Health and



the CEN-CINAI centres, configured an important network of public providers of basic healthcare attention for populations traditionally excluded from the main dynamics of social and economic well-being (Salas, 2010).

From the 1980s to the present, the Costa Rican state undertook profound structural reforms guided by international organizations such as the International Monetary Fund and the World Bank. Neoliberal blueprints calling for the reduction of the state's role in different dimensions of people's lives were promoted, placing the health sector under a significant strain. Its financial organization, models of administration, and provision of services were criticized. Almost all the budgets and social investments in this sector fell, and its traditional policy-making processes were accused of being highly centralized and bureaucratic. Furthermore, the popular demand for health services changed with the demographic and epidemiological transitions that the country began to experience (Guendel, 1997).

As part of these reforms, the public health sector assigned the delivery of primary medical goods and services to the Ministry of Health, while the CCSS -thanks to its public insurance- was in charge of managing services offered in the public hospitals. But this sort of organization did not last long. In the 1980s, all the different government sectors experienced a first wave of administrative reforms in response to financial pressures and the change in the size and composition of the civil service. Starting in the 1990s, a second wave of administrative reforms based on market principles has been promoted, eroding previously established collective arrangements and undermining the social justice foundations used in the past to equalize the population's quality of life. More importantly, this second wave brought the *new management* creed as a solution to the problems faced by the state (Filgueira and Martinez, 2002).

“New management” has been a key ideological component of the health sector reform enacted and executed since the 1990s. It encouraged, at least in theory, the development of neutral, objective, and independent “rational decision-making” models (Stone, 2012: 11) in which the organization of diverse healthcare work processes has become standardized by overall goals of accountability and financial sustainability. In this scenario, public administrators are called upon to maintain efficient and effective systems of delivering health benefits. Accordingly, the most relevant structural change derived from this reform has been the decentralization of former authority and surveillance functions.

Under the new organizational scheme, the Ministry of Health assumes an essentially administrative role. Its main task is the design of the National Health Policy and the steering of different governmental agencies related to healthcare and planning. All the primary healthcare activities undertaken by this institution are left to be executed by other agencies from the sector, especially the CCSS.<sup>69</sup> Thus, the CCSS has become not only the public institution that virtually monopolizes and manages the market of health insurances (plus the retirement funds and pensions), but also acts as the largest provider of medical services for the population through its network of local community clinics, specialized clinics, and hospitals (Clark, 2002; Mesa-Lago, 2007).

### **6.3 The Costa Rican Ministry of Health and the ‘social production’ of health**

As seen in the previous section, the Ministry of Health and the CCSS are the most important institutions of the Costa Rican healthcare system. According to the reform

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<sup>69</sup> The exceptions were the program to educate and feed poor children under seven years old and the vector control program (PAHO, 2007: 255).

implemented in the health sector during the 1990s, the provision of medical goods and services conducted by the CCSS came under the scrutiny of this ministry. What the reform did, at least on paper, was to reaffirm the leading position of the ministry with regards to the development of health policies. The Ministry of Health Act establishes that:

“[...] the definition of the national health policy, the organization, coordination, and chief direction of the Costa Rican health services, should be assumed by the Executive Power through the Ministry of Health.” (MINSAL: 1973)

Since the reform was enacted, the logic of management followed by the Ministry has been focused on the constitution of preventive medical care rather than the development of curative medicine. All the agencies directly linked to this ministry, such as the Costa Rican Institute of Health and Nutrition Research (INCIENSA), the Institute of Drug and Alcohol Dependency (IAFA), or the National Secretariat of Food and Nutrition (SEPAN), have been strongly involved in strategies of *health promotion* directed at the Costa Rican population.<sup>70</sup> In this new context, the idea of health promotion has been attached to the topic of social determinants of health “as a response to the biomedical approach to healthcare provision established previously” (interview: Ministry of Health).

As described in the *Conceptual and Strategic Management Model of the Social Production of Health*, individual health conditions are collectively produced. Thus, the Ministry was directed to focus on the identification of different types of health determinants and to advance solutions to challenges in the promotion of people’s health.

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<sup>70</sup> For an explanation of the Health Ministry’s administrative organization, see Gómez (2003).

According to this report, beyond the identification and protection of diverse risk groups, or the improvement in the quality of medical services, the promotion of health would offer:

“[...] conditions and resources needed to develop people’s ability to adopt healthy lifestyles and participate actively in caring for their own health as well as the health of their families and communities.” (MINSa, 2007: 10)

In addition, it is assumed that the promotion of health must also rely on the development of human rights. This development is defined by the Ministry of Health in terms of the expansion of the freedom enjoyed by individuals, which is only possible when they have access to the means required to reach this state. This idea is influenced by Amartya Sen’s work on capabilities. More importantly, a public health strategy committed to the respect for human rights involves the analysis of those “inequalities located at the centre of the development troubles,” and the correction of discriminatory practices (MINSa, 2007: 14).

In order to accomplish the goal of health promotion under a human rights framework, the “management functions” (MINSa, 2007: 27-29) of the Costa Rican Ministry of Health have been set as comprising:

1. Policy Direction. This is the most important goal of the Ministry, and it is accomplished through the design of the National Health Plan and other strategic documents guiding the activities of those institutions that form part of the health sector.
2. Health Marketing. This goal is related to the elaboration of sanitary campaigns, and other similar informational and educational efforts on public health issues.

Its objective is to influence people's behaviours, attitudes and skills concerning healthcare.

3. Surveillance. This goal refers to the compilation of data about the population's health conditions and their potential determinants. It includes the elaboration of epidemiological profiles, and indicators of access to healthcare services.
4. Strategic Planning. This function concerns the coordination of the actions conducted by the institutions that make up the health sector. Based on the National Health Plan, the Ministry leads the creation of common policy interventions in specific regions and communities.
5. Harmonization of Services. This goal refers to the prioritization of benefits that each public institution of the health sector should provide with regards to the objectives established in the process of strategic planning.
6. Financial Coordination of Services. This function is to guarantee financial resources to all the services provided by the health sector, according to the goals established in the process of strategic planning.
7. Public Health Regulation. This function is to oversee and introduce changes -if necessary- in the normative frameworks governing those public or private actors who provide healthcare services in the country.
8. Impact Evaluations of Public Health Initiatives. This goal relates to the development of national and regional evaluations capable of assessing, or measuring, the effects that the policy actions implemented by the health sector are having on different communities and populations.

In geographic terms, the management functions of the Ministry of Health are coordinated by nine *Regional Health Authorities*: Brunca, Chorotega, Central Pacific, East Central, West Central, North Central, South Central, Atlantic Huetar, and North Huetar. These Regional Authorities are also sub-divided into different *Health Management Areas* with offices across the country. There are 81 Management Areas in total, one for each Costa Rican county, and the staff of their offices is composed of different professionals specializing in public health issues, including administrators, evaluators, social scientists, and epidemiologists.

In sum, with the contribution from different Management Areas, the Ministry of Health is the leading public institution in the development of policies on public health at the national and local levels. The next section discusses actions undertaken by the Ministry of Health towards labour migrants. It explores whether migration issues are present in national and regional health plans. More specifically it questions whether and to what degree Ministry officials have addressed challenges posed by migrants to the healthcare system through initiatives directed at the temporary migrants hired under the BNA. This section is based on interviews conducted with authorities of the Ministry of Health in San José, and also in three Health Management Areas from three Regional Health Authorities -Chorotega, Central Pacific, and Huetar North.<sup>71</sup>

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<sup>71</sup> The communities in which these Areas are located are characterized by the important presence of labour migrants, but most importantly, by the presence of companies subject to the BNA. In these cases, the analysis was centered on the management functions of surveillance, strategic planning, and health marketing.

#### 6.4 Health policies and the invisible migrant

An analysis of the Costa Rican national health plans and key official documents about the main challenges addressed by the public sector in this country reveals that migration issues are not given much consideration. The few paragraphs on migration that can be found in these documents are dedicated to describing basic demographic characteristics of migration. According to these documents, the arrival of migrants was having –or will have– an important impact on Costa Rica’s demographic structure. As the country reached the demographic transition (that is, the national fertility rate dropped below 2.1) and as concerns appeared about an aging national population, references to migration were reduced to the “demographic balance” and the expected role that this young population would have in the future. In this sense, data about fertility rates of female migrants was the only type of information related to migrants’ health (MINSa, 2002a: 12; MINSa, 2002b: 37).

In these documents migration is discussed as a *problem* for the country’s officials to address. For examples, the 2002 *Health Sector Analysis* (MINSa, 2002b: 173) stated that it was necessary to solve problems such as “poverty levels, internal debt, migrations, natural disasters, inadequate housing conditions, and excessive population growth.” At the same time, it was recognized that there was not enough information to assess problems and impacts of migration. Obviously, the lack of information was presented as part of the difficulties attached to the analysis of migrant populations. For instance, the only reference found about temporary migrants calls reader’s attention to the following methodological problem: “[...] this data does not include the floating population arriving in the country for short periods of time to work in agricultural activities” (MINSa, 2002b: 46).

