



# **Institutional and Legal Migratory Framework of the Republic of Guatemala: 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](http://www.migrationpolicy.org/research/regional-cooperation-migration-capacity-mexico-central-america).

## I. Institutional Framework

The Guatemalan immigration system, established by Guatemala's Migration Code (*Código de Migración*), is the set of state institutions that oversee the entry and exit of both Guatemalans and foreigners to the country, as well as the transit and permanence of foreigners.

This system is composed of the National Migration Authority, the Guatemalan Migration Institute and the National Council for Migrant Assistance, supported by the National Civil Police.

- **The National Migration Authority** (*Autoridad Migratoria Nacional*, AMN) is the institution responsible for the formulation, creation, modification, issuance and supervision of the country's migration policy and overall security-related matters on migration.<sup>1</sup> Its mandate is established by the Guatemalan Migration Code and national legislation, as well as international instruments on human rights to which Guatemala is a signatory.

The AMN is composed of:<sup>2</sup>

- The Vice President, who leads it;
- The Director of the Guatemalan Migration Institute (IGM), who serves as Technical Secretary;
- The Minister of Foreign Affairs;
- The Minister of Social Development;
- The Minister of Labor and Social Security;
- The Minister of the Interior;
- The Secretary of the National Council for Migrant Protection.

<sup>1</sup> Articles 114, 116, and 118 of the Guatemalan Migration Code, *Código de Migración* (Legislative Decree No. 44-2016).

<sup>2</sup> Article 117 of the Migration Code.

Among the Vice President's main responsibilities as director of the AMN are convening and directing the ordinary and extraordinary sessions of the AMN; proposing working groups, agencies, entities, and councils related to migration to the plenary session of the AMN; and adopting urgent and pertinent measures for the proper management of migration. The Technical Secretary is responsible for convening the members of the AMN at the request of the Director. In addition, the Technical Secretary has a say, but cannot vote during AMN sessions.<sup>3</sup>

In addition to the functions established by the Migration Code, the main functions of the AMN include:

- Determining the guidelines and procedures of the Guatemalan Migration Institute (IGM);
- Approving the suspension of the General Director of the IGM;
- Attending meetings held by the Guatemalan immigration system to share information or any matter related to migrants;
- Authorizing the duly justified expansion, creation, modification and combination of the IGM's subdirectorates at the request of the General Director;
- Creating the National Commission for Refugees;
- Making decisions on all asylum applications;
- Periodically determining the nationalities that require a visa to enter national territory;
- Coordinating with the Ministry of Foreign Relations in all matters related to foreign or international migration policy and in accordance with the country's foreign policy stated by the President of the Republic; among other functions.<sup>4</sup>

The AMN holds its first ordinary session every year during the month of January, followed by once every three months in ordinary sessions and in extraordinary sessions when necessary.

- **The Guatemalan Migration Institute** (*El Instituto Guatemalteco de Migración, IGM*) executes the country's migration policy,<sup>5</sup> issued by the AMN, and controls the entry of foreigners to the national territory, as well as their permanence, exit and changes in their immigration status.<sup>6</sup> The Institute, in turn, relies on the National Civil Police as the competent authority to detain people.<sup>7</sup>

The President of the Republic appoints the Director of the Guatemalan Migration Institute,<sup>8</sup> who exercises the assigned functions with absolute functional independence without

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<sup>3</sup> Article 3 of the Internal Regulation of Operation of the National Migration Authority (AMN) *Reglamento Interno de Funcionamiento de la Autoridad Migratoria* (National Migration Authority Agreement 1-2018)

<sup>4</sup> For more information on the functions of the AMN, see Article 4 of the Internal Regulation of Operation of the AMN.

<sup>5</sup> Article 122, subsection c of the Migration Code.

<sup>6</sup> Article 122 of the Migration Code; Article 4 of the General Regulation of the Migration Code, *Reglamento General del Código de Migración* (National Migration Authority Agreement 7-2019).

<sup>7</sup> Article 168 of the Migration Code.

<sup>8</sup> Article 125 of the Migration Code.

violating the guidelines determined by the National Migration Authority for the effective execution of the country's migration policy.<sup>9</sup>

Due to their functions related to compliance with the legal order and supervision of detention, it is worth identifying the following Subdirectorates of the Guatemalan Migration Institute:

- **The Subdiretorate of Immigration Control** (*La Subdirección de Control Migratorio*) is responsible for controlling and registering the entry and exit of nationals and foreigners from national territory, through the borders' ports of entry, as well as monitoring the stay and activities of foreigners in the country. It does not control the ports of entry between countries with which Guatemala has signed free transit agreements.<sup>10</sup> This Subdiretorate, through a field verification unit, verifies the migratory situation of people anywhere within the national territory.<sup>11</sup>
- **The Subdiretorate for the Care and Protection of Migrant Fundamental Rights** (*La Subdirección de Atención y Protección de Derechos Fundamentales de los Migrantes*) supports the procedures for shelter and temporary care, communication and family contact, as well as the requests from foreigners to be returned to their country of origin or provenance. In addition, it is responsible for providing, authorizing, and overseeing the operations and conditions of special shelters to host, protect and care for foreign migrants, as well as for returnees.<sup>12</sup>
- **The Subdiretorate for Immigration** (*La Subdirección de Extranjería*) is responsible for the issuance, registration and control of visas and residency permits. The Subdiretorate is also authorized to have a field immigration verification unit.<sup>13</sup>
- **The National Commission for Refugees** (*La Comisión Nacional para Refugiados, CONARE*), is an inter-ministerial body created in 2019 as an advisory body to the AMN. It is composed of a technical representative, a lead representative and an alternate from the Ministry of Foreign Affairs, the Ministry of Labor and Social Security, the Ministry of the Interior, and the Guatemalan Migration Institute.<sup>14</sup> Among other functions, CONARE is in charge of issuing recommendations to the AMN on the recognition or non-recognition of asylum applications, at which point the AMN is in charge of making final decisions.<sup>15</sup> The IGM appoints support personnel to aid CONARE in carrying out its functions. The support personnel depend on the IGM.<sup>16</sup>

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<sup>9</sup> Article 124 of the Migration Code.

