

Nicaraguan Immigration to Costa Rica: Tendencies, Policies, and Politics

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Like migration from Haiti, Bolivia, and Guatemala to the Dominican Republic, Argentina, and Mexico, respectively, Nicaraguan migration to Costa Rica is a major case of South-to-South migration in Latin America. It takes place in Central America, a region where migration—both intraregional and extraregional—is a structural dimension of everyday life. Demographers estimate that between 12 and 14 percent of Central Americans live in a country different from their country of birth. Military conflicts, economic inequalities, and, more recently, violence are among the main factors that expel Central Americans from their countries of birth (Sandoval 2015).

Although the 2011 census confirms that Nicaraguan migration to Costa Rica shows a slow decrease (about 6 percent of the total Costa Rican population), discrimination continues to be an everyday experience for Nicaraguans in Costa Rica (Bonilla and Sandoval 2014). Imagineries of immigration, most of them derogatory, are evident in conversations, emails, and digital social networks, and expressions such as “No sea nica” (Don’t be *nica*) or “Parecés de La Carpio” (You seem to come from La Carpio—an impoverished and criminalized community where about half of the population is from Nicaragua) inscribe hostility in everyday life.

Paradoxically, although Nicaraguans are seen as threatening “others,” they are indispensable to neoliberal economic development. The agriculture-based economy that produces new commodities like watermelons, oranges, melons, and mangoes, as well as the traditional coffee and bananas, depends on Nicaraguan men and women. Production and processing of the traditional and new tropical fruits that Costa Rica exports to the world are in the hands of migrants. The case of the

construction sector is similar, since Nicaraguans have become indispensable for building the infrastructure that has made the tourist boom possible, especially in the Pacific coastal region.

The popular representation of Nicaraguans as violent and lawless conflicts with the roles some of them play in tempering the insecurity that is often considered Costa Rica’s main social problem. Private security companies often recruit Nicaraguan guards to protect property, and Nicaraguan women perform a great deal of (badly) paid domestic work, in particular caring for Costa Rica’s middle-class children and elderly people. Nicaraguan domestic workers, construction workers, and private security guards generally live in highly criminalized neighborhoods or shantytowns. Ironically, those who live in such settings are responsible for the production and reproduction of life in the respected neighborhoods, which include gated communities.

Unfortunately, neither academic research nor NGOs have been able to estimate the economic contribution of Nicaraguans in terms, for example, of the Gross Internal Product. The erasure of migrants’ economic contributions might be due to their absence from the media and everyday conversations. Lack of recognition of the Nicaraguan community renders migrants invisible and erases their economic contributions from the public imagination. Instead, the media frame most discussions in terms of the economic costs of migrants. Prevailing discourses denote Nicaraguan immigration as a “cost” and a drain upon resources, paying scant attention to its contribution in a number of key economic activities. In short, as Sousa Santos (2009) notes, absences, such as Nicaraguans’ contribution to the Costa Rica economy, make it even more difficult to acknowledge

how much Costa Rican society depends on the migrant labor force.

Immigration Law Produces Irregularity

In July 2009, Costa Rica's Legislative Assembly passed the current General Law of Migration and Alien Affairs (No. 8,764), which went into effect in March 2010 (Asamblea Legislativa de la República 2009). In general, this law eliminates a good part of the vocabulary linked to security that abounded in the earlier law, replacing it with the discourse of human rights and alluding to multiple international agreements ratified and in effect in Costa Rica. The human rights frame bestowed important legitimacy upon the new law. The new law combines this framing with specific provisions that make the regularization of the migratory process even more cumbersome and grants powers—such as to extend detentions for more than 24 hours—to the executive branch that, according to the Constitution, properly belong to the judicial branch.

Participation in the public social security system is one of the new requirements for a migrant beginning the regularization process (articles 7.7, 78.3, and 97). A consequence of this new requirement is that the responsibility for securing insurance falls on the workers, not their employers. The law also establishes a series of payments to extend or otherwise change migratory status. For example, persons categorized as tourists must pay US\$100 to prolong their stay in the country (article 90). Those wishing to change their migratory category must, in addition to meeting the requirements to obtain the new status, pay US\$200 (articles 96 and 125) unless they leave the country to reenter on a visa, in which case they must begin

residency proceedings again, which costs US\$30.

High costs impede regularization of status. In fact, one of the grounds for canceling a person's permanent residency is failure to renew documentation within three months of its expiry date (article 129.10). To this must be added that for every month of irregular status in Costa Rican territory, one must pay a US\$100 fine or, "by default, the person's entry will be prohibited for a period equivalent to triple the time of his/her irregular residence" (article 33.3). The insurance requirement, added to the severity of the fines, has increased undocumented. A report on regularization requests presented to the General Direction of Migration and Alien Affairs (DGME) reveals that there was a decrease of almost 50 percent in new permanent visa applications between 2010 and 2011 (Press Conference 2012). In other words, the law's promise of regularization is far from being fulfilled.

In 2013, the government agreed to postpone the application of the fine of US\$100 for each month that a person failed to renew her resident visa. A year later, however, the likelihood of these fines was again a matter of concern. Advocacy efforts took place in a new political context because, for the first time in modern Costa Rican history, a nontraditional political party, Partido Acción Ciudadana (PAC), won the presidential election. It was a major surprise because, a year before, no one had envisioned such a possibility.