Even more worrying is the absence of migration issues in key official reports elaborated by the Ministry in recent years. In a 2007 document entitled *Basic Indicators: the Health Situation in Costa Rica*, the only time migration was mentioned was with respect to its effects on population growth (MINSAL, 2007a: 17). In the Ministry's 2008-2010 national plans, references to migration were simply absent (MINSAL, 2007b; MINSAL, 2007c). According to a former Health Minister interviewed for this study, during the first decade after the year 2000 the absence of programs designed to meet the needs of migrant populations was related to the fact that the CCSS has "reduced its tasks to the mere goal [management function] of health marketing." In addition, health policies have not addressed any cultural, social, or economic processes, but only individual risk factors such as obesity or smoking, all of them identified as part of the general morbidity or mortality patterns in the population. During the past decade, the development of policies concerning vulnerable, poor, or excluded social groups was done only in indigenous communities located in Costa Rica's southern region.

During the Pacheco de la Espriella administration (2002-2006), the recognition of rights for indigenous populations was addressed, and the Ministry of Health was not an exception in this respect. But this experience could not be generalized to other sectors of the population. In fact, the development of health policies directed at indigenous communities would have disappeared from the agenda in the health sector, if some CCSS functionaries had not continued their work at the local level (interview, Ministry of Health), as will be discussed in more detail below.

The most recent attempt to shape a comprehensive understanding of health promotion has been made through the introduction of the topic of the social production of health (as seen previously, attached to the matter of social determinants of health).



However, to date the same ministry authorities recognize that this discourse has not yet been translated into “a significant strategy like the one headed in the past by the Ministry of Health towards indigenous communities.” Asked about the current plans to design and implement strategies focused on migrants, a representative of the ministry pointed out that:

“Certainly, our country needs to pay more attention to the quality of the services offered. We need to progress more in key issues related to equity and solidarity. But at the same time we could not institute different treatment just for certain sectors of the society. The rest of the population will not be happy with these measures. What we should do is improve our capacity to provide quality services for everybody. Migrants need to be assimilated into the system. Besides, and maybe with the exception of [Nicaraguan] maternity cases in communities like *Los Chiles*, at the regional level the presence of migrant populations has not translated into more diseases or an excessive use of services [...] like studies from other countries show. They are healthy working-age persons.” (Interview, Ministry of Health)

In the Management Areas of Chorotega, Central Pacific, and Huetar North, the treatment of migration issues did not vary from the general objectives of national health plan, or from the opinion of the functionaries working in the Costa Rican capital. With respect to surveillance, one of the most important functions that Ministry of Health authorities have charge of, no effort is made to document epidemiological profiles of migrants or to develop health promotion initiatives directed at this population. For example, these areas prepare weekly epidemiological reports to assess health patterns

present in their populations. They obtain the information from the so called 'Basic Comprehensive Healthcare Teams' (EBAIS), walk in clinics managed by the CCSS which work at the local level (in section 6.5 the functions of these healthcare facilities will be explained). In these cases, the 'packages of information' submitted by the EBAIS have not incorporated any variables to distinguish the population by their nationality. The information is arranged according to the type of health conditions registered in the populations such as respiratory infectious diseases, diarrhea, injuries from domestic violence, and (depending on the region) outbreaks of diseases like meningitis, dengue, or chickenpox. In most cases, the only demographic characteristics included in the report are gender and age. One of the epidemiologists interviewed in my research asked his counterpart at the CCSS if it would be possible to develop a study on migrants' pathologies. He got the following reply:

"[...] in the EBAIS there is nothing including the nationality of the patients. They do not record this information in their databases. Maybe, there could be some exceptions, but it is not a common practice. The nationality is just taken into account in healthcare facilities with more budgetary controls." (Interview, Ministry of Health-Health Management Area).

On the other hand, that a group of EBAIS would be able to identify health conditions of migrant populations does not guarantee that the information would be passed on to the Ministry of Health. In the three Management Areas, the main concern with respect to surveillance was to monitor the incidence of diseases and attempt to avoid their spreading. As one official put it, "we do not care if they are Salvadorians, Panamanians or nationals; we are interested in the disease" (Ministry of Health, Health

Management Area). In addition, the type of fieldwork coordinated by the Ministry is focussed on *risk zones* - geographical areas defined by the endemic presence of certain infectious diseases and their known vectors, and by the outbreak of new diseases, like virus A (H1N1).

The establishment of risk zones in a few places near the Costa Rican-Nicaraguan border is the only kind of strategy on public health benefiting Nicaraguan migrants. Migrants residing temporarily or permanently in these zones will receive medical attention and information “regardless of their legal status.” But they have to live there in order to be “controlled and registered by somebody [authorities from the Ministry of Health or the CCSS].” On the border there are no facilities from the Ministry of Health coordinating complementary policies capable of screening the health conditions of this migrant population, and the establishment of surveillance initiatives “becomes difficult because the border is broad, full of greenery, easy to cross, occupied by *invisible migrants*” (interview: Ministry of Health-Health Management Area).

The Ministry of Health did not have any policies or health promotion programs for BNA migrants. In fact, in two of the three Management Areas consulted in this study, this temporary migration program was unknown. In all the Areas the officials interviewed in the study were aware of inspections carried out by the Ministry of Labour in response to occupational health complaints but they did not know whether any of these inspections were carried out among BNA employers.<sup>72</sup> When dealing with the Costa Rican migration authorities, the Ministry of Health obtained just basic information

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<sup>72</sup> In Costa Rica, it is necessary to obtain a *health permit* from the Ministry of Health to start any kind of business. These permits are related to occupational health requirements, such as the presence of extinguishers, basic medicines, or adequate clothes in work places. Usually, the Ministry conducts inspection with the help of the CCSS.

about how to regularize the migratory status of undocumented foreigners or the basic rights of legal migrants. No information on BNA migrants was ever provided to the Ministry of Health. The *Health Fairs* promoted by UNFPA for migrants residing in communities located at Costa Rica's northern border are the unique health promotion initiatives developed recently.<sup>73</sup> Other than that, the references to health promotion with migrants are vague, like the following:

“Some years ago we entered a neighbourhood called ‘Little Managua.’ We offered residents medical attention and information about good sanitary habits. Most important for us was to provide them basic services like clean water and sewage, toilets, and septic tanks. Also, during the 1980s we helped the government build a refugee camp with the help of funds provided by USAID and the United Nations High Commission for Refugees.” (Interview: Ministry of Health-Health Management Area)

In general terms, during the past decades the Costa Rican Ministry of Health has shown limited operative capacities to implement policies with regards to migrant populations. More importantly, as happened in the social security realm, problems of data collection can be related to the lack of development of the epistemological background needed to promote the foundations of adequate policies directly among groups like temporary migrants. From an institutional viewpoint, migrants are not ‘invisible’ or ghost-like, as suggested by a public functionary. Rather, it can be said that their right to healthcare is being made invisible due the lack of alternative reflexive governance practices. The next three sections will explore whether the CCSS, the most

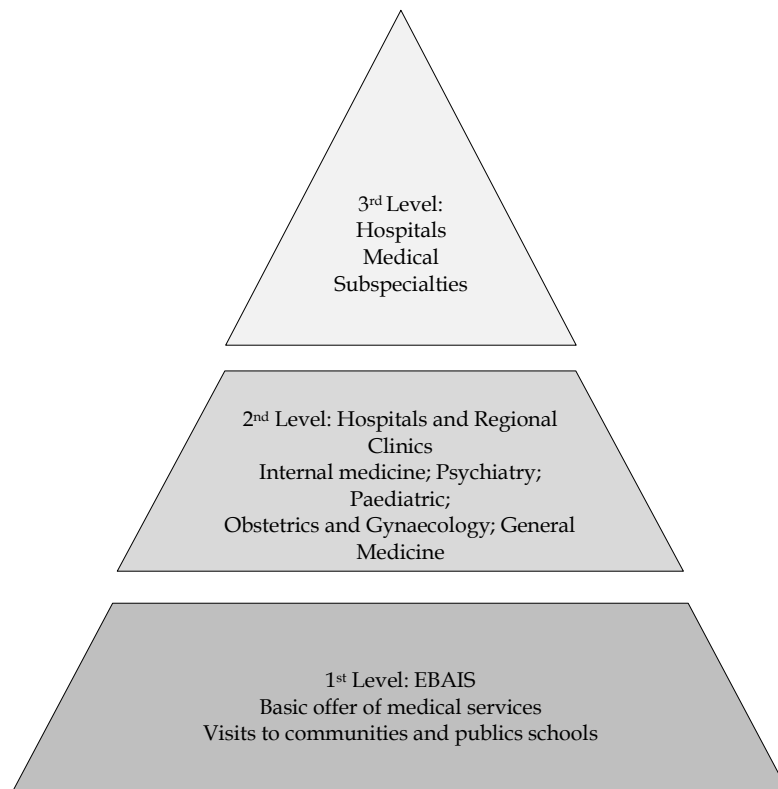
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<sup>73</sup> See, UNFPA (2009).

important public institution providing health services within the health sector, has acted differently in this respect.