<sup>10</sup> Governments of El Salvador, Guatemala, Honduras and Nicaragua, "[Convenio de creación de la Visa Única Centroamericana para la libre movilidad de extranjeros entre la repúblicas de El Salvador, Guatemala, Honduras y Nicaragua.](#)" The Central American Single Visa Agreement provides border posts for those nationals of neighboring countries who sign the agreement.

<sup>11</sup> Article 13 of the General Regulation of the Migration Code.

<sup>12</sup> Article 140, subsection a of the Migration Code.

<sup>13</sup> Article 140, subsection b of the Migration Code.

<sup>14</sup> Article 12 of the Refugee Protection Regulation, *Reglamento para la Protección y Determinación del Estatuto de Refugiado en el Territorio del Estado de Guatemala* (National Migration Authority Agreement 2-2019).

<sup>15</sup> Article 14 of the Refugee Protection Regulation.

<sup>16</sup> Article 13 of the National Migration Authority Agreement (2-2019).

- **The National Council for Migrant Protection**<sup>17</sup> (*El Consejo Nacional de Atención al Migrante*, CONAMIGUA) is the governmental entity attached to the Ministry of Foreign Affairs, which coordinates, defines, and supervises the actions and activities of the entities of the state that are responsible for protecting, attending, and providing assistance and aid to Guatemalan migrants and their families in Guatemala, as well as the migrants who are located in national territory.<sup>18</sup>

This National Council is composed of:<sup>19</sup>

- The Minister of Foreign Affairs, who presides over it;
  - A deputy elected by the Plenary of the Congress of the Republic, from a shortlist proposed by Congress' Commission on Migration;
  - The Secretary of the Secretariat of Planning and Programming of the Presidency;
  - The Deputy Human Rights Ombudsman;
  - The Vice Minister of the Economy who is in charge of Guatemala's foreign economic policy;
  - The Vice Minister of Labor and Social Security who is in charge of the aid provided to Guatemalan workers abroad;
  - The General Manager of the Bank of Guatemala;
  - The Executive Secretary of the National Council for Migrant Protection, who will have a say but not a vote, and will also be the Secretary of such Council. The Executive Secretary is appointed by Congress for a period of three years, with the possibility of being renewed only once;<sup>20</sup>
  - A representative appointed by the General Director of the Guatemalan Migration Institute.
- **The Council for Care and Protection** (*El Consejo de Atención y Protección*), established in 2020, is an entity that belongs to the National Immigration Authority. It is responsible for creating health care programs for deported migrants or returnees; it is also responsible for raising awareness about the risks of migration and serving the families of migrants that are considered to have disappeared during their migration journey.<sup>21</sup>

This Council for Care and Protection is composed of the following officials:

- The General Director of the Guatemalan Migration Institute, who is also chair;
- The Executive Secretary of the National Council of Migrant Protection of Guatemala;
- A Vice Minister of the Ministry of Education;
- A Vice Minister of the Ministry of Public Health and Social Assistance;
- A Vice Minister of the Ministry of Labor and Social Security;
- A Vice Minister of the Ministry of the Interior;

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<sup>17</sup> Article 113 of the Migration Code.

<sup>18</sup> Article 2 of the Law of the National Council of Migrant Protection, *Ley del Consejo Nacional de Atención al Migrante de Guatemala*.

<sup>19</sup> Article 5 of the Law of the National Council of Migrant Protection, modified by Article 240 of the Migration Code.

<sup>20</sup> Article 11 of the Law of the National Council of Migrant Protection.

<sup>21</sup> Article 161 of the Migration Code.

- A Vice Minister of the Ministry of Foreign Affairs;
- A Vice Minister of the Ministry of the Economy;
- A Vice Minister of the Ministry of Social Development;
- A representative appointed by the Attorney General of the Nation;
- The Sub-Secretary of the Sub-Secretariat of Protection and Foster Care of Children and Adolescents, within the Secretariat of Social Security of the Presidency of the Republic;
- A representative appointed by the Human Rights Ombudsman.<sup>22</sup>

## 2. Legal Framework

The Guatemalan legal migratory system derives from what is established in the National Constitution, the international treaties ratified by Guatemala, as well as by the Migration Code (Decree 44-2016) and its regulations (National Migration Authority Agreement 7-2019), the Internal Regulatory Organic Law of the Guatemalan Migration Institute (National Migration Authority Agreement 8-2019), the Internal Regulation of Operation of the National Migration Authority (National Migration Authority Agreement 1-2018) and the Law of the National Council for Migrant Assistance (Decree 46-2007).

Furthermore, this legal framework includes the Regulation Registry of Ordinary Migration Status of the Guatemalan Migration Institute (National Migration Authority Agreement 9-2019), the Regulation of Guatemalan Residencies (National Migration Authority Agreement 4-2019), the Visa Regulations (National Migration Authority Agreement 3-2019) and its amendment (National Migration Authority Agreement 6-2019), the *Regional Manual of Migration Procedures of the Central American Visa CA-4* and the Migratory Services Fee System (Migration Authority Agreement National 3-2018), and its amendment (National Migration Authority Agreement 5-2019).

