



# **Institutional and Legal Migratory Framework of the Republic of Panama: 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 Panamanian immigration system is the set of state institutions that oversee the entry and exit, regulation of nationals and foreigners, as well as the transit, stay, and permanence of foreigners in national territory under different migratory categories.

This system is composed of the Ministry of Public Security, the National Migration Service,<sup>1</sup> the Advisory Council on Migration, the police, migration inspectors,<sup>2</sup> and migration supervisors.<sup>3</sup>

- **The Ministry of Public Security** (*El Ministerio de Seguridad Pública*) proposes immigration policies to the Executive Branch and recommends and develops special measures in order to control, supervise, and prevent irregular migration.<sup>4</sup> This Ministry also recommends the negotiation, modification, or review of international migration treaties, conventions, or agreements.<sup>5</sup>

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<sup>1</sup> Martin Torrijos, “Decreto que crea el Servicio Nacional de Migración, la Carrera Migratoria y dicta otras disposiciones” (Law by Executive Decree 3-2008) *Gaceta Oficial Digital* (February 26, 2008); And its regulatory decree: Martin Torrijos, “Decreto que reglamenta el decreto ley No. 3 de 22 de febrero de 2008, que crea el Servicio Nacional de Migración y dicta otras disposiciones” (Regulatory Executive Decree 320-2008) *Gaceta Oficial Digital* (August 13, 2008); and the amendment of the regulatory decree: Ministry of Public Security, “Decreto que modifica, adiciona y deroga artículos del decreto ejecutivo 320 de 8 de agosto de 2008, reglamentario del decreto ley 3 de 22 de febrero de 2008, y dicta otras disposiciones” (Executive Decree 26-2009) *Gaceta Oficial* (March 11, 2009).

<sup>2</sup> Juan Carlos Varela, “Decreto que reglamenta el título X del decreto ley 3 de 22 de febrero de 2008 y deroga el decreto ejecutivo 40 de 16 de marzo 2009 y el decreto ejecutivo 112 de 24 de febrero de 2014” (Article 37, Executive Decree 138-2015) *Gaceta Oficial* (May 4, 2015).

<sup>3</sup> Article 15 of Executive Decree 138-2015.

<sup>4</sup> Article 9 of Law by Executive Decree 3-2008. The National Migration System was transferred from the Ministry of the Interior and Justice to the Ministry of Public Security.

<sup>5</sup> Article 9 of Law by Executive Decree 3-2008.

- **The National Migration Service** (*El Servicio Nacional de Migración*)<sup>6</sup> functions at the operational level of the Ministry of Public Security<sup>7</sup> and is responsible for the security, administration, supervision, control, and execution of migration policies.<sup>8</sup> This Migration Service enforces immigration control and oversees the presence of foreigners in the country. It authorizes or denies the entry or stay of foreigners within the country and orders their deportation, expulsion, or return. Among its functions are the apprehension, custody, and detention of foreigners who violate the legal provisions and the application of the corresponding administrative sanctions to offenders.<sup>9</sup> Furthermore, this institution must look out for the well-being and physical integrity of apprehended persons and those who are in their custody.<sup>10</sup> Within the National Migration Service, migration inspectors and migration supervisors are responsible for apprehending and detaining migrants who commit migratory offenses. The regulation of their conduct and professional services is outlined in the Migration Career Regulations.<sup>11</sup>
  
- **The Advisory Council on Migration** (*El Consejo Consultivo de Migración*) is a consultative and advisory body for the migration policies<sup>12</sup> of the National Migration Service. It designs and recommends the state's migration policies, as well as the necessary measures and actions for their execution.<sup>13</sup> This Council is constituted by the following public officials or those designated by them:<sup>14</sup>
  - The Minister of Public Security, who presides over the council;<sup>15</sup>
  - The Minister of Foreign Affairs;
  - The Minister of Labor and Labor Development;
  - The Minister of Commerce and Industries;
  - The Minister of Economy and Finance;
  - The President of the Electoral Tribunal;
  - The General Manager of the Panamanian Institute of Tourism;
  - The Executive Secretary of the Public Security and National Defense Council;

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<sup>6</sup> Law by Executive Decree 3-2008, regulated by Executive Decree 320-2008 and then amended by Executive Decree 26-2009.

<sup>7</sup> Article 11 of the Law Establishing the Ministry of Public Security, *Ley que crea el ministerio de seguridad pública* (Law by Executive Decree 15-2010).

<sup>8</sup> Article 4 of the Law by Executive Decree 3-2008.