### 6.5 The organization of the provision of healthcare benefits

The CCSS is the main public institution directly involved in the provision of medical benefits to the population. Along with other institutions ascribed to the health sector, it promotes preventive interventions in public health. With the implementation of reforms in the 1990s, the CCSS has changed its former curative orientation. There are three *levels of healthcare attention*, depicted in Figure 1, with different infrastructure, equipment, and financial costs:



**Figure 1 Costa Rican healthcare system levels**

The primary level, the most important, is organized around *Health Areas* divided into several Basic Comprehensive Healthcare Teams (EBAIS).<sup>74</sup> Each of the country's 81 counties has at least one CCSS Health Area. They are in charge of coordinating and supporting the work done in the local communities by the EBAIS both in terms of their administrative duties, and also in terms of the diagnosis and treatment of their patients. These Areas are equipped with resources such as laboratories or x-ray equipment. The staff of a Health Area must be composed of general physicians, dentists, pharmacy specialists, microbiologists, nurses, nutritionists, social workers, and other administrative human resources. Since 2005, the actions of the areas have depended on *Management Commitments*, annual blueprints based on *Situational Analysis* –regional analysis of health and epidemiological profiles of the communities- in which diverse policy problems on health are identified. The budget assigned to each Area depends on political negotiations around the health needs identified in the Situational Analysis and the policy goals required to fulfill them (PAHO, 2007; Salas, 2010).

The EBAIS constitute the core of the primary level. These are community clinics derived from preventive healthcare initiatives put in place in the past, such as the Sanitary Units or the program of Hospital without Walls –both mentioned in section 6.3. Their staffs are composed of a general physician, a nurse, and a *Primary Healthcare Technician* (ATAP), who collectively take care of approximately 4,000 people. By 2007,

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<sup>74</sup> CCSS's Health Areas are grouped into seven *Health Regions*: Brunca, Chorotega, Central Pacific, North Central, South Central, Atlantic Huetar, and North Huetar. In order to avoid mistakes, it is necessary to keep in mind that the geographical and administrative divisions used by the CCSS and the Ministry of Health (described in the section 5.3) are not necessarily the same. Usually, it could be possible to find representatives from both institutions in the same places, but there could be exceptions.

over 90% of the national territory had been covered (PAHO, 2007: 255).<sup>75</sup> According to Sáenz, Bermudez and Acosta (2010: 9) and CCSS (2004: 36-37), services offered by the EBAIS are geared to different age and gender-based groups:

1. Children: growth and development consultation, expanded immunity program, comprehensive oral health, monitoring of risk groups, treatment of diseases, and basic rehabilitation.
2. Teenagers: growth and development consultation, expanded immunity program, contraception, comprehensive oral health, monitoring of risk groups, and treatment of diseases.
3. Women: prenatal and postnatal attention, psycho-physical preparation for labour, assessment of infertile couples, birth control, vaccination during reproductive age, detection of cervix and breast cancer, dentistry services, and attention in cases of violence against women.
4. Adults: vaccination, dentistry services, prevention and detection of chronic diseases (mainly arterial hypertension and mellitus diabetes), monitoring of mental disorders, treatment of diseases, and basic rehabilitation.
5. Senior citizens: monitoring of group risks, detection of chronic diseases (mainly arterial hypertension and mellitus diabetes), dentistry services, treatment of diseases, and basic rehabilitation.

Not only do patients have access to these primary healthcare benefits, but also to general information regarding sanitation, nutrition, and healthy lifestyles. In addition to

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<sup>75</sup> Nowadays, there is a deficit concerning the construction of EBAIS around the country. Thus, there are clinics taking care of 5 or 6 thousand patients, a situation affecting the timing and quality of services offered to the community (Estado de la Nación, 2009: 129).

providing ambulatory services, the EBAIS conduct fieldwork in their assigned communities to collect basic demographic, socioeconomic, and epidemiological information. This work is directed by the ATAP consisting of professionals who during the data collection process also put into practice elementary public health initiatives such as immunizations and vaccinations. The work performed by the ATAP is essential in order to create the epidemiological profiles that will be incorporated into the *Comprehensive Analysis of Health States (ASIS)* of the different Health Areas of the country.

The secondary and tertiary levels of the healthcare system rely on the work done in a network of 10 specialized clinics, 13 peripheral hospitals, and 7 regional hospitals. At the secondary level clinics and hospitals offer specialized outpatient and inpatient services not available in the EBAIS, as well as hospitalizations and medical-surgery treatments, including core areas of internal medicine, gynaecology-obstetrics, paediatrics, and psychological counselling, among others. The tertiary level is related to “high-tech” medical and surgical services, for example, medical oncology, haematology, nephrology, and transplants of organs (CCSS, 2004: 26-27; PAHO, 2007: 257). Ideally, patients are treated first by the primary-level healthcare facilities. In cases of medical or surgical emergencies, they are referred to secondary-level clinics or hospitals. Depending on the seriousness of their condition, they could be referred to tertiary-level facilities. When the treatment in clinics or hospitals is completed, patients are sent back to the EBAIS for further care and follow-up.

Even though the outpatient services delivered by the CCSS have broad territorial coverage, in the 1980s and 1990s financial investments in hospital infrastructure and the provision of certain services were insufficient. After almost three decades of reforms, the current public expenditure in health measured as a percentage of GDP has not yet



regained pre-1980s levels, a situation which translates into problems like long waiting lists for care. While emerging investment requirements are not covered, old deficits compound the problem. Some of the contemporary challenges are related to the health transition attained decades ago by the improvement in national health indicators, such as the reduction in infant mortality and the control of infectious diseases –both associated with a progressive increase in chronic diseases in the population. Other challenges, maybe the most ‘invisible’ in terms of policy-making, stem from demographic changes rooted in the new globalized economic and political contexts, especially the significant migration that has taken place over the past three decades.

In theory, the provision of services by the CCSS should comply with the policy guidelines established by the Ministry of Health. But this is not necessarily the case in practice. There are at least two reasons for this. First, the CCSS has been one of the so-called ‘autonomous institutions’ of the Costa Rican state.<sup>76</sup> As an autonomous institution, it has its own board of directors and its own financial resources. The first article of the CCSS constitution act establishes that its governance –including the administration of public insurance and funds- is not subject to normative orders and guidelines “imposed by the Executive Power or national budget authorities” (Asamblea Legislativa, 1943b). The greater degree of administrative autonomy historically enjoyed by this institution within the health sector has survived in spite of the reforms introduced in the 1990s.

Second, the administrative and monitoring functions assumed by the Ministry of Health in the 1990s were unprecedented and their design required time (interview: Ministry of Health). From the viewpoint of the CCSS, the new functions assumed by the

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<sup>76</sup> Other public institutions with this status are, for example, the University of Costa Rica (the country’s main public university), and also the Costa Rican Central Bank.

Ministry with regards to the design of social policies have not been totally clear during the past two decades. That situation has created certain operative divisions between the two institutions:

“During those years in which the Ministry of Health conducted its experiments, we had to deal with concrete problems related to the provision of services across different communities. In some cases, like in the development of policies towards indigenous communities, we had to take the initiative... I mean, we decided not to wait for them.” (Interview: CCSS)

As seen in the previous section, migration issues were literally missing in the agenda-setting of the Ministry of Health. We will now turn to explore whether this void has been filled by the CCSS. The next section will question whether this institution was prepared to receive temporary migrants hired under the BNA. Section 6.6 examines if the primary healthcare strategies established by the CCSS at the national and regional levels have been able to include concerns on diversity attached to labour migrant populations, while section 6.7 extends this analysis to local healthcare providers.<sup>77</sup>

## **6.6 Health promotion, care models and labour migrations**

In the national institutional plans developed by the CCSS for the periods 2001-2006, and 2007-2012, there are hardly any references to migration issues.<sup>78</sup> With the

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<sup>77</sup> Interviews were conducted with directors of Health Areas, and main physicians of EBAIS. These offices and healthcare facilities are part of the following CCSS's Health Regions: Chorotega, Central Pacific, and Huetar North. The fieldwork was done in the same communities where the interviews with representatives of the Health Management Areas were conducted.

<sup>78</sup> As an autonomous public institution, the change of the CCSS's Board of Directors happens every six years (and not four like the rest of government institutions). The institutional plans 2001-2006, and 2007-2012, cover the agenda setting of the last two boards in charge of the CCSS.

exception of the Ngöbe-Buglé Panamanians, discussed at the end of this section, no programs or projects are directed towards migrants. Thus, Nicaraguan labour migrants are omitted from the national agenda designed and implemented by this public institution.

When Nicaraguan migration was mentioned in the 2001-2006 CCSS public documents, it was presented in descriptive terms. For instance, the Nicaraguan migration was linked to the military conflicts and the economic crisis experienced by Nicaragua since the 1980s. Some documents mentioned that Nicaraguan migrants had come to Costa Rica in search of work in such sectors as agricultural activities (sugar cane and coffee), as well as in construction, and that they were geographically located in the north and on the Atlantic coast. In addition, the birth increase in the general population was linked to a high fertility rate among Nicaraguan migrant women. In addition, the size of the Nicaraguan migrant population was estimated to be six hundred thousand or almost 20% of the overall Costa Rican population. This exaggerated estimate was double the estimate produced by the 2000 national census (CCSS, 2001: 26).

By comparison, the institutional plan elaborated by the CCSS for the next period, 2007-2012, raised concerns about the Nicaraguan migration, claiming it was one of the main challenges faced by the national healthcare system –along with the demographic transition, the change of Costa Rica’s epidemiological profile, and the transformation of labour markets (CCSS 2007a: 6). Some of the descriptions provided by the previous plan have survived but the error in the population estimate was corrected. This plan also recognized the contribution of Nicaraguan migrants to “the production of national wealth” particularly in such economic activities as “export agriculture, construction, and the care of children and senior citizens.” Understanding the presence of these migrants

as “inevitable,” the report stated that their integration was a major challenge to the country’s “inner social cohesion.” Furthermore, the document viewed the presence of Nicaraguan migrants in the country “as an opportunity to improve the sustainability” of the healthcare system:

“If the sons and daughters of this migrant population grow well-educated and healthy in the next decades, they could help to solve the financial pressures produced by the demographic transition that the national population will be undergoing.” (CCSS, 2007a: 22).