On humanitarian protection, issues related to refugees are included in the Regulations for the Protection and Determination of Refugee Status in the Territory of the State of Guatemala (National Migration Authority Agreement 2-2019), while issues regarding Guatemalan actions against human trafficking are established in the Law against Sexual Violence, Exploitation and Human Trafficking (Decree 9-2009), and the Protocol for the Protection and Care of Victims of Human Trafficking.

Moreover, the legal framework related to the protection of minors is established in the Law for the Comprehensive Protection of Children and Adolescents (Decree 27-2003) and the National Protocol for the Care of Unaccompanied Migrant Children.

Finally, there do not appear to be specific regulations on political asylum and stateless person protections in Guatemala.

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<sup>22</sup> Article 162 of the Migration Code.

### 3. Migratory Categories and Adjustment Processes

Migratory categories are divided into:<sup>23</sup>

#### A. Ordinary Immigration Status<sup>24</sup>

**Tourist or traveler,**<sup>25</sup> refers to all foreigners who have entered the country through a regular channel for lawful purposes, without intending to obtain a temporary or permanent residence, whose term may not be greater than 90 days, extendable only once. This includes people conducting technical, professional, scientific, cultural, athletic or religious activities, who for reasons of their knowledge are required by public or private institutions to stay and develop a paid consultancy or advisory activity for a period that does not exceed 180 days.

##### **Temporary Resident:**

- Migrant workers;
- Students;
- Athletes and artists;
- Investors;
- Intellectuals, researchers and scientists;
- Cult or religious ministers.

**Permanent Resident** refers to those who wish to acquire residency in the country, and who meet the following criteria:

- Temporary residents for a period equal to or greater than five years;
- Having a year or more of certified marriage or a de facto declared union with a Guatemalan person;
- Relatives, within the degrees of law, of a Guatemalan person who have another nationality;
- Temporary residents for a period of one year who were born in another Central American country;
- Rentiers or pensioners, people who have been authorized to reside in the country and who rely on legal permanent income sent from abroad. It is understood, as a special rule for the status of a permanent resident rentier or pensioner, that all benefits and exemptions regulated in the specific laws and regulations for these cases, will be applicable to people of Guatemalan origin who have been naturalized in other countries and who return as retirees from governments or private entities.<sup>26</sup>

#### B. Extraordinary Permanent Status

Extraordinary circumstances for permanence are recognized with the purpose of allowing a foreign person to be in the country. Such circumstances are:

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<sup>23</sup> Articles 47 to 61 of the General Regulation of the Migration Code.

<sup>24</sup> Article 73 of the Migration Code.

<sup>25</sup> Article 74 of the Migration Code.

<sup>26</sup> Article 78 of the Migration Code.

**Provisional Permanent Status.** Provisional permanence is granted:

- By a court order so that the individual can appear as a witness, expert or victim, strictly for the necessary time period;
- At the request of the Guatemalan authority for processes that require physical presence, strictly for the necessary time period;
- By request of refuge, for a period of 30 extendable days.<sup>27</sup>

**Permanent Status for Special Needs.** Foreigners who are victims of torture, victims of human trafficking, victims of sexual violence, women in particular circumstances, children who are unaccompanied or have been separated from their relatives, elderly people, people with mental disorders, and others, can obtain permanent status for special needs.<sup>28</sup>

**Permanent Status for Humanitarian Reasons.**<sup>29</sup> Foreigners that enter Guatemala can have permanent status for the following humanitarian reasons:

- Due to natural catastrophe in neighboring countries, forcing individuals or groups of people to save their lives;
- For medical emergencies or for the purpose of saving someone's life, or salvaging aircraft or maritime vessels;
- For reasons of armed conflict, in accordance with international law;
- By request of cooperation from another state or entity in accordance with international law and with the objective of bringing equipment, ships, or people with medical aid or relief needs into the country;
- For the repatriation of the remains of dead relatives in Guatemala.<sup>30</sup>

### **C. Special Status**

Special immigration status is granted to foreigners who, due to their activity or situation, are not within those defined as ordinary or extraordinary.<sup>31</sup> Such status includes:

- Cross-border and temporary workers;
- Workers in accordance with provision b of article 13 of the Labor Code. In these cases, the Ministry of Labor and Social Security must communicate the corresponding requirements;
- Diplomatic, consular or international organization officials who will be governed by the provisions of the corresponding international conventions to which Guatemala is a party;
- Special state guests and their dependents or guests of autonomous and decentralized bodies who will communicate the steps to be taken for the delegates accompanying their guests;

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<sup>27</sup> Article 82 of the Migration Code.

<sup>28</sup> Article 83 of the Migration Code.

<sup>29</sup> Article 81 of the Migration Code.

<sup>30</sup> Articles 68 and 85 of the Migration Code.

<sup>31</sup> Article 57 of the General Regulation of the Migration Code.

- Artistic, cultural, religious, sports, or educational groups that travel together under the responsibility of a specific person.

