

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 INFORMATION 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. The Office of Migratory International Relations (ORMI) acts as the Secretariat of the National Commission for Refugees and oversees asylum applications.

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 movements. Guatemala hosts a total of 138 refugees, the vast majority of whom are Nicaraguans and Salvadorians. 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

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.

UNHCR welcomes the initiative of the National Council for Migrants (*Consejo Nacional de Atención al Migrante*) to publish in 2010 a review of 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

A. 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 Trafficking³ (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, 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.

B. 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.

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.

³ Ley contra la violencia sexual, explotación y trata de personas at http://www.ungift.org/doc/knowledgehub/resourcecentre/Governments/Guatemala_Ley_contra_la_violencia_sexual_explotacion_y_trata_de_personas.pdf

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: Child Protection Systems

In 2009, following a training event supported by the Mexican National Institute on Migration, 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 National Institute on Migration 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. As a result, a proposal was made to adopt a governmental decree to implement this system, which is still pending implementation. In addition, 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: UNHCR commends Guatemala for its efforts to establish a protection system for migrant children and continues to recommend the development of mechanisms to identify and provide international protection to unaccompanied and separated minors, such as adopting and implementing a model framework and operative manual for Child Protection Officers, which should include a referral procedure for those in need of international protection. In addition, UNHCR also encourages authorities to ensure that migration authorities, in particular future Child Protection Officers, 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, the protection standards for unaccompanied children, and the potential need for international protection of victims of trafficking, forced recruitment, sexual and gender-based violence or other abuse.

Issue 2: Asylum Procedure and Mixed migration

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). 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 an appeal procedure for cases rejected in first instance. 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.”

Due to the fact that persons of concern to UNHCR are part of mixed migratory movements, 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.

Recommendation: To guarantee the fairness of the asylum procedure and to continue with the ongoing efforts of the government in this regard, UNHCR recommends the establishment of a body to consider appeal cases. In addition, UNHCR, confirming its availability to continue supporting the authorities, recommends Guatemala to continue strengthening mechanisms to identify persons with international protection needs within mixed migration movements.

Issue 3: Complementary Protection Framework

In its official comments to the Proposal of Migration Law Initiative discussed at the relevant Parliamentary Commissions 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 international protection and could not return to their country of origin.

Recommendation: UNHCR continues to recommend the introduction of a complementary protection framework in the national legislation for those persons who are not recognized as refugees, but still require international protection.

Issue 4: 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: UNHCR encourages Guatemala to take the necessary measures to ensure that the living conditions in the shelter for migrants comply with international standards. Furthermore, UNHCR recommends establishing 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 that might be 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 5: Statelessness Status Determination Procedure

Guatemala has acceded to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. However, Guatemala has not yet 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.

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: Following on the accession to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*, UNHCR recommends Guatemala to establish a statelessness status determination procedure to ensure the protection of stateless persons in Guatemala.

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