



Institutional and Legal Migratory Framework of the Republic of Costa Rica: A Working Paper

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As part of its project on regional migration systems and capacities, the Migration Policy Institute (MPI) developed country profiles for six countries (Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Panama). These working papers were preparatory for the final report MPI published in April 2021, *Laying the Foundation for Regional Cooperation: Migration Policy and Institutional Capacity in Mexico and Central America* by Andrew Selee, Ariel G. Ruiz Soto, Andrea Tanco, Luis Argueta, and Jessica Bolter. The full report and other country profiles can be found here: www.migrationpolicy.org/research/regional-cooperation-migration-capacity-mexico-central-america.

I. Institutional Framework

The Costa Rican immigration system is the set of state institutions that oversee the entry and exit of migrants, regulation of nationals and foreigners, as well as the transit, stay, and permanence of foreigners in national territory under different immigration categories.

This system is comprised of the National Migration Council, the General Directorate of Migration and Foreigners,¹ the Administrative Tribunal for Migration, the Professional Migration Police, and the Unit of Refugee, Consular, and Restricted Visas, including the Restricted Visas and Refugee Commission.

- **The National Migration Council** (*Consejo Nacional de Migración*, NMC) is the advisory body to the President, the Ministry of the Interior and Police, and the General Directorate of Migration and Foreigners. This institution provides recommendations on immigration policy, measures and actions for its implementation, as well as modifications to existent immigration law. This Council is composed of:²
 - Minister, Ministry of the Interior and Police.
 - Minister, Ministry of Foreign Affairs and Worship.
 - Minister, Ministry of Labor and Social Security.
 - Minister, Ministry of National Planning and Economic Policy.
 - Minister, Ministry of Health.
 - Minister, Ministry of Education.
 - Director, General Directorate of Migration and Foreigners.
 - Executive President of the Costa Rican Institute of Tourism.
 - Executive President of the Costa Rican Social Security Fund or two representatives of civil society organizations related to migration issues, appointed by the Ombudsman's Office.

¹ Article 13, section 16 of Costa Rica's Migration Law, *Ley General de Migración y Extranjería* (2009).

² Article 11, section 1 of the Migration Law.

The NMC is responsible for developing Costa Rica's comprehensive migration policy and is responsible for creating synergies to accompany the implementation and monitoring of policy, through ordinary and extraordinary sessions.

- **The General Directorate of Migration and Foreigners** (*Dirección General de Migración y Extranjería*) is responsible for the implementation of migration policy,³ and is an autonomous agency associated with the Ministry of the Interior and Police, responding to the Vice Ministry of Migration and Public Security.

Among its main duties, the Directorate authorizes, denies, prevents, and supervises the entry, stay, and legal exit of foreign persons in the country.⁴ Likewise, its duties include declaring illegal entry or stay of foreigners in the country,⁵ canceling their stay, ordering the deportation of foreigners, and executing deportation orders.⁶ On the other hand, the Directorate is also responsible for the authorization or closure of immigration stations for entering and exiting the country,⁷ as well as the authorization or closure of detention centers for foreigners subject to deportation from the national territory.⁸

Furthermore, the General Directorate of Migration and Foreigners includes the **Unit of Refugee, Consular, and Restricted Visas**, which consists of the Visa Subcommittee and the Refugee Subcommittee, which provide technical and administrative support to the Restricted Visa and Refugee Commission. **The Refugee Subcommittee** is in charge of receiving and processing asylum applications. **The Visas and Refugee Commission (or Refugee Commission)** is the body in charge of adjudicating asylum applications. The Commission is made up of the Minister of Labor and Social Security or their representative, the Minister of the Interior, Police and Public Security or their representative, or the Minister of Foreign Affairs and Worship or their representative.

- **The Professional Migration Police** (*Policía Profesional de Migración y Extranjería*) is a specialized public police force dependent on the General Directorate of Migration and Foreigners that controls and monitors the entry or exit of nationals and foreigners to the country as well as the presence and activities carried out by foreigners.⁹ The Police is in charge of the denial of entry, deportation, and expulsion of foreigners.¹⁰ This force also apprehends foreigners for the purpose of verifying their immigration status¹¹ and transfers them to a detention center when deportation or expulsion¹² is processed or executed.
- **The Administrative Tribunal for Migration** (*Tribunal Administrativo Migratorio*) is an autonomous body associated with the Ministry of the Interior and Police. It studies and

³ Article 12 and article 13, section 13 of the Migration Law.