The Subdirectorate of Immigration Control will be in charge of qualifying and granting said status in the event that people do not fit into any of the ordinary or extraordinary categories.<sup>32</sup>

## Regularization Programs

Regularization programs are those through which Guatemala allows foreigners to submit a request to regularize their immigration status if the foreigner entered peacefully and in good faith to the national territory, without undergoing the mandatory immigration controls, and having the intention to remain in the country under an ordinary immigration status.<sup>33</sup>

These regularization programs are temporary in nature, with defined deadlines applicable for people who have entered the country within a specified time frame. Therefore, they are extraordinary procedures that must be adjusted to each situation and condition. In order to apply for an immigration regularization program, the foreigner must prove that they are a relative within the determinations of the law of a Guatemalan person or of a foreign person with temporary or permanent residence, except for nationals of Central American countries who must not prove the aforementioned.<sup>34</sup>

The regularization process begins when the applicant presents an application to the Guatemalan Migration Institute,<sup>35</sup> to be completed within 90 days from the submission of the application and the submission of documentation.<sup>36</sup> If the resolution is declined, the applicant may file an appeal for reconsideration before the Institute.<sup>37</sup> In the event that the application for individual immigration regularization is denied, the applicant must leave the country within a period of no more than ten days, obtaining the corresponding abandonment order for this purpose. The fact of not having an ordinary immigration status does not entail a criminal offense nor will the commission of illegal acts by the foreign person be prejudged.<sup>38</sup>

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<sup>32</sup> Article 87 of the Migration Code.

<sup>33</sup> Article 106 of the Migration Code; Article 43 of the General Regulation of the Migration Code.

<sup>34</sup> Article 38 of the General Regulation of the Migration Code.

<sup>35</sup> Article 188 of the Migration Code.

<sup>36</sup> Article 39 of the General Regulation of the Migration Code defines documentation as: 1. Individual immigration regularization application form; 2. Valid and current physical passport; 3. Passport validity certification issued by the embassy or consulate of the country accredited in Guatemala or the concurrent one; 4. Lack of valid and current criminal and police records, issued by Guatemalan authorities; 5. Lack of valid and current criminal and police records, issued by the corresponding authority in the country or countries in which they have had verifiable legal addresses during the last five years. In the event that the country does not issue a similar document, the applicant must present the agency's refusal to issue such documents. The referred documents must be presented with an apostille or in accordance with the law of the judicial branch, as appropriate; 5. City improvement tax for the current year, if applicable; 6. Certification issued by an accountant or public accountant and auditor to establish economic capacity; 7. Notarial certificate of affidavit stating the place and date of entry into the national territory, as well as specifying the irregularity incurred and the desire to opt for an immigration status in the country; 8. Documentation that supports the request for migratory regularization; and 9. Proof of payment.

<sup>37</sup> Article 190 of the Migration Code.

<sup>38</sup> Article 40 of the General Regulation of the Migration Code.

The state guarantees full equality, access to public security, health, education, work, housing and all services necessary for personal development to every person residing in the national territory. Foreigners may access state agencies to exercise their actions and uphold their rights in accordance with the law. Assistance and attention cannot be denied due to their condition as foreigners.<sup>39</sup>

### Special Categories: CA-4 Agreement<sup>40</sup>

The CA-4 Agreement signed between the presidents of El Salvador, Guatemala, Honduras and Nicaragua, allows for the free transit of nationals from the signatory countries without the required presentation of a passport and with expedited immigration instruments. Visa requirements are also not required for citizens of the member countries.

The Agreement for the Creation of the Central American Single Visa for the Free Mobility of Foreigners establishes the principle of free mobility, meaning the facilitated process granted to a citizen of a third country who, having a visa to enter any of the signatory countries, can then travel to the other signatory countries without additional visa requirements, provided that such visa has not expired.<sup>41</sup> Likewise, the uniform requirements and procedures for the entry of foreigners are approved based on the classification of countries: Category "A" - For foreigners exempt from a visa; Category "B" - For foreigners who require a consular visa or one without consultation and; Category "C" - For foreigners who require endorsement to obtain an entry visa by the General Directorates of Migration (consulted visa).<sup>42</sup>

It also defines the intermediate and peripheral migratory delegations and establishes the Visa Homologation Commission (*Comisión de Homologación de Visas, VUCA*) composed of the Directorates of Migration and the Directorates of Consular Affairs of the Foreign Ministries of the signatory countries. Technical and operational aspects are regulated through approved manuals on migratory and consular procedures, which are freely adhered to by any member state of the Central American Integration System (*Sistema de la Integración Centroamericana, SICA*).

Along these lines, the *Regional Manual of Migration Procedures of the Central American Single Visa CA-4* establishes a classification of visas according to the type of travel document and/or activity to be carried out in the region:

- Ordinary: For current or ordinary passports;
- Official: For official or service passports;
- Courtesy: For ordinary, special, or service passports in official, cultural, or sports missions, to service personnel of diplomatic or consular missions, participants in seminars or courses, among others;
- Diplomatic: For diplomatic passports.

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<sup>39</sup> Article 2 of the Migration Code.

<sup>40</sup> These visas are regulated in the Visa Regulation, *Reglamento de Visas Guatemaltecas* (National Migration Authority Agreement 3-19) and its reforms, *Reformas por Adicional al Reglamento de Visas Guatemaltecas* (National Migration Authority Agreement 6-2019).

<sup>41</sup> Article 2 of the Central American Single Visa Agreement.

<sup>42</sup> Article 4 of the Central American Single Visa Agreement.

And a classification according to the conditions of validity:

- Transit: Valid to enter and leave the region, within a period of 96 hours from the moment of entering a peripheral border of any of the signatory countries. It does not apply to Category “C”, which requires the normal visa extension process for transit purposes.
- Single: Valid for a single entry to the region. Valid for 60 days from its issuance.
- Multiple: Valid for multiple entries to the region. It is valid for up to one year.

The status granted by the migratory authority of the first signatory country is the basis for terms of residency within these territories. If foreigners remain in the territory of one of the signatory countries for a longer time than initially authorized, they are subjected to an evaluation by the General Directorate of Migration of the country in which they are located in accordance with national legislation. Likewise, if an extension for permanence is required, it must be requested from the immigration authority of the signatory country in which the person is located.

