

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

GUATEMALA

I. BACKGROUND AND CURRENT CONDITIONS

Guatemala ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1983. The Guatemalan Constitution establishes that treaties and conventions ratified by the State shall prevail over national legislation. The refugee definition of the *1951 Convention* and the extended refugee definition of the Cartagena Declaration of 1984 are included in Article 11 of the Government Agreement No. 383-2001 (Regulation to Protect and Conduct Refugee Status Determination in Guatemala of 14 September 2001). Furthermore, the Government passed a National Decree on Refugee Protection in 2001. Gender-based persecution is recognized as a ground for granting refugee status. The national Refugee Status Determination (RSD) procedure is implemented by an inter-ministerial commission, the National Refugee Commission (CNR). UNHCR is a member of the CNR, with voice but no vote.

Office of Migratory International Relations (ORMI) acts as the Secretariat of the National Commission for Refugees and oversees asylum applications. On 19 January 2012, a new Director of Migration was appointed. Following the recent elections, UNHCR is concerned about possible changes in ORMI, as the technical expertise gained by ORMI on these issues may be jeopardized. In case further changes are made, it is important to ensure a proper transition that maintains the emphasis on complying with state obligations under the 1951 Convention.

Guatemala is a State party to both the *1954 Convention relating to the Status of Stateless Persons* (since November 2000) and the *1961 Convention on the reduction of Statelessness* (since July 2001), but has not yet established formal procedures to determine statelessness.

Guatemala is a country of origin of economic migrants and is largely a transit country for asylum-seekers and refugees moving towards the North in mixed migratory flows. Guatemala hosts a total of 138 refugees, the vast majority of whom are Nicaraguans and Salvadorans. Guatemala receives very few asylum claims each year. Nine asylum claims (representing fifteen individuals) were submitted in 2010 and fourteen asylum claims (representing twenty individuals) were submitted in 2011. During this period, 11 cases involving 14 persons had to be closed, as the asylum-seekers left the country before the asylum process had concluded.¹ UNHCR is concerned about the small number of asylum-seekers registered in 2011 and previous years, given the estimated 300,000 persons transiting through Guatemala annually in the attempt

¹ The same happened in 2009, when 39 persons were registered as asylum-seekers, whereas only one applicant was recognized as a refugee and the others left the country at an earlier stage of the process.

to reach the United States or Canada and the estimated 250,000 migrants, originating mostly from Latin America, residing irregularly in Guatemala.

Given the small number of asylum-seekers and refugees and the pressing nature of other national political priorities (such as combating poverty, unemployment, insecurity, organized crime, growing gang violence, corruption, etc.), the issue of asylum is not a priority for the Government of Guatemala. UNHCR is aware of the challenges posed by the complex socio-economic and security considerations. Therefore, it remains of great importance to continue developing formal and informal alliances, working with relevant organizations, and strengthening coordination with key national and international actors. Additionally, even though there are a small number of asylum claims annually, there still is a critical need to develop migration and detention standards that comply with basic international human rights. The need for such procedural standards is illustrated by the practices of other countries in the region (specifically Mexico) that implement rapid deportation of immigrants from Central America.

UNHCR welcomes the initiative of the National Council for Migrants (*Consejo Nacional de Atención al Migrante*) of issuing a 2010 publication that compiles the general framework applied by Guatemala on migratory matters, including refugee and statelessness matters. The main purpose of this compilation is to systematize the actions and policies by different government entities with competency over migratory issues, in order to establish a solid foundation and guide for the Public Policy in Migration.²

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR welcomes the Government's achievements in the following areas:

1. Adoption of the Law against Sexual Violence, Exploitation, and Human Trafficking.

Guatemala has been identified as a source, destination and transit country for internal and cross-border human trafficking, which disproportionately affects women and children. In April 2004, Guatemala acceded to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, which supplemented the *United Nations Convention against Transnational Organized Crime*, and adopted national anti-trafficking legislation in March 2009.

The Law against Sexual Violence, Exploitation, and Human Trafficking (Decree 9-2009) has been a positive development in creating standards with the aim to prevent, repress, sanction, and eradicate sexual violence and the exploitation and trafficking of persons; to guarantee that protection is offered to the victims; and to compensate them for the damages suffered. The new piece of legislation explicitly states that the best interest of the child should prevail and establishes an ad-hoc Secretariat against the Sexual Violence, Exploitation and Trafficking of Persons (SVET) to coordinate the Government's anti-trafficking efforts.