⁴ Article 13, sections 1, 2, 6, and 9 of the Migration Law.

⁵ Article 13, section 16 of the Migration Law.

⁶ Article 13, section 18 of the Migration Law.

⁷ Article 13, section 22 of the Migration Law.

⁸ Article 13, section 31 of the Migration Law.

⁹ Article 15 and article 18, sections 2, 5, 18, and 21 of the Migration Law; Article 29 of the General Police Law, *Ley General de Policía* (1994).

¹⁰ Article 18, section 4 of the Migration Law.

¹¹ Article 18, section 12 of the Migration Law.

¹² Article 18, section 13 of the Migration Law.

resolves the appeals filed against the final decisions issued by the General Directorate of Migration and Foreigners on migratory matters,¹³ and against the final resolutions issued by the Restricted Visas and Refugee Commission on refugee matters. Its decisions exhaust administrative remedies.¹⁴ It has three permanent judges and three substitutes in case of absence, impediment, challenge, or excuse of the permanent judges.

2. Legal Framework

For detailed information on the existing legislation on immigration, please refer to the Spanish version.

3. Migratory Categories and Adjustment Processes

Migratory categories are divided as follows:

- Permanent residents;¹⁵
- Temporary residents;¹⁶
- Non-resident person;¹⁷
- Special categories,¹⁸ which include:
 - Cross-border workers,¹⁹ temporary workers,²⁰ specific-occupation workers, and workers linked to specific projects and projects of public interest;
 - Business visitors, transfer staff within the same company, self-employed workers;²¹
 - Students, researchers, teachers, and volunteers;²²
 - Special guests of the state, those that for reasons of public security are considered relevant by the Ministry of Security, plaintiffs, witnesses;²³
 - Artists, athletes, and members of public shows;²⁴
 - Refugees,²⁵ asylum/refuge seekers,²⁶ stateless persons,²⁷ victims of human trafficking,²⁸ and others deemed appropriate for entry for humanitarian reasons by the General Directorate of Migration and Foreigners.

¹³ Article 29 and article 13, section 28 of the Migration Law; Article 276 of the Migration Control Regulation, *Reglamento de Control Migratorio* (2011).

¹⁴ Article 25 of the Migration Law.

¹⁵ Articles 77 and 78 of the Migration Law.

¹⁶ Articles 79 to 86 of the Migration Law.

¹⁷ Articles 87 to 92 of the Migration Law.

¹⁸ Article 94 of the Migration Law.

¹⁹ Article 94, section 1 and article 97 of the Migration Law.

²⁰ Articles 98 and 99 of the Migration Law.

²¹ Articles 100 and 101 of the Migration Law.

²² Articles 102 to 105 of the Migration Law.

²³ Article 94, section 5 of the Migration Law.

²⁴ Article 94, section 6 of the Migration Law.

²⁵ Article 94, section 7 and Articles 106 to 108 of the Migration Law.

²⁶ Article 41 of the Migration Law.

²⁷ Article 94, section 9 and Articles 109 to 110 of the Migration Law.

²⁸ Article 94, section 10 of the Migration Law.

The General Directorate of Migration and Foreigners approves changes in migratory categories and subcategories, grants extensions of stay,²⁹ and issues immigration documents to nationals and foreigners.³⁰ It also promotes the integration of migrants into Costa Rican society and the integration of Costa Ricans living abroad.³¹

4. Humanitarian Protection

For individuals who are considered vulnerable populations, such as refugees, minors, women and/or those in any other urgent or humanitarian migratory situation, Costa Rica has a team for special migratory situations and an Action Protocol for Special Situations that began in 2015.³²

A. Refugee Protection³³

The Refugee Subcommittee of the Unit of Refugee, Consular, and Restricted Visas is the central office in charge of refugee procedures,³⁴ and it is also responsible for providing specialized technical support to the Restricted Visas and Refugee Commission.³⁵

A refugee may exercise any type of remunerated or lucrative work activity, whether as a dependent³⁶ or independently, and may apply for permanent residence.³⁷ Administrative or criminal proceedings that were initiated for reasons of irregular entry will be canceled if the committed offenses are justified by the causes that determined the recognition of a refugee's status.³⁸

Family unity is an essential right of refugees. Consequently, refugee status will also be recognized for the primary nuclear family and to other dependent relatives within the first degree of consanguinity or kinship.³⁹

Three years after the refugee, asylee, or stateless status has been recognized, the General Directorate, upon request, will authorize an immigration category change to the category of permanent resident, provided that the applicant meets the requirements established in the law.