The *Regional Manual of Migration Procedures of the Single Central American Visa CA-4* establishes that foreigners residing in one of the states party to the agreement may not carry out any remunerated or commercial activity within the visited territory.<sup>43</sup> However, with the creation of the Central American Resident Card, it was agreed to grant foreigners who are residents in any of the countries of the region the same treatment as nationals in relation to freedom of mobility, regardless of their nationality.

The Central American Single Visa does not mean temporary or permanent residence in the territory of the signatory countries. Consequently, foreigners who wish to enjoy a different status than the one assigned at entry must comply with the requirements established by the legislation of each of the signatory countries.

On the other hand, foreigners who have visas issued by the United States, Canada, and the countries that belong to the Schengen Agreement, are exempted from a tourist visa in order to travel to the Central American region CA-4 and all their visa categories are considered improved.

The list of countries and other entities, as well as international organizations that make up the aforementioned categories, can be found in the *Regional Manual of Migration Procedures of the Central American Single Visa CA-4*.

## 4. Humanitarian Protection

### A. Refugee Protection

#### Process for Granting Refugee Status

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<sup>43</sup> Governments of El Salvador, Guatemala, Honduras and Nicaragua, *Manual Regional de Procedimientos Migratorios de la Visa Única Centroamericana CA-4*. (procedural manual, May 26, 2011).

The initial request can be presented at the immigration control stations upon entering the country, or at the Subdirectorato for the Care and Protection of Migrant Fundamental Rights of the Guatemalan Migration Institute, which then immediately transfers the request in writing to the Subdirectorato of Legal Affairs of the Guatemalan Migration Institute in their role as support personnel from the National Refugee Commission (CONARE).<sup>44</sup>

Once the application is received, the Subdirectorato of Legal Affairs informs the applicant about the procedure, which recognizes the right of the applicant to receive proper legal assistance, an interpreter or translator,<sup>45</sup> and to conduct an interview scheduled within a 15 day period from the date the formal application form was submitted.<sup>46</sup> The Subdirectorato for Legal Affairs performs an investigation to complete the file, and CONARE delivers a recommendation to the National Migration Authority on whether or not to grant refugee status to the applicant within a maximum period of 30 days. The National Immigration Authority will then proceed to deliver a resolution to the asylum applicant.<sup>47</sup>

In case the petition is denied, the interested party may file an appeal for reconsideration to the National Immigration Authority within ten days of the notification date, and the appeal must be resolved within a period of no more than five days. Once the resolution denying the application for refugee status has been signed, the applicant must regularize his or her immigration status in the country.<sup>48</sup>

## **Benefits and Rights of the Refugee**

The applicant for refugee status shall enjoy all the rights and obligations set forth in Guatemalan legislation, especially those outlined in the Constitution and the Migration Code, as well as those rights and obligations recognized and guaranteed in international treaties and conventions ratified by Guatemala.<sup>49</sup>

Applicants for refugee status, both children and adults, are immediately granted temporary resident status,<sup>50</sup> and they receive a personal identity document as well as additional documentation that guarantees access to basic rights such as freedom of movement, access to health services, education, information and legal guidance, justice, a work permit, among other fundamental rights established in national and international laws.<sup>51</sup>

Even if the application for refugee status is denied, the person may not be returned to the country of origin where there is a well-founded fear of persecution that endangers his or her life, physical

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<sup>44</sup> Article 13 of the Refugee Protection Regulation determines: The Institute will designate support personnel to receive applications for refugee status, conduct interviews, as well as fill out the files during the process of recognition of refugee status so that CONARE can carry out its functions. Said personnel will depend on the Institute and must have the necessary technical and professional capacity to address and follow up on applications for refugee status.

<sup>45</sup> Article 180 of the Migration Code.

<sup>46</sup> Article 17, section 2.1 and section 2.3 of the Refugee Protection Regulation.

<sup>47</sup> Article 177 of the Migration Code; Article 15 of the Refugee Protection Regulation.

<sup>48</sup> Article 18 of the Refugee Protection Regulation; Article 182 of the Migration Code.

<sup>49</sup> Article 50 of the Migration Code.

<sup>50</sup> Articles 48 and 84 of the Migration Code.

<sup>51</sup> Article 48 of the Migration Code.

integrity, and freedom.<sup>52</sup>

## Limitations

The following are excluded from refugee status: a) An individual who has committed a crime against humanity or a war crime, as defined by the international instruments that contain provisions on such crimes; b) An individual who has committed a particularly serious crime outside the country of refuge, before or after the application for refugee status was submitted in order to evade justice in another country; and c) An individual that is guilty of acts contrary to the purposes and principles of the United Nations, embodied in international treaties and conventions.<sup>53</sup>

## B. Political Asylum

Guatemala may grant political asylum on a discretionary basis.<sup>54</sup> In this regard, the Subdirectorate for Legal Affairs of the General Institute of Migration is responsible for reviewing and providing recommendations to the General Director on the resolution of applications for asylum (both humanitarian and political asylum) and extraordinary migratory status.<sup>55</sup>

## Benefits

Territorial political asylees will be immediately granted the status of temporary resident and will receive the documentation that will guarantee access to basic rights such as freedom of movement, access to health services, education, information and legal guidance, access to justice, among other fundamental rights established in national legislation and international law.<sup>56</sup>

## Limitations and Exceptions

According to the Asylum Collaboration Agreement (ACA) signed between the United States and Guatemala on July 26, 2019 and entered into force on November 15 of the same year, the ACA does not apply to Guatemalan asylum seekers or stateless persons with habitual residence in Guatemala.<sup>57</sup>

On the other hand, in order to ensure the protection of asylum seekers who are transferred to Guatemala, the country reinforces its commitment not to return or expel any asylum seeker who

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<sup>52</sup> Article 46 of the Migration Code.