In August 2009, the Government presented its public policy related to sexual violence and trafficking of persons, as well as the Ten Year Strategic Action Plan (2007-2017). In this context, an inter-institutional Protocol for the repatriation of victims of trafficking (with specific provisions for girls, boys, adolescents and adults) was adopted in January 2011. Additionally,

² Marco General y Descripción de Acciones del Estado de Guatemala en Materia Migratoria, Secretaría Ejecutiva del Consejo Nacional de Atención al Migrante de Guatemala, Octubre 2010.

two special shelters for victims of trafficking were opened in February 2011, including special facilities for unaccompanied minors. UNHCR and its implementing partner (IP) in Guatemala cooperated with the SVET to identify cases that should be referred to the asylum procedures and to complement each other's respective protection roles.

2. Training of Authorities in Addressing Migration Issues

The Government has taken steps to provide training to the authorities on migration issues involving refugees, victims of trafficking, and children, such as the workshop for Child Protection Officers organized in 2011.

UNHCR welcomes the interest, collaboration and participation of relevant authorities in capacity-building initiatives, such as training for judges and civil servants on issues related to trafficking. Police also participated in two capacity-building sessions organized by UNHCR and its IPs in collaboration with the Government in 2011. UNHCR encourages the recently-elected Government to continue using UNHCR's expertise for relevant capacity-building initiatives.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Identification of Persons in Need of Protection at Borders and Airports and Establishment of Mechanisms for Referral and Follow-up

It is important that the Government of Guatemala strengthen its mechanisms to identify and differentiate between groups of arrivals with varying needs and profiles and refer them to appropriate follow-up procedures. UNHCR is pursuing efforts to ensure that national police and migration officers in the field, particularly at airport, land, and sea border points, are informed, trained, and sensitive to the specific needs of migrants, among which there may be persons in need of international protection. Because people of concern to UNHCR are part of mixed migratory flows, it is difficult to provide the necessary protection without proper identification mechanisms. It is therefore of paramount importance to provide trainings and clear instructions on how to respond to asylum applications and how to handle the needs of separated children, victims of trafficking and other groups with specific needs.

Recommendation:

- Manage mixed migration flows in a protection-sensitive manner by considering the different profiles and needs of the persons concerned and by ensuring access of persons in need of international protection to fair and efficient RSD procedures.

Issue 2: Child Protection Systems

Unaccompanied and separated children are vulnerable to a variety of situations and abuses, but remain invisible since the Guatemalan authorities lack proper identification and referral procedures. UNHCR remains concerned about the situation of deported Guatemalan children who are caught transiting irregularly through Mexico, the US or Canada and subsequently are sent back to their families without having the necessary verifications.

The Mexican National Institute conducted a special training event at the beginning of December 2009 in Guatemala City, as a result of which 12 migration officials working in different offices in the country were appointed as Child Protection Officers ("Oficial de Protección de la Infancia") (OPIs). Their main tasks included identifying and responding to the most urgent needs of detained migrant children and victims of trafficking; informing children, in an appropriate

language, about their rights, including the right to seek asylum; and answering questions about the immigration proceedings. Unfortunately, this was not further implemented.

In February 2011, the Ministry of Foreign Affairs, the Mexican Immigration Institute and the Regional Conference on Migration organized a workshop to establish a protection system for migrant children. Over 50 officials from national institutions, including the police, attended the workshop. The Vice-Minister of Foreign Affairs proposed the adoption of a governmental decree to implement this framework, but as of March 2012, it had not been adopted. It is hoped that the “Operative Manual for Child Protection Officers” will reflect the views of UNHCR and UNICEF and provide for a referral procedure for those children who may be in need of international protection

Recommendation:

- Develop mechanisms to identify and provide international protection to unaccompanied and separated minors, such as adopting and implementing a model framework and operative manual for OPIs, which should include a referral procedure for those in need of international protection. In addition, ensure that migration authorities, in particular future OPIs, and other relevant officials, such as the police, are trained on international refugee law, including the right of children to seek asylum, the best interest determination principle, and the protection standards for unaccompanied children, including the potential need for international protection of victims of trafficking, forced recruitment, sexual and gender-based violence or other abuse.

Issue 3: Combating Trafficking in Persons

Despite the various efforts to strengthen the framework for the prevention and prosecution of human trafficking, UNHCR notes that many Government officials remain unaware that victims of trafficking also may be in need of international protection. The regulations remain inadequate in protecting victims of trafficking, particularly victims of international trafficking who may be at risk if returned to their countries of origin or last habitual residence. It is therefore of critical importance that Government officials understand that some victims of trafficking may be in need of international protection as refugees and take measures to ensure victims are informed of their right to seek asylum in line with UNHCR’s Guidelines on International Protection on the Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked.³

Close coordination with relevant national and international actors, such as the Ombudsman Office, National Police, IOM, UNHCR, UNICEF, and Secretaría de Bienestar Social, can facilitate the identification of such persons, as well as the design and implementation of more adequate support channels and solutions.