Refugees, asylees, or stateless persons will be exempt from the costs associated with changing

²⁹ Article 13, section 15 of the Migration Law.

³⁰ Article 13, section 23 of the Migration Law.

³¹ Article 13, section 30 of the Migration Law.

³² Dirección General de Migración y Extranjería, "Protocolo de Actuación para Situaciones Migratorias Especiales," published in 2015.

³³ According to Article 106 of the Migration Law and Article 5 of the Migration Regulation: A refugee is the person who, owing to well- founded fear of being persecuted for reasons of race, religion, nationality, gender membership in a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.

³⁴ Article 119 of the Refugee Regulation, *Reglamento de Personales Refugiadas* (2011).

³⁵ Article 118 of the Refugee Regulation.

³⁶ Article 108 of the Migration Law.

³⁷ Article 83 of the Refugee Regulation.

³⁸ Article 137 of the Refugee Regulation.

³⁹ Article 106 of the Migration Law; Articles 63 to 65 of the Refugee Regulation.

migratory category, as well as from the guaranteed deposit payment. Such change does not imply the resignation of an individual's refugee status, unless this is explicitly stated.⁴⁰

When a refugee has committed a crime, a war crime, or a crime against humanity, or has carried out acts contrary to the purposes and principles of the United Nations,⁴¹ the General Directorate shall revoke their status. Moreover, the cancellation of the condition is appropriate when the applicant concealed or falsified the facts on which they based their request in such a way that, if the facts had been known, it would have led to the denial of refugee status.⁴²

B. Asylum⁴³

Every foreign person has the right to seek and receive asylum, if the claim is found valid, within national territory, in accordance with the international conventions that have been signed and ratified by the country.⁴⁴

The Ministry of Foreign Affairs and Worship will be responsible for conducting an investigation of each asylum application, which will determine the urgent circumstances behind the application and verify that they adhere to the conditions established in the international instruments on this matter. Once the investigation is concluded, the Ministry will issue a recommendation to the President of the Republic, granting or denying the status.⁴⁵

Once asylum is granted, the General Directorate must provide the asylum seeker with documentation that enables them to exercise any type of paid employment, either dependent or on their own.⁴⁶

Three years after the status of asylum has been recognized, the General Directorate, upon request, will authorize the change in migratory category to the category of permanent resident.⁴⁷

C. Statelessness⁴⁸

The Ministry of Foreign Affairs and Worship must resolve the recognition, denial, exclusion, cessation, and revocation of the condition of statelessness and support before the General Directorate of Migration and Foreigners the issuance of provisional identity documentation for the

⁴⁰ Articles 126, 18, and 123 of the Migration Law.

⁴¹ Article 114 of the Migration Law.

⁴² Article 36 of the Refugee Regulation.

⁴³ According to Article 109 of the Migration Law and Article 5 of the Migration Regulation: Asylum is the protection of a foreign-born person with the objective of protecting his/her life, liberty, or personal integrity, due to persecution for political motives or other reasons defined by the international agreements and treaties on human rights and those ratified by the government of Costa Rica. There are two types of asylum: 1) Diplomatic Asylum, which is given at diplomatic missions and on official ships and airplanes of the government of Costa Rica, to those who have been persecuted for political motivations or political crimes; 2) Territorial Asylum, which is granted to those who are persecuted for political reasons and political crimes, defined by the agreements, which is granted within Costa Rican territory.

⁴⁴ Article 31, section 8 of the Migration Law.

⁴⁵ Article 112 of the Migration Law.

⁴⁶ Article 16 of the Refugee Regulation; Article 113 of the Migration Law.

⁴⁷ Article 126 of the Migration Law.

⁴⁸ A person is considered stateless if no State assumes that person as a national of its country according to its laws.

applicant, as well as definitive identity documentation for the stateless person and their corresponding families.⁴⁹ The Legal Directorate of the Ministry of Foreign Affairs is in charge of the procedure, from the request to the recommended declaration.⁵⁰

The recognition of statelessness generates the right of definitive permanence.⁵¹

D. Victims of Human Trafficking⁵²

The definition and procedure regarding this category is found in the Law against Human Trafficking and the Creation of the National Coalition against Illicit Migrant Smuggling and Human Trafficking (*Coalición Nacional Contra el Tráfico Ilícito de Migrantes y la Trata de Personas*, CONATT).