<sup>53</sup> Article 47 of the Migration Code.

<sup>54</sup> Article 44 of the Migration Code.

<sup>55</sup> Article 66 of the Internal Regulation of Operation of the AMN, *Reglamento Organico Interno del Instituto Guatemalteco de Migracion* (National Migration Authority Agreement 8-2019).

<sup>56</sup> Article 48 of the Migration Code.

<sup>57</sup> Governments of the United States and Guatemala, "Agreement between the United States of America and the Government of the Republic of Guatemala on Cooperation regarding the Examination of Protection Claims" U.S. Department of State (November 15, 2019).

needs Guatemalan protection. Additionally, the United States will be responsible for the well-being of individuals who are transferred until such transfer is completed.<sup>58</sup> Regardless of the aforementioned, Guatemala reserves the right to evaluate requests for protection on a case-by-case basis.

The United States has the responsibility to resolve protection claims within its territory when the person in question is an unaccompanied minor or arrived in the territory of the United States with a valid issued visa or other valid document or in cases where a visa was not required by the United States.

Both countries agree to cooperate in strengthening Guatemalan institutions and jointly developing standardized operating procedures.<sup>59</sup>

### **C. Victims of Human Trafficking**

Migrants who are the victims of human trafficking have the right to access the following resources. In the case of children and adolescents, the country guarantees that all procedures recognize their developmental needs, including the right to not be subjected to confrontations, not to be deprived of their freedom, and to testify in special protection and care conditions.<sup>60</sup> They will also enjoy specialized and differentiated care through programs directed by the Secretariat of Social Security of the Presidency, as the governing body responsible for providing protection services to children and adolescents who are threatened or whose rights have been violated. This Secretariat will coordinate its actions through the Council for Care and Protection, as well as with other state institutions. It will provide its services through its departmental headquarters.<sup>61</sup>

## **5. Implementation and Compliance with the Legal Migratory Framework**

Individuals who are denied refugee or asylum status may not be returned to their country of origin where there is a well-founded fear of persecution that seriously endangers their life, physical integrity, and freedom.<sup>62</sup> Children or adolescents, or unaccompanied minors, ought not to be deprived of their liberty nor be deported, unless it is in their best interest,<sup>63</sup> nor are they to be transferred to another country if there is a risk of serious violation of their human rights.<sup>64</sup> Likewise, the non-repatriation of the victims should be considered when their consanguineous family is located in the national territory within the degrees of the law or due to well-founded fears that the return to their country of origin puts their life or personal integrity at serious risk.<sup>65</sup>

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<sup>58</sup> Article 3 of the Asylum Collaboration Agreement.

<sup>59</sup> Article 7 of the Asylum Collaboration Agreement.

<sup>60</sup> Article 38 of the Migration Code.

<sup>61</sup> Article 39 of the Migration Code.

<sup>62</sup> Article 46 of the Migration Code.

<sup>63</sup> Article 11 of the Migration Code.

<sup>64</sup> Article 169, subsection 10 and article 173 of the Migration Code.

<sup>65</sup> Article 41 of the Migration Code.

## Types of Return, Fines and Re-entry Bans

**Assisted Voluntary Return** is the administrative procedure by which a foreign person is assisted in leaving the national territory by sending them to their country of origin or of provenance in a voluntary or assisted manner, when they do not wish to remain in the national territory, in exercise of their right. For this, there should be no legal restriction to leave the country,<sup>66</sup> and it is encouraged that all members of the same family unit travel together.

The Subdirectorate for the Care and Protection of Migrant Fundamental Rights will support the return procedures of foreigners.<sup>67</sup> In the case of accompanied children and adolescents, pregnant women, victims, witnesses of crimes committed in national territory, or people with disabilities and elders, the return procedure is conducted with the intervention of consular or immigration officials from the receiving country, if applicable, taking into consideration the best interest of these people and their vulnerable condition.

When migrants cannot cover the costs for their return, the consular authorities of their country of origin or provenance are notified and the suitable mechanism for their return is established.<sup>68</sup> In this sense, it is worth mentioning that Guatemala is a member of the Regional Conference for Migration, and of the International Organization for Migration and part of the Protocol for Assisted Voluntary Returns, which relies on funding from the Regional Conference on Migration for assistance with vulnerable regional migrants. Thus, it is possible to use these mechanisms in situations where the cost of return cannot be covered.

**Repatriation** is the administrative procedure through which foreigners are sent to their country of origin or provenance when there is a court order, or a request from the competent authority or a request from the corresponding consular authority, or for medical, psychological, or psychiatric reasons.<sup>69</sup> To do so, Guatemala has the following protocols:

- **Minor Repatriation Protocol** for unaccompanied children and adolescents, in coordination with the Office of the Attorney General of the Nation, a consular authority (if there were to be any), and temporary care and shelter institutions.<sup>70</sup>
- **Protocol for the Repatriation of Victims of Migrant Smuggling** for those who must receive health and psychological services that guarantee their well-being and be repatriated without undue or unjustified delay, only after official communication with the country of origin has been established, and only when it is safe for them to return to their country of origin.<sup>71</sup>

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<sup>66</sup> Article 29 of the General Regulation of the Migration Code.

<sup>67</sup> Article 29 of the General Regulation of the Migration Code.

<sup>68</sup> Article 20 of the Migration Code.

<sup>69</sup> Article 30 of the General Regulation of the Migration Code.

<sup>70</sup> Article 16 of the Law against Sexual Violence, Exploitation and Human Trafficking, *Ley contra la Violencia Sexual, Explotacion y Trata de Personas* (Decree 9-2009).