Formal cooperation agreements were signed in 2010 between the IP of UNHCR (Pastoral de Movilidad Humana), the Human Trafficking Section of the Ombudsman Office and the National Forum for Migrants. UNHCR shared and discussed official comments on the Proposal of Migration Law Initiative with the President of the Commission for Migrants from the Guatemalan Parliament. However, the proposal was put on hold due to the elections in the country. It is an issue that will be followed up this year.

³ UN High Commissioner for Refugees, Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked, 7 April 2006, HCR/GIP/06/07, available at: <http://www.unhcr.org/refworld/docid/443679fa4.html>

Recommendation:

- Identify and address the specific protection needs of victims of trafficking and ensure that those in need of international protection are referred to the competent authorities and have access to adequate procedures for the examination of their claims in an age- and gender-sensitive manner.

Issue 4: Asylum Procedure

The asylum procedure in Guatemala is governed by the 2001 Regulation to Protect and Conduct RSD in Guatemala, approved by the Government Agreement No. 383-2001. These rules govern the functioning of the National Eligibility Commission, including the establishment of monthly meetings (Article 6). However, in practice, the National Eligibility Commission met only twice in 2011, despite the fact that there are still seven cases pending. Considering such few asylum applications, UNHCR acknowledges that the frequency stated in the law does not properly reflect reality; however, more meetings should be conducted throughout the year. UNHCR would like to note that shortly after the new Government was appointed, the National Eligibility Commission had its first session on 21 February 2012 and hopes the authorities will continue holding such meetings in a systematic manner.

In addition, the Regulation establishes that the Government must guarantee the existence of an institution responsible for analyzing and deciding eligibility matters on appeal. Nevertheless, the competent authority has not been clearly determined. As the National Council for Migrants in Guatemala indicates, “[a]lthough the law establishes that the Presidency of the Republic shall hear such appeals, the General Secretariat of the Presidency determined that it is not under the competency of the Presidency of the Republic to make such determinations.”

Recommendation:

- To guarantee the fairness of the asylum procedure ensure that the National Eligibility Commission meets sufficiently often to make decisions on pending asylum requests and establish a body to consider appeal cases.

Issue 5: Complementary Protection Framework

In its official comments to the Proposal of Migration Law Initiative discussed at the relevant Commissions in the Parliament in 2010, UNHCR recommended the introduction of complementary protection measures, such as humanitarian visas for persons not qualifying for refugee status but who are nevertheless in need of protection.

Recommendation:

- Amend the national legislation to introduce a complementary protection framework for those who are not recognized as refugees, but still require international protection.

Issue 6: Living Conditions in the Pre-Removal Administrative Detention Facility

Despite the commitment by the Directorate-General of Migration and various improvements (i.e. separation of men and women), the conditions at the “shelter for migrants” in Guatemala city (a pre-removal administrative detention facility for migrants and asylum-seekers) remain inadequate. In particular, the shelter lacks open spaces and ventilation, and outdoors activities or recreational facilities. No proper referral mechanisms to the asylum procedures exist, and the provision of information about the procedure to persons in need of international protection depends on individual officers in charge.

Recommendation:

- Take necessary measures to ensure that the living conditions in the shelter for migrants comply with international standards. Furthermore, establish mechanisms allowing detained migrants to make a request or complaint regarding their treatment, in particular in cases of physical and

psychological abuse, to the authorities responsible for the administration of the shelter, to higher authorities and, when necessary, to judicial authorities. Additionally, inform persons in need of international protection in the shelters about their right to seek asylum, and establish and implement a proper referral mechanism. Provide persons of concern to UNHCR in detention, free of charge, an interpreter and legal counsel during administrative proceedings.

Issue 7: Forced Recruitment of Children by the Maras

Gang-related criminal activity is on the rise in the region. Reports indicate that the Maras are assuming a more consolidated level of organization, enabling them to exert greater violence and to focus on criminal activities. While recruitment previously occurred voluntarily, the gangs now are increasingly resorting to forced recruitment, including of minors, drawing their recruits mainly from marginalized segments of society.

UNHCR notes that the prevention of recruitment of children by the Maras in Guatemala is crucial, as it also will prevent children from fleeing forced recruitment and from seeking international protection as refugees in other countries in the region.

Recommendation:

- Increase efforts aimed at preventing and addressing forced recruitment of children by the Maras, including the adoption of appropriate allocation of funds to implement prevention programmes, as well as the assistance to and monitoring the situation of under-aged victims and police informants.