The PAC began its term with huge electoral support and a wide variety of expectations, including the possibility of changing migration policies. However, no major changes took place during the first months of the new government. The director of the DGME remains the same, and the fines,

postponed by the last government, went into effect in August 2014.

When Retaining Rights Is a Challenge

An estimation based mainly on community work might suggest that about one-third of Nicaraguan migrants do not have regular status in Costa Rica. Most of them, about two-thirds, have the requirements for applying for a residence, which are to have a child born in Costa Rica or being the partner of a resident or a Costa Rican. However, most migrants with irregular status do not have the money for all the paperwork in the application process. Those with irregular migrant status are primarily women and children. Men are most often the first within families to seek to regularize their migrant status because they must look for jobs. Women heads of households who are responsible for children usually cannot afford the payment for the residency application.

Children without residency may study in state education institutions, and they have access to health care, but they need to show a valid identification document, either a passport or an identity card provided by the Nicaraguan consulate. Women face more restrictions. If they are in an irregular status, they cannot access health care, including essential preventive tests such as cervical cancer screening. Additionally, they do not have access to contraception, which means they usually give birth to more children than they wished to have.

In 2013, the Caja Costarricense de Seguro Social (CCSS) drafted a mandatory resolution stating that pregnant women with irregular migration status would not have routine access to health care. The document stated, "Pregnant women with an irregular migratory status only may

access health care in case of emergencies” (CCSS 2012). In effect, undocumented migrant women would not have access to pre- and postnatal care. Such a decision had been under consideration for a number of months, but it was available soon before it was going to be made public. The ombudsman of that time, Ms. Ofelia Taitelbaum, agreed to meet with representatives of universities, NGOs, and religious networks to discuss the matter. She was familiar with details of the issue and quoted correspondence (Defensoría de los Habitantes 2013a) in which the ombudsman requested criteria from the CCSS’s Legal Department.

Two mid-level authorities at the CCSS—the State Coverage Department and the Legal Department—had different views. Correspondence written by the Legal Department quotes references from 1999 confirming that access to health care by women with an irregular migratory status has been highly contested. While the State Coverage Department aimed to stop their access to health care, the Legal Department insisted that providing service was compulsory. After summarizing a number of mandatory resolutions regarding access to care, the main conclusion from CCSS’s Legal Department was that pregnant women (Costa Ricans or not) must receive prenatal and postnatal health services. The recommendation also established that the Costa Rican State must bear the costs (CCSS 2013a; CCSS 2013b). Once they give birth, however, women with irregular migratory status are unable to use the public health system for health services, and the risk of having more unwanted children returns. To my knowledge, this is the most radical decision limiting migrants’ access to public health services.

The association Merienda y Zapatos (Snacks and Shoes), of which I am

cofounder, works with children and youth who run the risk of being expelled from formal education. The association’s experience makes clear that migrant children’s access to technical education is also a contested issue.

The Instituto Nacional de Aprendizaje (INA) is an autonomous public institution that provides free applied technical education with the goal of increasing the possibilities of getting paid, formal work. For many years, the INA accepted applicants who did not have regular migratory status, but its entry requirements changed to disqualify youths with irregular migratory status. According to INA’s official position, the change reflected the guidelines provided by the DGME toward the end of the 1990s. The deputy technical president of INA explained in a letter why youths without residency could not gain entry to the institution. The letter cites “legal security,” which was understood to require following immigration legislation, which cannot be transgressed (INA 2012). It means that foreign youths must hold legal residency before they may obtain a place at INA. In another letter, signed in 2013, the technical director (INA 2013) appeals to the “principle of legality,” which signifies the mandatory rule to follow positive law.

The ombudsman agreed that rejecting migrants’ access to both health care and technical education infringed upon fundamental rights, and urged the staff at the Ombudsman’s Office to speed up the procedures in order to protect these fundamental rights. This was especially relevant because the director of childhood at the Ombudsman’s Office knew of the INA case and had scarcely advanced a single initiative. The ombudsman arranged a meeting that brought together INA’s executive president, the director of the

DGME, and members of grassroots organizations who have been promoting the case (DH 2013b). The call from the ombudsman received media attention from *La Nación*, the newspaper of record in Costa Rica, which demanded attention by INA authorities (Ross A. 2013).

In response, INA established a working committee to draft a resolution on the problem, which was signed by the ombudsman, the director of DGME, and INA’s executive president at the beginning of May 2014. This case confirms how reactive institutions are when it comes to recognizing rights in practical terms. The establishment of formal rights, in this case spelled out in the Código de la Niñez y la Adolescencia, does not guarantee their application. INA did not develop a strategy to make the change in admission policies visible among the migrant community policies.

Overall, advocacy related to the CCSS and INA uses possibilities made available by the state to reclaim rights that state institutions do not recognize as such. Advocates face the challenge of criticizing existing institutional procedures while they use the very same procedures to argue for recognition of migrants’ rights. Note that these cases do not aim to gain new rights but to preserve existing ones. In this context, the liberal state, often criticized for its identification with the views and interests of the powerful classes, must now justify policies that attempt to erode rights that have never been universal.

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