<sup>9</sup> Article 6 and article 10, section 9 of the Law by Executive Decree 3-2008.

<sup>10</sup> Article 102 of the Law by Executive Decree 3-2008.

<sup>11</sup> Executive Decree 138-2015.

<sup>12</sup> Article 2 of Executive Decree 320-2008.

<sup>13</sup> Article 8 of the Law by Executive Decree 3-2008; Articles 2 and 3 of Executive Decree 320-2008.

<sup>14</sup> Article 8 of the Law by Executive Decree 3-2008.

<sup>15</sup> Article 8 of the Law by Executive Decree 3-2008 establishes that the president of the Council is the Minister of the Interior and Justice, but as mentioned before, the National Migration System was transferred from that Ministry to that of the Ministry of Public Security, for which it is understood that the president is now the Minister of Public Security, although no regulations stating this were identified.

- The General Director of the National Migration Service, who acts as Secretary, with the right to participate.
- **The National Border Service** (*El Servicio Nacional de Fronteras*) is a specialized civilian police institution within the scope of the Ministry of Public Security,<sup>16</sup> whose duties include carrying out the surveillance, security, and defense of border areas in both land and waterways,<sup>17</sup> safeguarding the life and physical integrity of detained persons or persons under their custody,<sup>18</sup> assisting with the protection and preservation of natural resources,<sup>19</sup> preventing and repressing crimes and misdemeanors committed at the borders and in areas with no other police authorities, prosecuting and capturing lawbreakers<sup>20</sup> in such areas, and investigating crimes under their jurisdiction.<sup>21</sup>
  - **The Police**, for its part, may be authorized, as auxiliaries, to exercise immigration control<sup>22</sup> in places of difficult access, or where there are no offices nor officials of the National Migration Service.
  - **The National Office for the Protection of Refugees** (*La Oficina Nacional para la Atención de Refugiados*, ONPAR) is the state office attached to the Ministry of Government<sup>23</sup> where applications for the recognition of refugee status must be submitted. It is responsible for receiving, admitting, and processing the applications. The admitted cases are evaluated by the National Commission for the Protection of Refugees (*Comisión Nacional de Protección para Refugiados*, CONARE), the institution responsible for deciding whether or not to recognize the presented application.

## 2. Legal Framework

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

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<sup>16</sup> Martin Torrijos, “Decreto ley que crea el Servicio Nacional de Fronteras de la Republica de Panamá” (Article 2, Law by Executive Decree 8-2008) *Gaceta Oficial* (August 20, 2008).

<sup>17</sup> Article 22, section 2 of the Law by Executive Decree 8-2008.

<sup>18</sup> Article 11, section 1 of the Law by Executive Decree 8-2008.

<sup>19</sup> Article 22, section 3 of the Law by Executive Decree 8-2008.

<sup>20</sup> Article 22, section 4 of the Law by Executive Decree 8-2008.

<sup>21</sup> Article 22, section 5 of the Law by Executive Decree 8-2008.

<sup>22</sup> Article 109 of the Law by Executive Decree 3-2008.

<sup>23</sup> Juan Carlos Varela, “Decreto que desarrolla la Ley 5 de octubre de 1977 por la cual se aprueba la Convención y Protocolo sobre el Estatuto de los Refugiados, deroga el Decreto Ejecutivo 23 de febrero de 1998 y dicta nuevas disposiciones para la protección de las personas refugiadas” (Article 16, Executive Decree 5-2018). *Gaceta Oficial Digital* (January 18, 2018).

### 3. Migratory Categories and Adjustment Processes

Migratory categories are divided as follows:

- Temporary resident;<sup>24</sup>
- Permanent resident;<sup>25</sup>
- Non-resident;<sup>26</sup>
- Foreigners under the protection of Panama;<sup>27</sup>
- Cross-border migratory movements of indigenous populations.

The General Immigration Regularization Procedure is the legalization process that can take place at National Migration Service facilities, at which point a provisional residence permit is issued to qualifying foreigners.<sup>28</sup> For this, interested parties need:

- To be over the age of 18, or if not, a notarized authorization from their parents is required.<sup>29</sup>
- To have resided for one year or more in the country at the time that the Executive Decree 167-2016 was issued. If the foreigner leaves the country, they cannot do so for more than 30 days.<sup>30</sup>
- Not to have an open legalization process before the National Migration Service.<sup>31</sup>
- To appear in person in order to start the legalization process at the National Migration Service.<sup>32</sup>

Those interested must participate in the Social Security or Peace and Safety Funds if they are adults,<sup>33</sup> be subjected to an interview and evaluation by the National Migration Service to determine whether or not they are eligible for the provisional permit,<sup>34</sup> and pay the corresponding amount for this service.<sup>35</sup> Those who meet the requirements receive a provisional residence card that is valid for two years.<sup>36</sup> Once the provisional residence permit

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<sup>24</sup> Articles 18 and 19 of the Law by Executive Decree 3-2008.