Issue 8: Non-Discrimination

Discriminatory attitudes and social stigmatization of migrants are common, and although asylum-seekers or refugees are not targeted per se, they are equally affected as non-nationals. Human rights NGOs and church often organize sensitization and awareness-raising campaigns, but there is a need for pro-active measures from the Government side to properly address the issue. Furthermore, discrimination against women is persistent throughout the country. Indigenous and migrant women are particularly affected, as they are often the main victims of sexual abuses and sexual and labour exploitation.

Recommendation:

- Take more concrete and active steps to combat discrimination and xenophobic tendencies, including against refugees and asylum-seekers. Improving access to education and economic empowerment of women are paramount. Discrimination hampers the populations' access to and the enjoyment of their most basic human rights, in particular the rights to work, education and housing, thus impeding their local integration. These fundamental rights are guaranteed under the Guatemalan Constitution.

Issue 9: Conventional Travel Documents

Article 28 of the *1951 Convention relating to the Status of Refugees* provides for the right of refugees lawfully staying in the territory of a State party to be issued a travel document (Conventional Travel Documents, or CTDs), enabling them to travel outside the territory. States are required to issue CTDs that comply with the rules of the International Civil Aviation Organization (ICAO) to refugees and stateless persons.⁴ ICAO standards required States to issue only machine-readable travel documents after 1 April 2010. The process of issuing CTDs by the Government was discontinued as of this date, as it was unable to comply with this requirement. Thus, refugees in Guatemala are unable to travel outside the country, unless they hold a valid

⁴ 1951/1954 Conventions, the 1944 Chicago Convention and ICAO Document 9303

national passport. UNHCR and its IP in Guatemala have raised this issue with the Government on several occasions; however, no action has been taken to address this serious concern that completely undermines the freedom of movement of refugees.

Recommendation:

- Encourage cooperation between migration authorities and passport-issuing authorities to ensure that ICAO-compliant CTDs are issued to refugees and stateless persons and that they are standardized with national passports.

Issue 10: Universal Birth Registration

Currently, a large number of Guatemalan children, in particular girls in rural and poor areas, remain unregistered because of their distance from the registry offices or because their parents are unaware of the importance of birth registration.⁵

Every child has the right to be registered at birth, as recognized in the International Covenant on Civil and Political Rights. Birth registration is the first step towards ensuring recognition as a person before the law. Failure to document a person's legal existence beginning from birth can prevent the effective enjoyment of a range of human rights.

Birth registration is also essential in ensuring the right of every child to acquire a nationality. While nationality is normally acquired independently, and birth registration in and of itself does not normally confer nationality upon the child concerned, birth registration constitutes a key form of proof of a person's place of birth, parentage and identity. These are important elements in establishing the link of citizenship between an individual and a State, which thereby serves to prevent statelessness. UNHCR is concerned that the lack of birth registration could lead to statelessness for unregistered Guatemalans who leave the country and attempt to re-enter, and also impact negatively on the rights of such persons as far as those rights are contingent upon holding the status of a citizen of Guatemala.

Increased access to and information about birth registration is essential to ensuring proper registration of the population and in reducing vulnerability to statelessness, particularly for women and girls.

Recommendation:

- Ensure birth registration for all children born in the territory of Guatemala by, inter alia, ensuring access to registry offices and wide dissemination of information regarding the importance of birth registration, with a particular focus on the registration of girls in poor and rural areas, many of whom are currently not registered.

Issue 11: Statelessness Status Determination Procedure

Despite the fact that Guatemala acceded to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*, it has not implemented a statelessness status determination procedure. In the absence of such a procedure, stateless persons in Guatemala may not be identified and protected according to relevant international standards and can remain in the country with an unclear legal status.

⁵ See *Sistematización de las experiencias sobre derecho a la identidad y registro de nacimiento de niños y niñas indígenas en Bolivia, Ecuador, Guatemala y Panamá*, pages 47-64, available at: http://www.unicef.org/lac/Sistematizacion2col_21agost%282%29.pdf

UNHCR welcomes the fact that one officer from ORMI, which handles RSD matters, and one officer from the Department of Foreign Affairs attended the 2011 Regional Mesoamerican Workshop on statelessness in San Jose, Costa Rica, which was organized by UNHCR and the Costa Rican authorities. One of the workshop's goals, amongst others, aimed at harmonizing the identification of stateless persons in the sub-region.

Recommendation:

- Establish a statelessness status determination procedure to ensure the protection of stateless persons who are not refugees in Guatemala.

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