Even though the CCSS’s authorities recognized the importance of labour migrants for the national economy or the financial functioning of the healthcare system, the plan did not elaborate any further understanding about the way in which the ‘healthy integration’ of these persons into Costa Rican society will be achieved. The only specific program related to migration designed in the plan was for Costa Rican emigrants living abroad, mainly in the U.S. In fact, the plan harshly criticises those receiving countries that “do not want to offer conditions required to improve the quality of life of vulnerable populations who had to move to other countries” (CCSS, 2007a: 21). In order to protect these citizens, the plan assumed as a goal the provision of a program for emigrants “that would teach them about the use of social insurance” and the impact of “migratory restrictions and controls” on their access to private and public healthcare (CCSS, 2007b: 21).

The poor development of migration issues in the current CCSS policy documents is consistent with past trends. In the 1990s, when the presence of Nicaraguan labour migrants in Costa Rica increased, the institution was embroiled in debates about the

managerial reforms introduced in the health sector. In that decade and the next one, the creation of new EBAS across the country became the main institutional goal. At the same time questions about how to analyse the variety of problems experienced by different communities, and more importantly, how to assess the future impact of the CCSS in the new rural and urban areas were not addressed. In this sense, the old model based on curative medicine could not be replaced for a comprehensive strategy of health promotion (interview: CCSS).

In the interviews conducted in the different Health Regions, the CCSS's representatives stated that they were not aware of the Bi-national Agreement. They were well aware of the presence of migrants in their areas, especially during harvest season, but they did not know if any of these migrants were part of any special labour migration program. In fact, these functionaries did not remember any policy discussions on migration. For them, the only challenge to healthcare provisions was that posed by the presence of undocumented migrants. The following quote summarizes the comments shared on this matter by a number of interviewees:

“Let's see... we cannot introduce any sort of discrimination in the provision of services. Then, we could not develop programs just for Nicaraguans. That would be unfair for the rest of the people. We need to improve our capability to provide services to everyone, no matter if they are women or men, migrants or nationals, or whoever. The problem is that they [Nicaraguans] are not contributing to social security like the rest of us. They should pay an official insurance [one of the CCSS's public insurance programs].” (Interview, CCSS-Health Region)

The tendency to reduce migration issues to the 'illegal' status of these potential patients is consistent with the ignorance about their health conditions, the impact of the arrival of migrant populations in the host communities, or their changing needs and demands in terms of public health. Comments like this one are common:

“[...] there is no clear understanding about the number of foreigners that we have received during the past years. We know that they have been participating in agricultural activities and changing the composition of our towns at the same time. But we can't say anything else. For instance, it is possible that the migratory inflows contribute to inadequate sanitary habits or to the growth in malnutrition. Also, it is possible that in some communities a decline in the provision of basic services like housing and sewage are influencing our general health conditions.”

(Interview, CCSS-Health Region)

Furthermore, in the three Health Regions where my research was conducted epidemiological profiles for migrant populations are absent. The databases managed by the CCSS at the primary level (EBAIS) do not include 'nationality' as one of the variables. And consequently nationality is generally not found in the information used by Hospitals. In these Health Regions just one hospital has information on migrants. For instance, violence and physical traumas are counted among the main causes of death for migrants, while the most common emergency services and patient discharges were related to births, injuries and physical traumas, as well as tumours related to job risks. Even though this healthcare facility maintained migrants' records, the information

available there did not make it possible to analyse health patterns of particular groups like temporary migrants (interview, CCSS-Health Region).<sup>79</sup>

One representative of the CCSS's central office in San José confirmed that the institution did not know about the existence of the BNA. This "kind of thing," the representative stated, "is usually handled by the Ministry of Labour and the Ministry of Health." The lack of policy initiatives directed at Nicaraguan migrants was listed as one of the omissions the CCSS has to address in the short term:

"In the northern region we did not offer special services to meet migrants' needs. For example, we have not implemented screening tests or other medical controls for those persons crossing the border. We do not have, like in Río Sereno, healthcare providers at the border who would check their health conditions [...] In the case of the workers that you are talking about, we visit the employers involved in the program, to collect data in melon or sugar cane plantations, and to know if they are permanent or temporary residents, for example. But we are just initiating these actions with the coffee producers in the south." (Interview, CCSS)

By contrast, Ngöbe-Buglé families arriving from Panama to the Río Sereno, a community located on the southern border of Costa Rica, have received some special healthcare services. Each year, around 10,000 indigenous people from this community are incorporated in coffee production located around the Southern border and the

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<sup>79</sup> According to the interviewee, compared to a hospital the EBASIS have fewer controls overseeing their use of financial resources. For that reason, in communities with an important presence of migrant populations, it becomes necessary to be able to estimate how many medical goods and services are covered by non-contribution insurances, and also how many resources are demanded by "special" communities like migrants.

Central Valley. Along with Panamanian government authorities, functionaries of the CCSS have provided healthcare services for these temporary migrants. For example, on the Panamanian-Costa Rican border physicians and nurses from both countries work together implementing healthcare campaigns and offering basic medical services. During the past four years the CCSS has elaborated databases allowing not only the identification of these workers and their families, but also the documentation of their past and present diseases, as well as the type of vaccines they would need (interview, CCSS).

At least three factors have favoured the incorporation of these temporary migrants into the host healthcare system. First, during the past decade the Costa Rican Ministry of Health improved protections provided to the indigenous populations of the country. Different international instruments and agreements with international organizations have been adopted, and communities like the Ngöbe-Bugle have benefited from them. Second, the relationships between Costa Rica and Panama are good.<sup>80</sup> Compared to the Nicaraguan case, it has been easier for the Costa Rican authorities from the health sector to establish collaboration with Panama. Third, from the beginning the services provided to these migrants have been strongly promoted by key healthcare providers working at the local level. They started their health promotion activities without the support of the national authorities, as a reaction to the high mortality rates experienced by the community, as well as the danger that they represented to the nationals due to the infectious diseases they brought (interview, CCSS).<sup>81</sup>

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<sup>80</sup> In the past years conflicts about the rights to navigate the river San Juan, located at the Costa Rican – Nicaraguan border, has created diplomatic tensions between both countries.

<sup>81</sup> By the time in which this interview was conducted, a special healthcare strategy for indigenous populations was being designed: the *Care Model for Indigenous and Migrant-Indigenous Populations*.



## 6.6 Local health, invisible needs, and temporary migrants

Despite their limitations, primary health policies directed at indigenous and Panamanian temporary migrants demonstrate that initiatives taken by healthcare providers working at the local level could be important. Not only has it been possible to address the needs of this vulnerable population, but health officials were able to learn about the specificity of this group. The current visibility of this issue on the national agenda has been produced by the attention received in the first place by the communities where these indigenous populations reside permanently or temporarily. Is this experience an exception, or could it be replicated in some way in the case of temporary Nicaraguan labour migrants?

It seems that no replication is likely, at least in the Health Regions where my fieldwork was conducted. Even though the communities that were visited were characterized by the significant presence of Nicaraguan labour migrants, the lack of interest towards their needs in general terms replicated the tendencies seen at national and regional levels of policymaking.<sup>82</sup> In the three EBAIS where the fieldwork was conducted the CCSS representatives were unaware of the temporary migrants employed through the BNA. A few formal encounters with migration authorities or the Ministry of Labour officials did not raise the visibility of this program. Furthermore, in the northern region, the communication with Nicaraguan public health authorities located in towns near the border was nil.

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This new care model was launched as part of the policy actions that the CCSS should be developing during 2012. See, CCSS (2011).

<sup>82</sup> The fieldwork for my research was conducted during the peaks of melon, pineapple and sugar cane harvests.

CCSS representatives interviewed in this study knew about the harvest cycles and how the presence of Nicaraguans increased in certain months of the year. However, they did not know that some Nicaraguan workers and their employers participated in the BNA program. Nor were they aware of any problems concerning employers participating in the BNA program. In fact, they did not recall having had any contact with them. Asked if they had conducted studies, health promotion activities, or at least medical control among these farmers or on these plantations, one of the interviewees acknowledged that:

“Our staff, and I am talking of our ATAPS, are not well prepared to conduct medical examinations or to offer special services to agricultural workers, no matter what their nationality is. They lack the epidemiological training required to assess these work environments. Usually, the type of occupational health information that we have gathered has been conducted in closed spaces like factories.” (Interview: CCSS-EBAIS)

When the ATAPS staff goes out to conduct health promotion, they follow the priorities established by the Ministry of Health. They focus on well-known risk areas, or on new communities suffering unexpected epidemic outbreaks. Also, these EBAIS distribute information on appropriate hygienic habits needed to avoid the spread of contagious diseases. In addition, in one of the facilities visited in this study, social workers conducted a study on domestic violence. But again, all these initiatives were designed to benefit all members of the community, regardless of nationality.