<sup>25</sup> Articles 20 to 22 of the Law by Executive Decree 3-2008.

<sup>26</sup> Articles 16 and 17 of the Law by Executive Decree 3-2008.

<sup>27</sup> Articles 23 to 27 of the Law by Executive Decree 3-2008.

<sup>28</sup> Juan Carlos Varela, "Decreto que establece el Procedimiento de Regularización Migratoria General y se deroga el Decreto 547 de julio 2012" (Article 1, Executive Decree 167-2016) *Gaceta Oficial Digital* (June 3, 2016).

<sup>29</sup> Article 2, section 1 of Executive Decree 167-2016.

<sup>30</sup> Article 2, section 2w of Executive Decree 167-2016.

<sup>31</sup> Article 2, section 3 of Executive Decree 167-2016.

<sup>32</sup> Article 2, section 4 of Executive Decree 167-2016.

<sup>33</sup> Article 2 of Executive Decree 167-2016,

<sup>34</sup> Article 4 of Executive Decree 167-2016.

<sup>35</sup> Article 5 Executive Decree 167-2016,

<sup>36</sup> Article 8 of Executive Decree 167-2016,

expires, renewal may be requested upon compliance with the established requirements.<sup>37</sup>

## 4. Humanitarian Protection

### A. Refugee Protection<sup>38</sup>

Panama considers whether or not to provide refugee status based on the terms of the 1951 Convention on the Statute of Refugees.<sup>39</sup>

#### Process for Determining Refugee Status

To request refugee status, the person must submit their application for refugee status to the National Office for the Protection of Refugees (ONPAR) within six months of the business day following the day of entry into the country. Subsequently, ONPAR conducts the interview in person to verify the information and admit or deny the case.<sup>40</sup> The admitted cases are evaluated by the National Commission for the Protection of Refugees (CONARE),<sup>41</sup> who will then decide whether or not to recognize the submitted application.

If the request is denied or rejected, a reconsideration appeal may be filed at the ONPAR office addressed to CONARE, within five business days following notification of the resolution.<sup>42</sup> In turn, if the request for reconsideration is rejected by CONARE, an appeal may be filed before the Minister of Government within three business days of notification of the resolution.<sup>43</sup> The decision on the appeal is filed through administrative channels. If desired, an appeal can be filed before the Third Administrative-Adversarial Chamber of the Supreme Court of Justice of Panama.

#### Benefits, Rights, and Obligations of the Refugee

Asylum seekers are protected by the principles of nonrefoulement, nonrejection at the border, and no penalty for illegal or irregular entry.<sup>44</sup>

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<sup>37</sup> Juan Carlos Varela, “Decreto que autoriza la renovacion de los permisos provisionales de residencia otorgados dentro de los Procesos de Regularizacion Migratoria Extraordinaria” (Article 2, Executive Decree 169-2015) *Gaceta Oficial* (May 22, 2015).

<sup>38</sup> Executive Decree 5-2018.

<sup>39</sup> Article 7 of Executive Decree 5-2018, Any foreign person who due to supervening causes that have arisen in their country of nationality or habitual residence during their stay in this country have developed a fear of being persecuted for reasons of race, gender, religion, belonging to a certain social group, or political opinions. The principle of nonrefoulement applies from the moment the person expresses verbally or by writing their intention to formalize an application for refugee status before the appropriate state authority.

<sup>40</sup> Chapter 6 of Executive Decree 5-2018.

<sup>41</sup> The National Commission for the Protection of Refugees (CONARE) is a group of government officials who make the final decision on whether or not to grant refuge to a person or family.

<sup>42</sup> Chapter 10 of Executive Decree 5-2018,

<sup>43</sup> Chapter 10 of Executive Decree 5-2018,

<sup>44</sup> Article 228 of Executive Decree 320-2008.