5. Implementation and Compliance with the Legal Migratory Framework

A. Types of Return, Fines and Re-entry Prohibitions

- **Repatriation** is considered to be the facilitated return to the country of nationality or residence of an individual on a voluntary basis without undue or unjustified delay and taking the person's safety into account.⁵³
- **Assisted voluntary return** refers to the return, with logistical and financial support, of applicants for refugee status, migrants who were victims of human trafficking, qualified nationals, and other migrants who are unable or unwilling to remain in the host country, and who voluntarily want to return to their country of origin.⁵⁴
- **Deportation** is the act ordered by the General Directorate for the removal from national territory of any foreign person who falls under the following categories:
 - Has entered the country clandestinely or without complying with the rules that regulate entry or stay;
 - Has obtained entry or permanence in the country, by means of declarations or presentation of visas or documents that have been declared false or altered;
 - Has an extended stay in the country, once the authorized term has expired;

⁴⁹ Article 7 of the Statelessness Determination Regulation, *Reglamento para la Declaratoria de la Condición de Persona Apátrida* (2016).

⁵⁰ Article 5 of the Statelessness Determination Regulation.

⁵¹ Article 95 of the Migration Law.

⁵² A trafficking victim is a person who is brought to the country by a third person to perform one or more acts of prostitution, sexual servitude, labor slavery or practices analogous to slavery, forced work or service, forced marriage, begging, illicit organ donation, or illegal adoption. Another definition is a person who has suffered injuries, including physical or mental damage, financial harm, or significant violations of basic rights, as a result of a trafficking crime.

⁵³ Article 5 of the Migration Control Regulation.

⁵⁴ Article 5 of the Migration Control Regulation.

- Has been ordered to leave the country and did not do so within the term established by the General Directorate.⁵⁵ In these cases, the General Directorate will order the deportation of the foreign person to their country of origin or to a third country that admits them.⁵⁶

The deported foreign person may not re-enter the country for a term of five years. The Director General may authorize, exceptionally, entry before said term.⁵⁷

- **Expulsion** is the order issued by the Ministry of the Interior and Police by which the foreign person who enjoys legal permanence, under any migratory category, must leave the national territory within the period established for that purpose, when it is considered that their activities compromise peace, public safety, tranquility, or public order.⁵⁸

The expelled foreign person may not re-enter the country for a period of ten years, with the exception of an authorization expressly issued by the President of the Republic. If the cause of the expulsion was based on committing a crime against a minor, as long as it is a willful crime, or an assault against the life of a woman, a person with disabilities, or a senior citizen, the foreign person may not enter the country for a term of 25 years.⁵⁹ The expulsion will result in the loss of their legal immigration status, without requiring an additional administrative cancellation procedure. In applying these measures, the specificity of the protection granted to refugees, asylum seekers, and stateless persons must be respected.⁶⁰

- With regards to **the adjustment of immigration status**, once the irregular status of a migrant has been declared, the Director General may:
 - request the adjustment of status if the individual is the parent of a minor child or an adult with disabilities who is a Costa Rican national or resident;
 - demand that the individual stay in the country as a non-resident or under another special immigration status; or
 - demand that they leave Costa Rica within a term that cannot exceed ten days.⁶¹

B. Exceptions and Protections

No foreigner seeking asylum or who has been granted such status, may be expelled, rejected, or deported to their country of origin or where their right to live is at risk.⁶² Requesting refugee

⁵⁵ Article 183 of the Migration Law.

⁵⁶ Article 184 of the Migration Law,.

⁵⁷ Article 185 of the Migration Law.

⁵⁸ Article 186 of the Migration Law.

⁵⁹ Article 187 of the Migration Law.

⁶⁰ Article 188 of the Migration Law.

⁶¹ Article 125 of the Migration Law.