<sup>71</sup> Article 41 of the Migration Code; Article 30 of the General Regulations of the Migration Code; Articles 16 to 18 of the Law against Sexual Violence.

Irregular entry, stay or transit within the country does not justify the imposition of criminal sanctions, but the foreigner is obliged to pay the incurred administrative expenses.<sup>72</sup>

In cases of non-compliance, the Guatemalan Migration Institute may also impose an order to leave the country within a period of no more than ten days.<sup>73</sup> Sanctioned individuals may appeal the decision through the mechanisms for reconsideration before the same Institute.<sup>74</sup>

Both migrants and their families have the right to stay together at all times. However, if for exceptional reasons they must be separated (which should be done only for the processing period), the family must be informed about the procedures that must be conducted, and the reasons behind the separation, the place where the procedure will take place, as well as the authority that has requested it. Regarding children and adolescents, they may be separated from their family exceptionally and exclusively due to their superior interest. Family members have the right to seek remedy before the competent authority, for which they must always be provided access to their family.<sup>75</sup>

As a general rule, foreign migrant children and adolescents that are unaccompanied or that have been separated from their families have the right to not be deprived of their liberty and to be cared for by specialized personnel. The Ministry of Social Security of the Presidency will implement programs for the protection of children or adolescents, prioritizing: a) foster care with a relative located within the country that can guarantee their safeguard; b) temporary foster care; or c) other forms of open accommodation, aimed at protecting children and the family. Exceptionally, and for the shortest possible time, children and adolescents may be housed under the modality of residential shelter.<sup>76</sup> On the other hand, pregnant girls and adolescents with children, as well as married couples of minors with or without children have the right to be cared for in specialized and differentiated programs, outpatient or sheltered, in special homes that are arranged for that purpose.<sup>77</sup>

Adult migrants that have been victims of sexual violence, exploitation and human trafficking will be placed in shelters and special protection housing. These individuals have access to specialized programs with comprehensive services, which are under the care of the Secretariat against Sexual Violence, Exploitation, and Trafficking. In turn, the Ministry of Public Health and Social Assistance, the Ministry of Labor and Social Security, as well as the Ministry of Social Development in coordination with the Subdirectorate for the Care and Protection of Migrant Fundamental Rights, and the other entities of the state are in charge of providing support services.<sup>78</sup>

Children and adolescents who are victims of sexual violence, exploitation, and human trafficking, including Guatemalan or migrant children, will enjoy specialized and differentiated care. These care programs will be overseen by the Secretariat of Social Security of the Presidency, which will

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<sup>72</sup> Article 50 of the Migration Code.

<sup>73</sup> Article 195 of the Migration Code.

<sup>74</sup> Article 196 of the Migration Code.

<sup>75</sup> Article 15 of the Migration Code.

<sup>76</sup> Article 173 of the Migration Code.

<sup>77</sup> Article 11 of the Migration Code.

<sup>78</sup> Article 39 of the Migration Code.

coordinate the required actions through the Council for Care and Protection.<sup>79</sup>

Migrant women have the equal right to access public services for sexual and reproductive health, maternity, and family planning. Likewise, every migrant mother and her child has the right to vaccination in accordance with the national health policy.<sup>80</sup>

With regards to migrants who are senior adults located within the country and in vulnerable conditions, they have the right to be cared for and be sheltered, as well as the right to receive the necessary special care due to their age.<sup>81</sup>

The Subdirectorate for the Care and Protection of Migrant Fundamental Rights provides, regulates, authorizes, and supervises the operation and conditions of the special houses for the protection, shelter, and care of foreign migrants, as well as for returned nationals.<sup>82</sup>

Migrants in special shelters, housing and temporary care centers, can request support to communicate with relatives and receive consular assistance.

In the case of unaccompanied and/or separated children and adolescents, communication will be promoted as many times as necessary, taking into account their best interests. They can also communicate at any time with their consular authorities. Refugees and those applying for any other system of international protection are excluded from the protocols outlined in this section.<sup>83</sup>

## 6. Migrants in the Labor Market

A migrant worker is any foreign person engaged in paid activities within Guatemala, classified among the following categories:

- **Cross-Border and Itinerant Workers** are people who reside in the territory of a neighboring state to which they return at the end of their daily working day, or at least once a week. Likewise, itinerant workers are those who carry out a specific economic activity and who transit between Guatemala and Belize, until the territorial, insular, and maritime dispute is resolved by the International Court of Justice;<sup>84</sup>
- **Seasonal Workers** are those whose economic activities depend on the conditions of the season of the year, or are only carried out during a certain time of the year due to the nature of the work;<sup>85</sup>
- **A Consultant, Advisor or Specialized Technical Worker** is the person who carries out their economic activities for a period not exceeding 365 days and who are hired by a

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<sup>79</sup> Article 39 of the Migration Code.

<sup>80</sup> Article 13 of the Migration Code.

<sup>81</sup> Article 14 of the Migration Code.

<sup>82</sup> Article 140, subsection a of the Migration Code.

<sup>83</sup> Article 19 of the Migration Code.

<sup>84</sup> Article 26 of the Migration Code.