The National Migration Service will grant refugees a refugee card for one year, which enables the right to process a valid work permit for the same period.<sup>45</sup>

Refugees who have been recognized as such for ten years or more may request a permanent residence permit<sup>46</sup> and naturalize<sup>47</sup> with the same rights, including the right to work, the obligation to pay taxes and social security contributions under the same conditions as nationals, as well as payments for immigration services.<sup>48</sup> Likewise, refugees have the right to reunite with their nuclear family,<sup>49</sup> therefore the change in status is carried over to the nuclear family.<sup>50</sup>

## **B. Asylum**

Asylum protection is the recognition of foreigners who have entered a country seeking temporary protection, while they await return to their country of origin or resettlement to a third state.<sup>51</sup>

Asylum is understood as a political instrument, which is granted only to people who allege persecution for political reasons. ONPAR is the official body in charge of coordination between different institutions for the protection of people who request asylum.

Asylees who have had legal status for ten years or more may apply for a permanent residence permit,<sup>52</sup> with the right to work, the obligation to pay taxes and social security contributions under the same conditions as nationals, as well as the payment of immigration services.<sup>53</sup>

## **C. Statelessness**

Any person who is not considered a national by any state, as a result of conflicts in the criteria for assigning nationality, the renunciation of nationality, judicial sanction, or dissolution of their former state.<sup>54</sup>

## **Process for Determining Asylum Status**

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<sup>45</sup> Chapter 12, article 232 of Executive Decree 5-2018,

<sup>46</sup> Art. 236 of Executive Decree 320-2008.

<sup>47</sup> Article 94 of Executive Decree 5-2018.

<sup>48</sup> Article 26 of the Law by Decree 3-2008.

<sup>49</sup> Article 77 of Executive Decree 5-2018.

<sup>50</sup> Article 88 of Executive Decree, 5-2018.

<sup>51</sup> Article 23 of Law by Decree 3-2008.

<sup>52</sup> Articles 236 and 237 of Executive Decree 320-2008.

<sup>53</sup> Article 26 of Law by Decree 3-2008.

<sup>54</sup> Article 2 of Executive Decree 320-2008.

The Ministry of Foreign Affairs receives, processes, and declares by means of a reasoned resolution, the recognition of statelessness. The Directorate of International Legal Affairs and Treaties of the Ministry of Foreign Affairs will carry out the application procedure until it makes a recommendation declaring an individual as stateless or not.<sup>55</sup>

## Benefits

Having recognized the status of a stateless person, the competent authority will issue the stateless person a travel document,<sup>56</sup> at which point that person may exercise any type of paid legal activity, in accordance with the law.<sup>57</sup>

Stateless persons will have the same rights as temporary residents, including the right to work, the obligation to pay taxes and social security contributions under the same conditions as nationals, as well as make payments for immigration services.<sup>58</sup>

The stateless person has the right to reunify with their nuclear family. To exercise this right, the person must submit an application to the Ministry of Foreign Affairs. Subsequently, the Directorate of International Legal Affairs will conduct a socioeconomic evaluation of the applicant and the Ministry of Foreign Affairs will decide on reunification.

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

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

- **Voluntary Return** is the authorization granted to irregular migrants to leave the country upon prior payment of corresponding administrative sanctions and travel fees,<sup>59</sup> provided that either the migrant or a third party assume the return costs.

Panama is a member of the Regional Conference for Migration and the International Organization for Migration, as well as the Protocol for Assisted Voluntary Returns using funds from the Regional Conference on Migration to assist with returns of vulnerable migrants in the region. For the implementation of voluntary return of migrants in vulnerable situations, Panama may use the aforementioned protocol.

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<sup>55</sup> Ministry of the Presidency, "Decreto que reglamenta la Ley 28 de 30 de marzo de 2011, que aprueba la convención sobre el Estatuto de los Apátridas de 1954 hecha en Nueva York, el 28 de septiembre de 1954" (Executive Decree 10-2019) *Gaceta Oficial* (January 16, 2019).

<sup>56</sup> Article 42 of Executive Decree 10-2019.

<sup>57</sup> Article 43 of Executive Decree 10-2019.

<sup>58</sup> Article 26 of the Law by Decree 3-2008.

<sup>59</sup> Article 2 of Executive Decree 320-2008.