⁶² Article 31, section 9 and article 115 of the Migration Law.

status or asylum will have a suspensive effect on the extradition of a foreign person, until the corresponding procedure has been completed, by means of a firm resolution.⁶³

No one who invokes statelessness or asylum status can be rejected at the border, as they are protected by the principle of nonrefoulement.⁶⁴ In this regard, minors cannot be deported or expelled, except if it is in their best interest.⁶⁵

Regulations on the Voluntary Return of Migrants whose Countries of Origin Do Not Have Repatriation Agreements and Protocols for the Return of Vulnerable Populations

Costa Rica is a member of the Regional Conference on Migration and the International Organization for Migration, and is also part of the Protocol for Assisted Voluntary Returns, which uses funds from the Regional Conference on Migration to assist vulnerable migrants in the region.

Restrictions on the Duration of Migrant Detention

Foreigners may only be detained in accordance with the provisions of the Political Constitution, the General Law on Migration and Foreigners, and complementary regulations. At the time of applying the current legislation, this right may be limited under the following exceptional circumstances and conditions, as long as a less burdensome measure does not exist:

- Precautionary arrest for a maximum of 24 hours, for the purpose of verifying the individual's immigration status. This period may be extended in special situations and under a justified resolution issued by the General Directorate. Once the immigration offense is confirmed and another less burdensome measure is ruled out, the General Directorate must dictate the deportation procedure.⁶⁶
- Once the identification of the foreign person has been resolved by the consulate of their country of origin, the administrative detention may not exceed a maximum period of 30 calendar days and the deportation issued must be executed within that period. This period may be extended in special and justified situations by the General Directorate.⁶⁷

Access to Legal Representation and Guaranteed Consultation with Consular Services

Any foreign person who is subjected to immigration control and procedures must be informed of the reasons for their arrest and offered the possibility of communication, including with consular services and independent legal counsel.

⁶³ Article 116 of the Migration Law.

⁶⁴ Article 17 of the Refugee Regulation.

⁶⁵ Article 185 of the Migration Law.

⁶⁶ Article 5, section a of the Migration Law.

⁶⁷ Article 5, section b of the Migration Law.

Likewise, should it be necessary, an interpreter must be provided, as well as full access to the individual's administrative file.⁶⁸

Before the execution of the deportation order, the General Directorate will send notice to the consulate of the foreign person's country of nationality, so that they issue the respective travel document within 72 hours. Once this period has expired, without a response from the corresponding consular representation, the General Directorate will issue a travel document and will communicate this to the respective consulate.⁶⁹

The General Directorate, while processing a deportation, may apply any of the following precautionary measures:

- Presentation and periodic signature before the competent authorities.
- Order the apprehension of the foreign person, in accordance with the established timing and guidelines in the law.
- Surety.
- Temporary confiscation of documents.
- Home detention.

The precautionary measures issued by the General Directorate may be appealed to the Administrative Tribunal during the act of notification or within the following three business days. The appeal does not suspend the execution of the precautionary measures.⁷⁰

6. Migrants in the Labor Market

No discrimination may be made with respect to salary, benefits, or working conditions between Costa Ricans and foreigners, or with respect to any group of workers. However, under equal conditions, the Costa Rican worker should be preferred.⁷¹

Since the Migration Police has the power to investigate the migratory situation of foreign workers, they may enter work centers during working hours, check passports, residence cards, work permits, or any other identification document, in order to verify violations of the Migration Law and its regulations.⁷²

Legally Defined Types of Visa

The following categories are of note:

- **Cross-Border Worker:** Cross-border workers are foreign persons living near the borders of Costa Rica authorized by the General Directorate to enter and leave the national territory

⁶⁸ Article 31, paragraph 7 of the Migration Law.

⁶⁹ Articles 212 and 218 of the Migration Law.

⁷⁰ Articles 194 and 211 of the Migration Law.

⁷¹ Article 68 of the Constitution of the Republic of Costa Rica, *Constitución Política de la República de Costa Rica*.

⁷² Article 18, section 20 of the Migration Law.

in order to carry out paid activities, authorized by the General Directorate, using as reference, among others, the technical evaluations conducted by the Ministry of Labor and Social Security. These workers must contribute to the Costa Rican Social Security system (*Caja Costarricense de Seguro Social, CCSS*) and the Occupational Risk System of the National Insurance Institute (INS).⁷³ These workers belong to special categories.⁷⁴