<sup>85</sup> Article 26 of the Migration Code.

contractor specifically as a consultant, advisor or specialized technician and do not intend to apply for permanent residence;

- **A Self-Employed Worker** is someone who carries out commercial and industrial activities on their own account or with their families and who has authorization to carry out paid activities within the national territory.<sup>86</sup>

Guatemala guarantees all migrant workers and their families the rights recognized in the Constitution, national legislation, and duly recognized international law.<sup>87</sup> Any interpretation of legal, regulatory or contractual provisions is made in the most favorable way for the migrant worker, and stipulations that entail the diminution, misrepresentation or limitation of rights recognized in national or international legislation are considered void.<sup>88</sup>

Guatemalan migrant workers can access temporary worker programs abroad, individually or through legal recruitment channels, previously authorized and duly registered by the Ministry of Labor and Social Security of Guatemala with the collaboration of the Ministry of Foreign Affairs. The Ministry of Labor and Social Security must create the coordination system with the Ministry of Foreign Affairs to provide aid and assistance to Guatemalan migrant workers abroad and must promote diplomatic relations with the host country to verify compliance with both labor rights and what is established in specific contracts.<sup>89</sup>

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<sup>86</sup> Article 26 of the Migration Code.

<sup>87</sup> Article 21 of the Migration Code.

<sup>88</sup> Article 22 of the Migration Code.

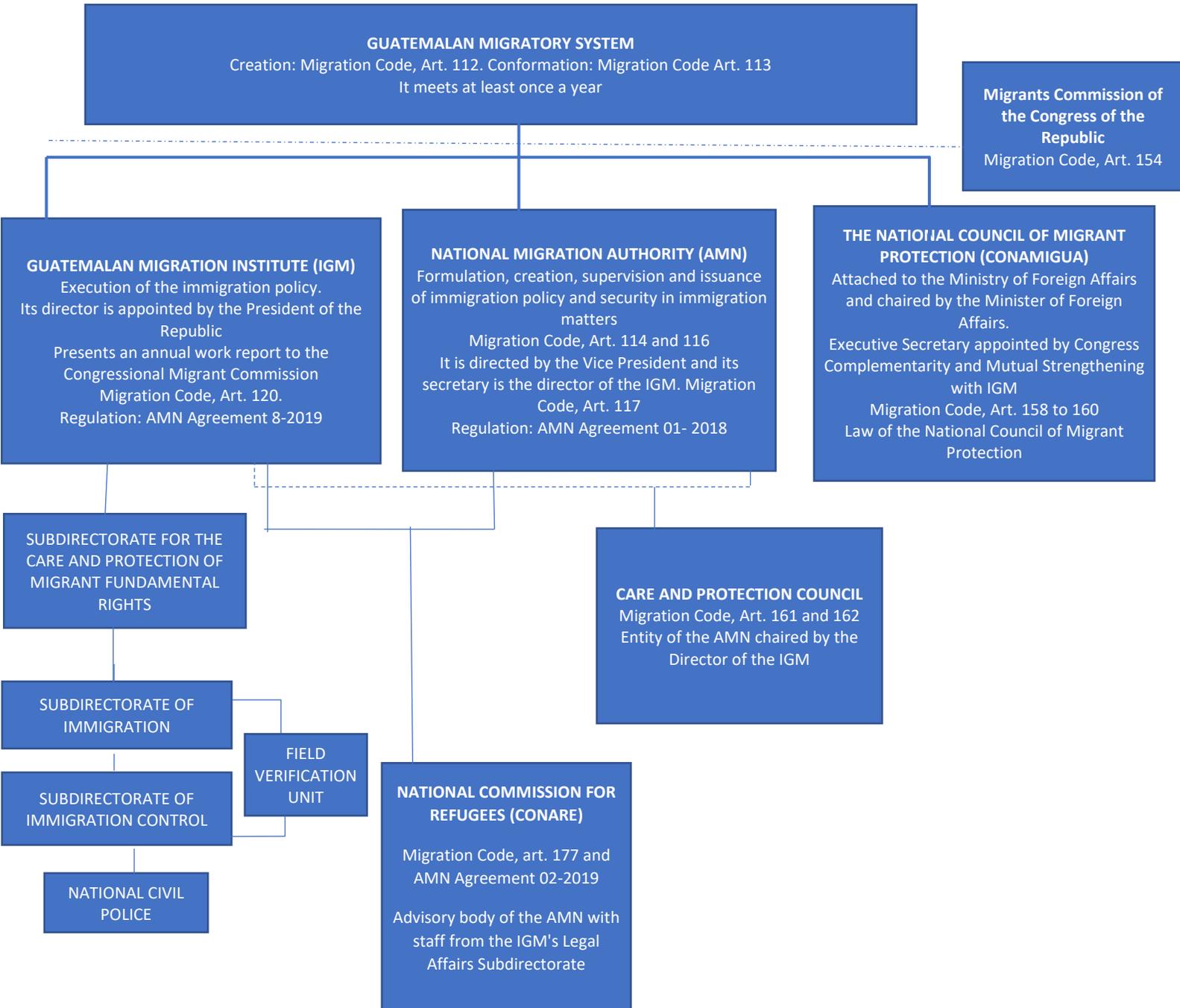
<sup>89</sup> Article 219 of the Migration Code.

## 7. Mapping of the Migration System

The Guatemalan Migration Institute will maintain cooperative relations with the National Council for Migrant Protection, aimed to provide care and protection to Guatemalans living abroad. In addition, both institutions must cooperate with the Ministry of Foreign Affairs in: a) providing necessary assistance to Guatemalans abroad in terms of obtaining official immigration documents, personal identity documents or those that, by provision of the country's laws, must be managed through consulates; b) maintaining a permanent dialogue with authorities from foreign countries regarding the conditions, treatment, hygiene, and health of Guatemalans in migration centers or during deportation or return; c) coordinating with shelters for the housing and temporary protection of Guatemalans who request assistance returning to the country; d) the management of requests for aid in the return of Guatemalans to the country.<sup>90</sup>

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<sup>90</sup> Article 160 of the Migration Code.



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