- **Consequences of Voluntary Return.** Irregular migrants who request this return will have to pay a fine of 50 Balboas for each expired month or fraction of the month for which they have been in the country irregularly. Migrants who choose to return voluntarily must generally leave the country within seven calendar days and are prohibited from entering the country for a period of two to five years. Irregular migrants married to a Panamanian national or who have a minor Panamanian child are not subject to the entry ban, as long as they can demonstrate that they are fulfilling their duties as a spouse or parent.<sup>60</sup>
- **Voluntary Repatriation.** It is the competence of the General Director of the National Migration Service to approve the repatriation of minors.<sup>61</sup> Likewise, a refugee can request voluntary repatriation along with their dependents and other persons included in their file.<sup>62</sup> In Panama, there is a repatriation deposit that migrants must pay, but members belonging to religious orders, students, those married to Panamanians, people under the age of 12,<sup>63</sup> and refugees, asylees, or stateless persons<sup>64</sup> are exempt from this obligation.
- **Deportation.** The National Migration Service is responsible for deporting and preventing foreigners from entering the national territory for reasons such as entering the country in an irregular manner, remaining irregularly in the country, engaging in conduct that goes against morals and good customs, threatening public security, national defense, and public health, as well as having served a prison sentence.<sup>65</sup> Before ordering deportation, the National Migration Service must verify the facts that motivate it, personally listen to the foreigners or their lawyers, order the arrest, and provide notice of the resolution that is ordering the arrest, and ensure the best interests of the minors and the family unit. A reconsideration appeal before the National Migration System is applicable in response to the deportation order, which is granted only for repayment purposes, and thus exhausts all administrative channels.
- **Consequences of Deportation.** The deportee may not enter Panama for five to ten years, counting from the date of deportation. Once this period has expired, the foreigner may request that the General Director of the National Migration Service lift the entry ban, and the Director will then decide whether or not to grant the lift. This sanction will be extended indefinitely if the foreigner violates the order and

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<sup>60</sup> Article 84 of the Law by Decree 3-2008.

<sup>61</sup> Article 259 of Executive Decree 320-2008,

<sup>62</sup> Article 87 of Executive Decree 5-2018.

<sup>63</sup> Article 29 of the Law by Decree 3-2008.

<sup>64</sup> Article 24 of the Law by Decree 3-2008.

<sup>65</sup> Article 65 of the Law by Decree 3-2008.

remains clandestinely in the country, or re-enters without authorization.<sup>66</sup>

- **Expulsion.** The National Migration Service can expel a foreigner who commits a crime or incites racial, religious, cultural, or political hatred, represents a threat to collective security, health, or public order, has been convicted of a malicious crime, after having served their sentence, or has been deported and is re-entering the country irregularly.<sup>67</sup> The expelled foreigner will not be able to return to the country.<sup>68</sup> After the National Migration Service decides to order the expulsion, the foreigner must be notified of the decision. An appeal for reconsideration may be filed before the National Migration Service, which will be granted only by means of said appeal, which exhausts all administrative channels.
- **Consequences of Expulsion.** The expelled person will not be able to return to the country. Anyone who re-enters will be referred to the competent authority for the corresponding procedures or, if that fails, will be permanently expelled.<sup>69</sup>

## **B. Regulation and Limitations on the Detention of Migrants**

The maximum period of migrant detention in government shelters is a calendar year and a half. Asylum seekers, refugees, or victims of human trafficking cannot be returned in accordance with the principle of nonrefoulement. An individual claiming statelessness can also not be expelled or returned to another country, except for reasons of national security or public order.<sup>70</sup>

The National Migration Service operates preventative shelters for short stays of up to 18 months,<sup>71</sup> designated to hold foreigners who violate immigration legislation. Only people over 18 years of age can stay in these shelters. Minors will be placed under the protection of the Ministry of Social Development, which will be responsible for communicating with the diplomatic or consular representative of the migrant's country of origin or residence.<sup>72</sup>

Foreigners that are staying in preventative shelters will have the right to communicate with a lawyer, a family member, and with the diplomatic or consular representatives of their country of origin or residence, if accredited in the country, or otherwise with an allied government. The National Migration Service will inform the accredited diplomatic or consular representatives about the migratory status of the migrants who are located in

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<sup>66</sup> Article 69 of the Law by Decree 3-2008.

<sup>67</sup> Article 71 of the Law by Decree 3-2008.

<sup>68</sup> Article 72 of the Law by Decree 3-2008.

<sup>69</sup> Article 72 of the Law by Decree 3-2008.

<sup>70</sup> Article 48 of the Executive Decree 10-2019.

<sup>71</sup> Article 2 of the Executive Decree 320-2008.