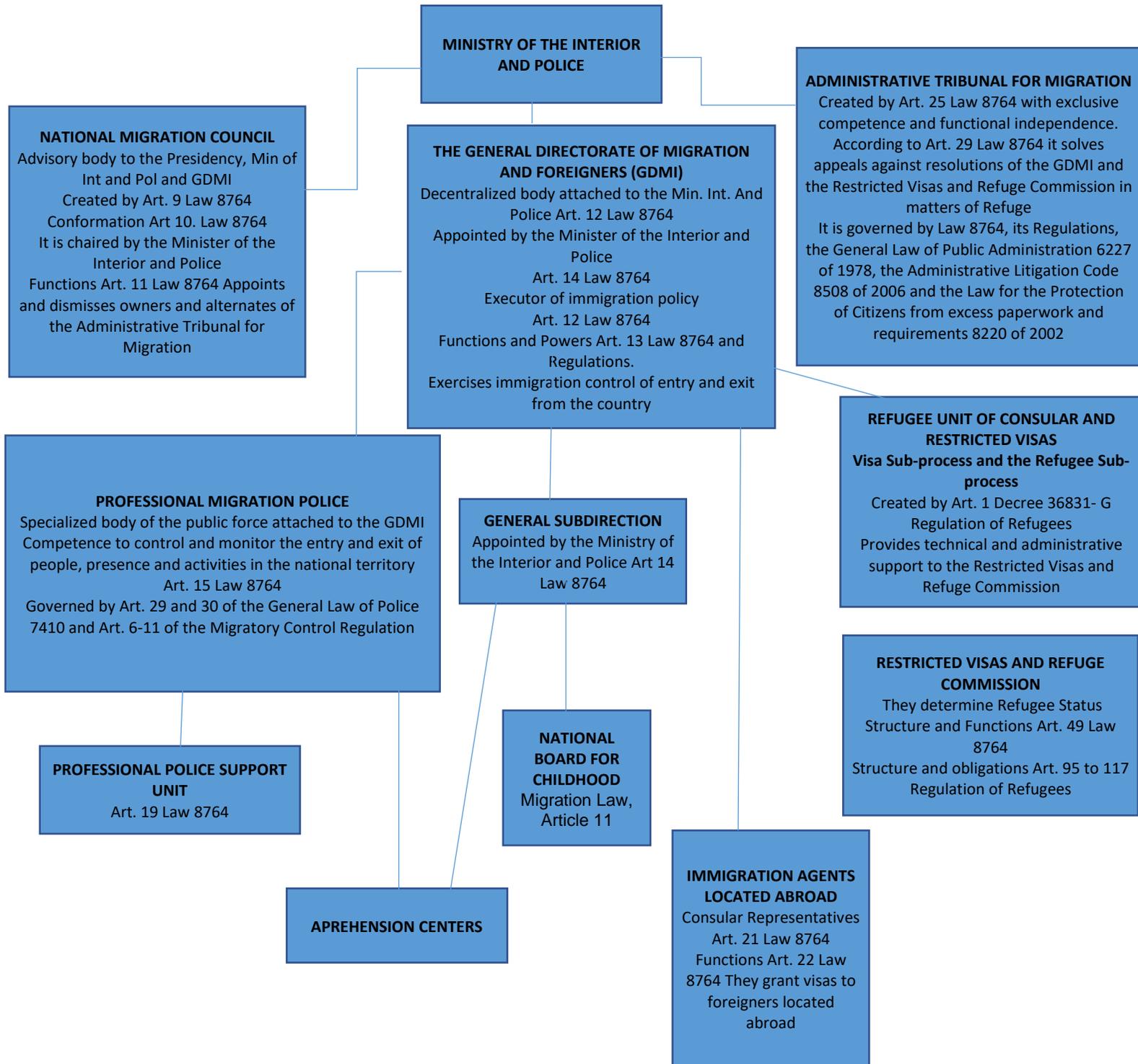
- **Indigenous Cross-Border Workers:** Indigenous cross-border workers are nationals of Nicaragua or Panama, residents of the areas bordering Costa Rica, thus recognized by the General Directorate. They are authorized by the General Directorate to enter and leave the national territory daily, with the purpose of carrying out paid activities, authorized by the General Directorate, following the technical evaluations conducted by the Ministry of Labor and Social Security.⁷⁵

⁷³ Article 97 of the Migration Law; Article 2 of the Regulation on Foreigners, *Reglamento de Extranjería* (2012).

⁷⁴ Article 94 of the Migration Law.

⁷⁵ Article 260 of the Regulation on Foreigners.

7. Mapping of the Migration System



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