On the one hand, it can be argued that this universalistic non-discriminatory approach would benefit migrants because they, like others, receive similar services. The

benefits, as one CCSS representative commented with regards to the control of dengue, “are distributed among all the people, even foreigners, and nobody needs to pay,” because we “are facing the risk of the development of general contagions.” On the other hand, health needs and problems experienced by specific groups of people are not recognized. And therefore there are no specific policies developed for these groups by the healthcare system. Discussing temporary migrants, an interviewee from an EBAIS located in the northern region made the following comment:

“We have an excellent vaccination program – one of the best in Latin America. But we have noticed certain problems with Nicaraguans working here. For example, they come to us, or we go to them, and then we apply the vaccines and give them a card explaining what we prescribed and when they will need the next dose. But some of them never come back, because when the harvest ends here they move to other parts of the country. Or maybe because they do not understand our instructions well, because like you know most of them cannot even read or write. And this problem also affects the children of these workers. In the end, what you have is people moving around the country, and you are not able to determine if they are protected or not against infectious diseases.”

(Interview: CCSS-EBAIS)

These comments constitute an isolated case relying on anecdotal evidence. Asked about the importance of migration issues in their everyday activities, the functionaries from different EBAIS interviewed in this study agreed on one point: it could be useful to pay more attention to migratory status in order to improve the

managerial capabilities of their facilities. The following quote summarized the opinions on this subject:

“[...] to distinguish Nicaraguan migrants from the rest of our insured population could be necessary in order to establish better administrative processes. You could know exactly how much resources you are spending on them. You could establish, for example, that 10% of the expenses on medicines are used by migrants.” (Interview: CCSS-EBAIS)

The functionaries interviewed in this study admitted that in the future it might be possible to develop healthcare models for Nicaraguan labour migrants. But, as the following quote illustrates, these policies would require separate financial resources for their implementation:

“[...] nowadays, as you know, the CCSS can hardly assist us... Also, we the *ticos* [Costa Ricans] do not like the *nicas* [Nicaraguans]. They are treated just in cases of emergency. It is sad but true. If they begin to demand special services, we will be accumulating more problems. And perhaps, who knows, their needs are different. If they could have their own care model like in the south [for the Ngöbe-Bugle indigenous people], they could express themselves better and communicate their problems in another way. They might feel more confident. That would be good not only for them, but for us too. Besides, it would be a great economic help for the CCSS... to create healthcare models paid by other governments and international organizations. In that way, they would not depend on us. Their country should take care of them.” (Interview: CCSS-EBAIS)

According to this logic, even those labour migrants who contribute to public insurance programs –temporary migrants for instance- did not deserve the development of special strategies of protection. As long as “they contribute,” they will receive the same treatment, “as any other normal patient” (interview: CCSS-EBAIS). The introduction of differences in this ‘equalitarian order’ is considered problematic for CCSS-EBAIS officials:

“The nationals are very picky and demanding with regards to our health services. They always wanted to be treated immediately even knowing that we manage waiting lists. They tend to complain a lot. In our waiting rooms you can feel it. Sometimes a Nicaraguan comes early and is treated first. But then you hear comments like ‘what are they doing here or why don’t they leave the country?’ But we do not care about that, because we know that we are not giving them any free service. They also deserve to be treated.” (Interview: CCSS-EBAIS)

In sum, for CCSS-EBAIS officials the only differences that mattered were those between legal and illegal migrants and insured and uninsured patients. The health needs of temporary migrants and other sorts of temporary migrants were irrelevant in the eyes of these local healthcare providers. Just one physician recognized work-related health problems (that would be more characteristic of Nicaraguan agricultural workers):

“Nicaraguan migrants and Costa Ricans come here for the same reasons: diabetes, giving birth, blood pressure, and fevers. The difference is that I have to take care of diseases like malaria or leishmaniasis, things that you would not see in the city. Well, in certain months we have an increase in health problems such

as back pain, poisoning with agrochemicals, or allergies.” (Interview: CCSS-EBAIS)

The fieldwork conducted in the different EBAIS allowed me to ascertain the development of a kind of “medical profiling” depicting health-related behaviour and culture, as well as related risk factors, shared –in theory- by all the Nicaraguan people.<sup>83</sup> According to my interviews, their main common characteristics are their lower economic and educational levels, also expressed in their inability to follow doctor’s advice:

“Nicaraguans are different. They are poor and their education is not the best. As poor people, their culture is different. For example they also will prefer to go to the *sobador* (a community healer) rather than visit us. Once, an agricultural worker fell down, badly, and what did he do? He paid for the *sobador*’s services. But when he saw that the pain did not stop, he came to me. He had two broken ribs... They also prefer to use home-made medicines and herbs brought from Nicaraguan rural markets. That is no good. We need to teach them basic things like the advantages of our modern medicine.” (Interview: CCSS-EBAIS)

Besides, the CCSS representatives of the northern region also highlighted that “the cultures” of Costa Rican and Nicaraguan agricultural workers were different. Nicaraguan men are “more violent,” they suffer from “traumas and psychosis produced by the war,” and most of the time health workers need to treat severe injuries, fractures

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<sup>83</sup> Briggs (2003) used the notion of medical profiling to describe how particular communities are seen as natural targets for particular diseases due their social and symbolic practices, becoming in that way less likely to be cooperative patients, or sanitary citizens.

and amputations, “some of them caused by their work, but others caused by fights” (interview: CCSS-EBAIS).

Other ‘negative’ stereotypes concerning the ‘Nicaraguan culture’ are related to food preparation, water management, leisure, as well as housing and fertility rates. Problems of malnutrition, diarrhoea and parasites suffered by these migrants were attributed to the absence of such habits as hand washing. With respect to leisure, it was mentioned that the celebration of holidays like *La Gritería* tends to increase burns and amputations since Nicaraguans have a “natural affection for firecrackers” (interview: CCSS-EBAIS).<sup>84</sup> Comments on housing were connected to “their particular” overcrowding practices and high fertility rates:

“Their housing habits are particular. First, Nicaraguans arrive alone. Later on, they bring their families. This is one of the most interesting characteristics. When you become aware, you will find overcrowded houses everywhere. The problem is that you start to see weird situations. For example, their promiscuity and their difficulties finding stable couples. Then you see, for example, divorces... and brothers getting married with their sisters in law. Or step-families in which the different kids living together begin to have sexual intercourse. Because for these women it is natural to get pregnant before they reach 20. Then you have sexually transmitted diseases. Or even old men, with adolescent partners.” (Interview: CCSS-EBAIS)

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<sup>84</sup> This is a catholic celebration related to the ‘purest conception of Virgin Mary.’ It takes place each December 8th

Finally, the alleged illegal status of most Nicaraguan migrants was also related to 'illegal' demand for healthcare services. For CCSS/EBAIS officials, regardless of the possession of legal papers, it was necessary "to be cautious." As was commented in one EBAIS, "for every 5 migrants arriving in the country legally, there are 30 arriving illegally," and the "migratory police" have not been able to control this problem.

"[...] I can bet you that these guest workers that you are talking about, at the end of their contracts, they will be freely moving to other parts of the country... and the employers will not do anything because they do not care. They have always brought migrants to work, and they prefer to hire illegal people to avoid the payment of social security insurance. Under these circumstances there is nothing we can do in the CCSS." (Interview: CCSS-EBAIS)

Like illegal 'invisible' migrants, Nicaraguan temporary workers were described as "silent, scattered, and quiet" persons, who came to the country to work and survive. They "do not want to be recognized, they do not want to be seen," and when they use medical services it is "because they really need them, because there is an emergency." Furthermore, in the northern region it was established that these people have "prostituted" the logic of service provision:

"They exchange their documents with each other. For example, I had a man whose height and weight was changed. What we noticed is that he brought his brother's CCSS's ID in order to be treated. In another case, their IDs have expired, and they still came to be treated. There are people who do not know their basic personal information like their last names or their birth dates. So we have learned not to trust them." (Interview: CCSS-EBAIS)



Like the Ministry of Health, the CCSS's functionaries working in healthcare facilities at regional and local levels have not developed operative or epistemological capacities to differentiate temporary migrants from other social groups, and to focus on their health needs. Unlike the case of Panamanian indigenous migrants, Nicaraguans have not been subjected to reparatory actions produced by the recognition and promotion of issues on diversity. Instead, they tend to be assimilated to policy frameworks designed for national citizens. Unless alternative reflexive governance practices are instituted, it is reasonable to expect that their precarious migratory status will be reinforced and reproduced through the configuration of medical profiling which links temporary migrants to risky habits or practices associated with 'illegality.'

## **6.7 Conclusions**

In theory, the historical configuration of the Costa Rican public healthcare system has been based on the principle that persons with access to more resources would provide for the care of less fortunate members of the society. This is the solidarity principle. This ideal not only referred to the access to healthcare, but also to the recognition of different health needs by different social groups. In order to achieve this aim, as the public health authorities argue, it has become necessary to abandon curative care models and strengthen the development of health promotion initiatives and the primary health care strategies.

Yet, this solidarity principle has not yet been applied to Nicaraguan temporary labour migrants. No healthcare initiatives have been designed to meet the particular

needs of these non-citizens whose migratory status is precarious (as seen in Chapter 4) and whose right to be members of the social security field is just partially recognized (as seen in Chapter 5). As my research makes evident, no studies have been conducted in the health sector on labour migrations, and the actions directed by the Ministry of Health have not addressed Nicaraguan migration as a relevant policy concern. In national plans, as well as in the interviews with regional, and local authorities from the Ministry of Health and the CCSS, any references with respect to migration issues are usually reduced to the description of basic demographic indicators identified through the national census, or inaccurate conjectures about the future impact of these population trends on the national communities and the functioning of public healthcare facilities.