<sup>72</sup> Article 93 of the Law by Decree 3-2008.

these shelters.<sup>73</sup>

## **6. Labor Migration Schemes<sup>74</sup>**

The employer, agent, contractor, or intermediary involved in hiring foreign workers must require that they present documentation proving legal stay in the country and, being duly authorized to do so, must notify the National Migration Service within 20 business days of the termination of the employment or contractual relationship. Failure to comply with this provision will generate the application of fines for the employer and/or the foreigner, regardless of whether the National Migration Service has already ordered the deportation of the worker or professional.<sup>75</sup>

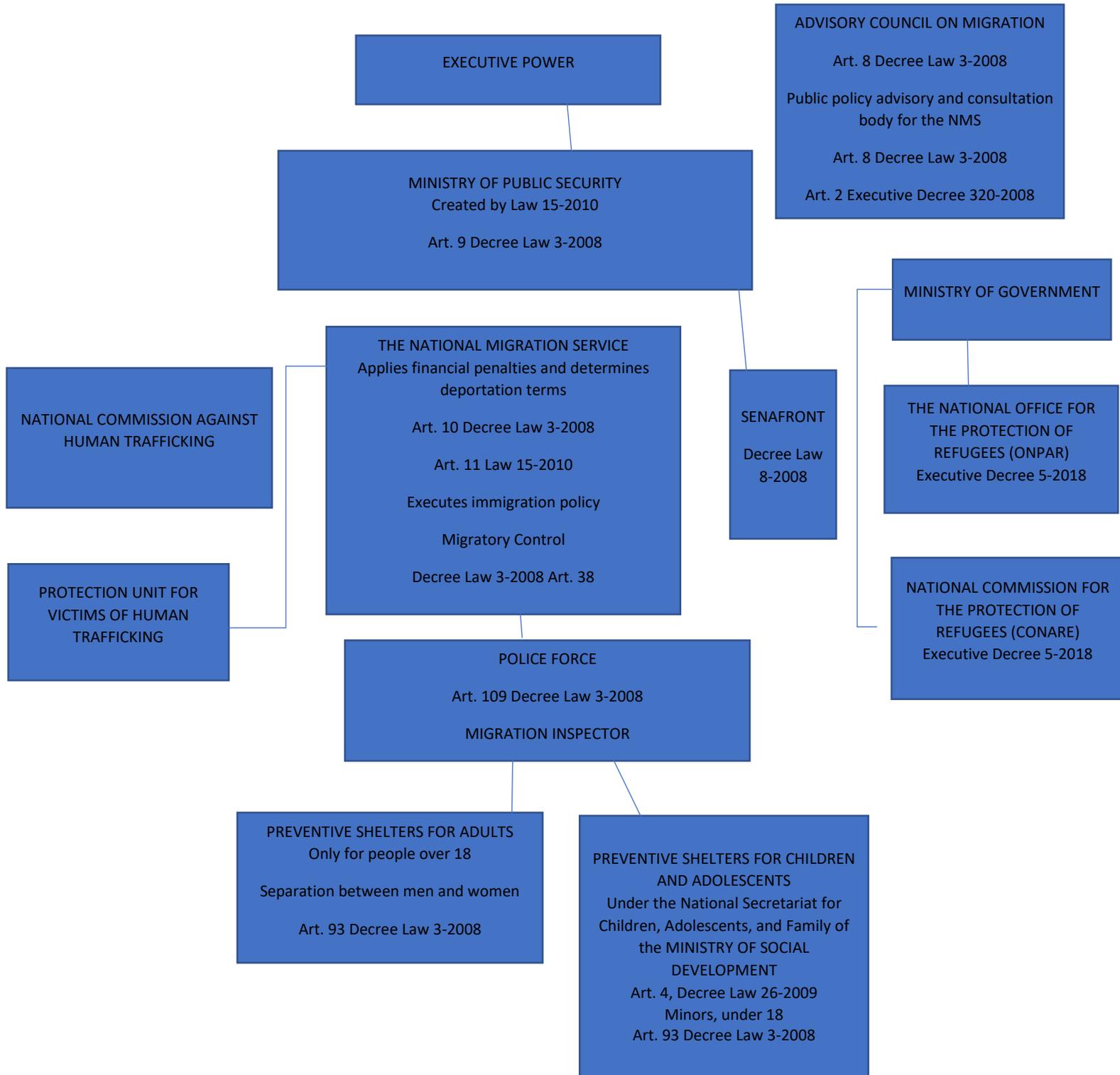
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<sup>73</sup> Article 94 of the Law by Decree 3-2008.

<sup>74</sup> Executive Decree 320-2008 and its amendment, Executive Decree 26-2009.

<sup>75</sup> Articles 53 and 56 of the Law by Decree 3-2008.

## 7. Mapping of the Migration System



## About the Author

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