In this scenario, the vulnerable conditions experienced by temporary migrants due to their precarious migratory status and partial membership in the social security realm have not been ameliorated. Any re-assessment of their occupational health risks seems condemned to be treated as a minor issue. In fact, most of the participants in my research were unaware of any steps taken by the Costa Rican Ministry of Labour related to the BNA. In addition, despite the importance of this type of labour force in agriculture in several rural areas, no medical inspections or health promotion initiatives were designed and implemented to welcome these workers, or even to treat labour migrants in general terms.

Most importantly, the limits imposed on the solidarity principle with regards to labour migrants do not seem just a matter of the shortage of material resources, lack of formal planning, or problems of redistribution. The treatment of diversity and belonging of Nicaraguan migrants mimics the membership practices and rationales constituted in the social security realm and the nation state. Thus, the politics of incorporation of the

healthcare system is founded on the assimilationist assumption that the needs of Nicaraguan labour migrants are the same as the needs of the general population. Public officials are reluctant to consider policy actions that would target Nicaraguans specifically.

Moreover, regardless of whether temporary migrants have a legal right to reside and work in the country, they are all treated by officials in the health care system as if they are 'illegal' and thus suspicious patients. Thus, the lack of multicultural-oriented paths of belonging with regards to Nicaraguan labour migrants undermines the chances that new appreciations of difference will be introduced and translated into recognition of temporary migrant as both 'legal' human beings and social groups with potentially particular health needs deserving public attention.

In sum, the policymaking process developed at the national, regional and local levels is blind to differences in migrants' health. With its emphasis on "universality," the promotion of health, which should be the main goal of the Costa Rican healthcare system, ignores the significance of diversity in the case of Nicaraguan labour migrants in general terms, and subsequently, ignores the particular needs of those temporary migrants recruited under the BNA.

## Chapter 7

### Conclusions

#### 7.1 The incorporation of temporary migrants into healthcare systems through the prism of citizenship

As explained in the previous chapters, the analysis of the incorporation of migrants into healthcare systems reveals different complexities related to both the types of migrants and the institutional domains under study. Non-citizens, such as legally employed temporary workers, are granted some membership entitlements, such as civil and social rights; yet, they are excluded from others. Overall, this partial membership tends to reproduce vulnerabilities and dynamics of exclusion. Furthermore, even though legally employed temporary workers in host societies are entitled to receive certain benefits, there are institutional contexts where policy makers and service providers tend to ignore the differences between these migrant workers and others migratory groups without such rights, such as 'illegal migrants'. And thus, without a clear understanding of the entitlements that correspond to the status of a legal temporary migrant, policy makers tend to deny them certain benefits.

Drawing on insights from the citizenship and migration literature, this dissertation makes an important contribution to unravelling the complexities involved in the construction of alienage in different institutional settings. More specifically, it illustrates how policy making with respect to certain categories of migrants is a 'messy' process, built on inadequate assumptions, incomplete information, and inaccurate

analyses. The analysis of dynamics of citizenship construction conducted in this research is relevant to understanding the different ways in which political communities and their welfare institutions establish who belongs and who is excluded from membership. In societies where the presence of foreigners has increased, this institutional form has been the main one to articulate responses to inevitable concerns arising about newcomers' belonging. Do migrants really have access to healthcare rights and benefits? If they do, are these rights providing an equal protection to their health needs compared to national citizens? How should the boundaries between different migratory groups and nationals be drawn? These are basic questions, the answers to which are socially configured through the prism of citizenship.

Along these lines, this research studied how the incorporation of those Nicaraguan temporary migrants recruited under the BNA into Costa Rica's healthcare system was influenced by citizenship. Labour and migratory government authorities promoted the agreement as the most important effort in recent decades to address the management of labour migrations; a first step for the development of a comprehensive temporary migration program capable of dealing with the labour shortfalls experienced by the Costa Rican export agricultural sector, to 'organize' migratory flows in a legal way, and to promote at the same time the respect for migrants' rights.

Beyond this rhetoric, the analysis conducted in the previous chapters established a fundamental institutional contradiction underlining the development of the BNA. The agreement established in formal terms that temporary migrants will be entitled to the same rights and benefits enjoyed by any other national worker. But in fact, as seen in Chapter 4, the entitlements of these migrants are based on a precarious migratory status configured around their market price and a non-permanent affiliation to the host society.

As a result, they are slipping through a crack between old public healthcare arrangements designed to protect national citizens and non-mobile populations, and the promotion of neo-liberal contractually oriented practices to assure flexibility for employers requiring a foreign workforce.

My findings show that this institutional contradiction has been shaped through citizenship arrangements configured in three interrelated policy contexts. First, the context of migration policies, where the question of which outsiders are entitled to be guests in the host society is defined. With regards to the BNA, as pointed out above, a precarious kind of status was reproduced. No significant formal changes in the relationship between migrants and the host society were introduced with the agreement, in a scenario traditionally characterized by national modes of membership not prepared to promote and protect the entitlements of labour migrants.

Second, the context of social security policies that in countries like Costa Rica determines the access to medical goods and services through different public insurance regimes. With regards to the BNA, temporary migrants' membership in the social security system was partial, a situation that in the end restricted the benefits they could receive. No special insurance programs were designed to attend to the particular needs of these workers, and their inclusion was tolerated only on the basis of their contribution-base type of affiliation.

Finally, in the context of healthcare policies -encompassing actions designed to assess the health needs and risks faced by different populations- the condition of vulnerability attached to the precarious status and partial membership imposed on temporary migrants through the BNA was not ameliorated through the development of

strategies of healthcare attention directed to them. The health states or risks faced by this population are not subjected to specific evaluations.

The next three sections are dedicated to summarize the main findings for each of these policy contexts. As will be explained later, the opportunities for social justice received by migrants in one policy context directly or indirectly affect the opportunities for social justice that they will receive in the others.

## **7.2 The precarious status of temporary migrants**

Regardless of the presumed benefits that, according to government authorities, the BNA would bring, the migratory status granted to temporary migrants could be categorized as precarious. Initiatives on temporary migration directed to low-skilled workers are basically driven by economic goals. In the realm of labour migrations, these persons constitute the perfect migrant as long as they behave according to the productive requirements of the employers and the economic cycles in which they are involved. The absence of major migration laws and policies oriented to the protection of the labour status of these migrants makes it difficult to conduct processes to ameliorate the 'commodification' that they will be subjected to in host societies. The Costa Rican case follows this pattern. In spite of the importance of labour migrations for its economic growth, the country does not have a national policy on this issue. Besides, the migration laws traditionally enacted have focussed mainly on control and surveillance matters. As a result, most discussions on issues of migrants have focussed on one type of alien, undocumented labour migrants. Other aliens residing and working legally in the country seem to be absent from the mainstream state-directed debates. Furthermore, this

situation has not been challenged yet by the emergence of any kind of post-national mode of membership promoted at the international level.

In this context, the migratory status of these temporary migrants is reproduced not only because their right to reside and work in the host country depends on a third party, namely the employers (as seen in Chapter 2, one of Goldring, Berinstein, and Berhard's indicators of precariousness). More precisely, it is precarious because their membership to the host society was reduced to recruitment and contractual terms set up in the BNA, an instrument shaped around minimum legal requirements needed by employers to legally hire foreign workforce. The essentially contractual character of this migratory status is revealed in four basic elements:

1. The agreement does not allow for an evaluation of the labour contracts of workers in order to adjust them to the national labour codes of Costa Rica and Nicaragua. Thus it is not clear how to protect -quickly and efficiently- this itinerant population when employers violate labour and social security legislation or how to compensate migrants once work permits have expired.
2. Temporary migrants are placed in a disadvantageous position because it is implicitly assumed that each worker will be assigned to a single employer. The BNA's contractual terms set out a clear restriction on the movement of workers to other economic sectors and labour markets.
3. Residence permits depends on work permits approved temporarily. The problem here is that migrants could be subjected to a subordinating effect of deportability triggered by employers. In the BNA it is not clear what could happen in situations when employers fire workers without any reasonable justification. The agreement does not establish parameters to evaluate this situation or to decide if



a case of dismissal of a temporary migrant is or is not fair. Besides, there are no mechanisms set in place to appeal the decision to repatriate the worker.

4. Although employers were assigned a central role in the BNA, their participation was not subjected to any comprehensive selection process. It was apparently sufficient that they maintain clean records of tax and social insurance payments to be able to request temporary migrants. Other characteristics of the future employers such as the development of good practices towards their employees or their preparation in matters of occupational health were not evaluated. Moreover, before the recruitment of temporary migrants no inspection was conducted by the MTSS to verify whether the employers were ensuring good housing and sanitary conditions for their employees.

Under these conditions, the development of the BNA has not introduced significant changes in the relationship established by this host society towards labour migrants in general terms – a relationship that is based on issues like control rather than social integration. The opportunities for social justice experienced by temporary migrants under the BNA were not supported by migration laws and policies capable of disentangling their legal status from the market value of these migrants. But this situation was not translated into a formal denial of social rights. Despite the configuration of this precarious status, temporary migrants had formal access to the same type of public social insurance enjoyed by national salaried citizens –as long as they were entitled to reside and work legally in Costa Rica. In this sense, and using Linda Bosniak's terms, this host society located temporary migrants in an ambivalent or hybrid position that will be explained in the following two sections.

### **7.3 Temporary migrants and the right to be insured: limits of universality**

It is generally assumed that the Costa Rican social security system operates on a universal principle guaranteeing access to public health insurances to almost everyone. But in fact, the membership in this system –required to get access to public health insurance programs- is based on the logic of contribution and non-contribution. Both memberships have not only settled parameters to the extension of health benefits but also principles of social closure. In Costa Rica, the most relevant principles regulating access to the healthcare system are labour status and personal payment capacity; followed by kinship (especially when it is understood as an extension of the rights of salaried and self-employed workers); and finally means-based (established through a means test). In a few categorical cases, the extension of benefits is universalized (children and adolescents, pregnant and battered women, and persons with infectious diseases).

These membership arrangements have been applied to national citizens, and in different moments, they have been used as a means to stratify the access to benefits and to legitimize the exclusion of certain populations from the social security realm. For international migrants, it is necessary to add an extra distributive principle: legal status. Taking this principle into account helps to shed light on one of the most important characteristics of the Costa Rican social security system. At the formal level, its boundaries are designed to be ‘fully’ inclusive with regards to denizens or naturalized foreigners, but just ‘partially’ inclusive, with regards to aliens like the temporary migrants recruited under the BNA.

Even though the agreement entitles these migrants to receive the same kind of public insurance enjoyed by national salaried workers, their labour status is not equally strong. As seen above, their migratory status is precarious. In the realm of social security, this situation is expressed in situations like these:

1. Temporary migrants are not allowed to receive the extra benefits and economic transfers granted to national citizens. They are expected to be productive workers, but then only basic medical attention will be covered (see table 5).
2. Accordingly, medical services they are entitled to receive are granted as long as they are recognized as active workers. For that reason, in cases of work-related disability or long term diseases, these migrants would be unprotected unless they reside and work legally in Costa Rica.
3. Moreover, no joint policies between Costa Rica and Nicaragua have been set protecting the well-being of these mobile workers through long-term monitoring.
4. Unlike other Costa Rican insured citizens, these workers cannot extend their security rights to closest dependant relatives.
5. The time served in Costa Rica and the quotas paid to its social security system are not recognized by the Nicaraguan social security system once migrants return to their home country.
6. Finally, due to the poor state of the Nicaraguan public health care system, as well as employment instability for the return migrants, chances are not high that temporary migrants would have access to public social insurance programs upon their return to Nicaragua.

In sum, regardless of the fact that the Nicaraguan temporary migrants formally share the same type of social insurance, in practice their condition of alienage and precarious migratory status tends to reduce their status to a market-driven conditional privilege as labourers subjected to the employers' needs. Furthermore, government's capacity to oversee the compliance with the national norms in social security matters –as offered in the BNA- is restricted. In this sense, the government authorities have not advanced much in the coordination and implementation of a substantive strategy to protect the entitlements formally granted to these migrants. There is no official data on occupational health for the agricultural sector, and the capacity of the MTSS to conduct inspections is severely restricted due to insufficient financial resources, basic equipment, and inspectors. Meanwhile, other state agencies like the CCSS, seem to reduce the discussions on social security and migrant populations to financial concerns –how many migrants are, and should be, enrolled in the system.

Under these conditions, the politics of belonging directed at temporary migrants did not create exclusionary boundaries due to their contribution-based membership –a condition that also prevented seeing them as a burden for the financial stability of the social security system. On the other hand, this equalitarian protection was just partial compared to that enjoyed by national citizens, and the countries involved in the BNA did not design or apply special assessments on this matter. At least in Costa Rica, public officials did not think it necessary to adjust this logic of extension of entitlements to the social security needs created around the condition of being an alien, in particular with regards to the creation of long term protections. In this case, the opportunities for social justice were limited because policymakers considered it illegitimate to develop 'affirmative actions' for Nicaraguans.

#### **7.4 Temporary migrants and the right to be a patient: limits of solidarity**

As in the case of universality, it is also generally assumed that the configuration of the Costa Rican public health system has been based on the solidarity principle. Following this ideal, it is said that those persons with access to more resources would provide for the care of less fortunate members of the society. According to the current discursive emphasis on health promotion and the recognition of social determinants of health, this health system should be abandoning its previous emphasis on curative models of attention to develop strategies on primary healthcare attention capable of recognizing the needs of different social groups.

But like in the case of the universality principle, it is also necessary to assess whether or not the health policies developed by the Costa Rican healthcare system have been supportive of migrant populations. As seen earlier, the granting of health insurance has been organized around the population's socioeconomic status (labour status, payment capacity, or means-test proof) or economic dependence (kinship). This coverage has responded, in the first place, to general distributive concerns rather than claims on recognition associated with minority groups. In the case of health policies, the minority groups seem to be invisible as well. The main groups targeted in care models designed by health authorities have been categorized according to their age and gender. For them, vaccination programs, strategies promoting lifestyles, as well as initiatives to prevent cardiovascular diseases, or to take care of prenatal and postnatal states have been developed.

For labour migrants, as a social group with particular health problems, no policy initiatives on healthcare have been designed. As my research explains, no official studies have been conducted in the health sector on labour migrations, and the actions directed by the Ministry of Health have not addressed Nicaraguan migration as a relevant policy concern. In national plans, as well as in the interviews with regional, and local authorities from the Ministry of Health and the CCSS, the references with respect to migration issues are usually reduced to the description of basic demographic indicators identified through the national census, or conjectures about the future impact of these population trends on the national communities and the functioning of public healthcare facilities.

Under these conditions, the assessment of illnesses and health risks faced by temporary migrants seems condemned to be treated as a minor issue. Accordingly, despite the importance of this type of labour force in agriculture in several rural areas, no medical inspections or health promotion initiatives were designed and implemented to insure their well-being. In fact, most of the public health authorities working at regional and local levels were unaware of any steps taken by the Costa Rican Ministry of Labour related to the BNA. Distinct from other workers, and regardless of their migratory status, temporary workers were not subject to any special treatment such as screening tests, assessment about how the particular health transition experience in their country of birth has affected their current well-being, or medical evaluations before, during, or after their stay in Costa Rica as guest aliens.

This void of information and interest in temporary migrants' health states has been also 'complemented' with general stigma attached to Nicaraguan labour migrants as a whole. Like the rest of their countrymen and women, temporary migrants from

Nicaragua are seen as suspicious kinds of patients. All of them share a similar medical profile produced by 'cultural' traits that supposedly make them vulnerable to certain diseases. They are portrayed as persons who have problems following modern medical notions on health prevention and attention, and who are not trustworthy insured patients.

In conclusion, temporary migrants' opportunities for social justice are restricted because of the limited reflexive capacities shown by public health authorities to develop policies directed either at labouring populations or temporary migrants. In this policy context, the treatment of issues of diversity in the politics of incorporation in the health sector mimics the practices and rationales constituted in the social security realm and, more broadly, at the level of the nation-state. As a result, the health states of temporary migrants recruited under the BNA have not been problematized yet. Their health needs were assimilated to the general health needs of the rest of the national population. Furthermore, the public officials interviewed for this research were reluctant to promote a multicultural approach to the topic of migrations and translate it into policy actions that would target Nicaraguans specifically.

### **7.5 The Costa Rica-Nicaragua Bi-national Agreement: an opportunity for social justice?**

The dissertation has analysed the incorporation of a particular type of aliens, temporary migrants, into a host political community and one of its main welfare institutions, the healthcare system. Migrants recruited under the BNA have been subjected to particular logics of inclusion and exclusion, not necessarily shared by other

types of labour migrants, or even other categories of aliens. As discussed in chapters 4, 5 and 6, their condition of alienage was constructed in different ways depending on the social scenario on which the analysis was focussed –in this case migration, social security, and healthcare policy contexts.

Taking as a point of departure the different ways in which the condition of alienage was configured in these contexts, it is possible to state that a temporary migration initiative such as the BNA faces important challenges in order to become a cornerstone for the configuration of policies on labour migrations – the stated intention of the Costa Rican government authorities. Once certain productive sectors have identified and established the need for a migrant labour force, it becomes necessary to ask: what kind of benefits will migrants receive in return for their contribution to the host economy? Should these rewards be just monetary, or could they include other benefits? What will they be entitled to? Do temporary migrants have the same capability, compared to the rest of national workers, to take advantage of these rights in the same way?

At least with regards to the BNA, it seems that most of these questions have not received enough attention yet. Using as an example the incorporation of Nicaraguan migrants into the Costa Rican healthcare systems, this research has showed that they were granted a precarious migratory status. Their rights to reside and work legally in the country were contingent upon their economic value. Thus, employment terms and restrictions -that in the case of national citizens would be unfair- were imposed on these workers. In a neoliberal labour market environment, greater state involvement was undermined in order to favour employers' role in the agreement.



Even though the BNA established formal access to the social security system for guest workers, the citizen/alien divide upon which the system has been built, recognized partial membership for these migrants. Unlike citizens, the access to benefits through public insurance was restricted due to their alien condition. Besides, these limitations were not compensated by the design of health policies directed to take care of the potential risks and needs that the temporary hard work in agriculture could produce for labour migrants. Expected to be 'productive' aliens, they nevertheless lose the right to medical coverage once their residence and work permits expire.

Today's societies are not characterized by the homogeneity 'of the people.' In contexts with an important presence of migrant populations, complex tensions between institutional dynamics of inclusion and exclusion, as well as new forms of social closure and stratification, are arising and deserve our attention. As argued earlier, Nicaraguan temporary migrants are slipping through a crack between the traditional architecture of welfare institutions. Two of the most appreciated characteristics of these migrants in domestic labour markets -- their commodity value and temporary affiliation -- undermine their capacity to take advantage of policy contexts designed to function synchronically with sovereign territories composed of populations who are not transnationally mobile.

Finally, to analyse the BNA through the lens of citizenship contributes to our ability to understand that these kinds of political initiative are not exempt from imposing inferior statuses upon labour migrants. Beyond the official rhetoric that portrayed this agreement as a means to improve the recognition of rights for migrant populations, analyzing this labour migration arrangement using categories such as membership and alienage reveals particular dynamics of inequality in which the incorporation of

migrants to different institutional spaces was attached to patterns of civic stratification, partial forms of memberships and the extension of rights and benefits. Such an analysis also calls into question assimilation processes in which the needs of migrants were not differentiated from the regular needs of the rest of the national population. For the study of complex social subjects such as migrants, citizenship-oriented analytical approaches are well suited to re-articulate and reformulate traditional frameworks for social policies focussed either on redistributive or recognition concerns in relation to social justice.

To reside in Costa Rica, at least temporarily, defines not only Nicaraguans' opportunity to earn an honest living. It also defines their access, maybe for the first time in their lives, to welfare protections designed to reduce risks and insecurities, to receive support from those fortunate members of the society who have accepted them as guests and to be cared for in times of illness or unemployment. To make visible the presence of groups and persons exposed to vulnerable situations anchored in precarious migratory statuses, and how these conditions are tied to actions that in theory should reduce their vulnerability, has been one of the general purposes guiding this research.

Even though Costa Rican society should improve the treatment of labour migrants, nothing has been written in this matter. As an institutional form configured around concrete politics of incorporation, citizenship related statuses and rights should not be evaluated as static entities, but practices that could be eventually negotiated, reversed, or reconfigured over time.

## 7.6 Policy recommendations

How should policy analysis respond to changing scenarios like those produced by migratory flows? Often the policy process takes place in fragmented institutional contexts, where there are no adequate rules and norms according to which politics guarantee the well-being of distinct social groups, and where policy measures are to be agreed upon. The development of the Costa Rica-Nicaragua Bi-national Agreement could be taken as a good example of an initiative on temporary migrations where major policy contexts in the host country require modification or adjustment in order to enhance the protection of migrants. Otherwise, the BNA and future similar official actions on labour migrations will remain merely dry and economically-driven procedures to recruit a foreign labour force.

In order for BNA-covered migrant workers to have their access to healthcare legitimately granted and respected, government authorities would need to configure a special policy of co-ordinated monitoring. The solutions required for policy problems regarding mobile populations need to transgress the sovereignty and membership boundaries of specific political communities and welfare institutions. In this sense, the analysis conducted in this research allowed for the identification of two general concerns deserving attention: one related to operative state capacities, and the other related to reflexive governance.

In operative terms, the BNA was called initially by the Costa Rican and Nicaraguan governments to 'manage' labour migrations in an 'ordered' way. To reach this objective, the sending and receiving countries were to develop collaborative strategies according to the rules of recruitment established under the agreement. Rather

than a bilateral agreement, this temporary migrant initiative has relied on the 'good will' of the host country, its financial resources, and its human resources. In this sense, it is necessary to develop a common strategy to evaluate the performance of the MTSS and the DGME on this matter, and to summarize practical experiences and suggestions arising from the first years of implementation of the agreement.

The lack of collaborative actions with regards to temporary migrants has been echoed in the public health sector too. At least on the Costa Rican side, the BNA remains practically unknown. Public health functionaries need to be informed about this initiative, especially in host local communities with an important presence of guest workers, and also in the Nicaraguan communities where they will return to once their work permits are terminated. Currently, temporary migrants are going back and forth between Costa Rica and Nicaragua, and nobody is subjected to particular medical screenings or tests assessing their short- and long-term well-being. The design of bilateral social security protections and insurances is an option that should be assessed by these countries.

Another relevant operative concern is related to material and economic restrictions experienced in the MTSS. Before and after the development of the BNA, the poor financial resources directed to the Department of Labour Migrations remained the same. Even the administrative staff in charge of recommending workforce quotas and checking all the applications of individual workers, did not increase in order to handle the arrival of temporary migrants. The MTSS, in charge of the development of Costa Rican labour policies, needs to be able to improve its bureaucratic processes and also to conduct specialized studies on labour migrations and the dynamics of labour shortages,

in order to promote access to legal temporary migrant labour forces for different agricultural producers.

On the other hand, the DGME and the MTSS are supposed to establish proper accountability over the practices of those employers involved in the agreement, to oversee and ensure due respect to workers' labour and social security entitlements, as well as to develop clear arrangements for repatriation or readmission, and controls to detect related practices created outside the BNA. The lack of transparency on these matters helps to produce precarious migratory statuses for aliens.

Even though these operative problems can be overcome, this research also identified another type of problem that could undermine policies capable of promoting dynamics of social integration for temporary migrants. At the moment of its enactment in 2007, the idea of the BNA was 'sold' without major troubles among different private and public actors in Costa Rica. As in other high-income countries hosting temporary migrant programs, the rhetoric about labour migrants allows for the recognition of the contribution of this labour force to agricultural sector productivity. But what has not been recognized yet is some basic epistemological challenges for the design and implementation of policy initiatives involving aliens. These epistemological challenges are associated with the current reflexive capacities shown by public functionaries in the three policy contexts studied (migration, social security, and health), which involve their access to information, in the first place, and also a critical understanding of their practices with regards to the construction of policy problems.

As pointed out earlier, the DGME and the MTSS have not developed yet a unified and reliable database encompassing basic demographic information about temporary migrants. This lack of information makes it impossible to identify exactly

those arriving and going back home during each agricultural season, or eventually, the temporary migrants who decided to reside permanently in Costa Rica under an 'illegal' migratory status. Thus, the implementation of the BNA has not been complemented with the production of different social indicators for temporary migrants.

As seen in Chapters 5 and 6, this problem is not isolated to one state sector. In welfare institutions such as the Ministry of Health, INS, and CCSS, this void of information about labour migrant populations in general is constantly reproduced. There are no categories established in data collection mechanism that would generate a differentiated understanding of social groups assigned to different migratory statuses (naturalized citizen, denizen, and alien) and related administrative categories (temporary migrant, permanent resident, asylum seekers, among others). The public health authorities consulted in this research at national, regional, and local levels, stated that any strategy to assess the epidemiological profiles of these migrants was impossible. Besides, no common labour migration program between Costa Rica and Nicaragua has been designed.

In this sense, it will be necessary to advance in the development of methods and techniques capable of distinguishing or comparing the health states of documented temporary migrants with other social groups, or to assess their evolution across time, or across generations of migrant populations. Obviously, the enhancement of these governments' epistemological capacities will be required to guide the improvement of operative state capacities mentioned previously. Without this reflexive government effort informed discussions and analyses on the needs of different migratory populations, including the workers recruited under the BNA, will be difficult.

A reconfigured epistemological framework could also lay the foundations for a rich and critical discussion on social justice issues. Policy makers should be more conscious about the effects that the citizen/alien divide has on the extension of public health entitlements and benefits for temporary migrants. Under the current normative parameters, an old inclusive notion of universalism and solidarity conceived for national citizens has acquired new and exclusive implications by virtue of being applied in a wholly distinct scenario, one characterized by a neo-liberal orientation that was not present in the past. Citizenship arrangements that in the past were useful to protect national workers are creating dynamics of inequality for labour migrants.

Judging by the opinions collected in the interviews conducted with public health authorities in this research, the Costa Rican government is far from addressing the need for this kind of critical assessment. For these persons, the creation of health insurance and health promotion programs for temporary migrants is discounted on the grounds that these actions will violate the principle of universalism by giving 'special privileges' to a particular group and so, by extension, violate the principle of solidarity as well. The functionaries felt that migrants deserved to access health services as long as they contributed financially to the social security system. Thus, a phrase constantly repeated among my research participants was that as long as temporary migrants paid their premiums, they had a right to be treated on equal terms. But when asked about the de facto partial extension of membership and benefits granted to these guest workers, and how this can contribute to the migrants' vulnerability, my participants' acceptance of migrants' right to equality seemed limited.

Thus, temporary labour migrants are assessed in terms of their economic contribution to welfare institutions, as well as their competence and responsibility as

'guest citizens.' For these public officials, as long as migrants were not acting illegally, the healthcare system had to welcome them as patients. But, at the same time for these public officials temporary migrants seemed not to have the right to complain about their membership status, or to request the introduction of changes to improve the way in which their health needs are attended. In earlier periods, if the Costa Rican social security and healthcare systems had followed this rationale, the social rights of different groups such as rural workers, non-salaried women, or poor families, would have remained unprotected.

To conclude, the precarious migratory status of Nicaraguan temporary migrants was not only produced by their official 'invisibility.' It was also the result of social relationships marked by different levels of uncertainty about the proper hierarchical relationships that host societies and welfare institutions should establish with this particular type of alien, and an adequate assessment about the vulnerability that they could experience despite their formal temporary right to reside and work in Costa Rica. A final question arises: are temporary migrant initiatives provided with an adequate institutional base for a true recognition of social rights for these labour migrants?



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## **Vita Auctoris**

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