

# GUATEMALA

Guatemala's migration profile is quite complex and determined in great part by its location in the Central American Isthmus. On the southern border of Mexico, Guatemala is a country of transit for emigrants from other Central American countries heading towards the USA. It is also a country of emigration for some 300 Guatemalans who embark on a dangerous journey northwards to leave their country every day, and of return for some who are deported from the USA or Mexico.<sup>1</sup> According to estimates by the IOM, until 2010 there were 1,637,118 Guatemalans in the United States of America, which amounts to 11% of the Guatemalan population.<sup>2</sup>

Currently, the migration profile of Guatemala is characterized by the securitization of nearly all migration issues: the patrolling of the national guard, on top of the border patrol, and on top of it all, the wall that has distorted migration patterns and routes from Mexico to the USA. Besides the securitization of the USA-Mexico border and the criminalization of migration in some states of the USA, challenges have mounted in Mexico as a transit territory as well with the ever-growing intervention of organized crime into the migratory routes.

Despite the enormous economic contributions of Guatemalan emigrants to their home economy, the field of policymaking by the state for emigrants is nearly empty and no electoral rights have been granted to them. Even if there have been a few scattered proposals to extend voting rights to Guatemalan emigrants, there has been no debate in parliament about enfranchising them. This flies in the face of associations of Guatemalans abroad that have been pressing to raise the issue. Public policy has lagged behind even in making any use of the remittances for productive purposes: While some private initiatives aim to direct them for collective purposes, the state has been passive in this regard, offering just one program to incentivize the use of remittances for investment in small businesses.

Slowly, in the past 10 years more and more documents by different government agencies, notably the Ministry of Foreign Affairs contain plans and commitments to develop policy on emigrant issues. Yet there is a sizeable gap between those programmatic documents and policy output. It is also noticeable that although the Directorate of Consular Affairs, which typically deals with consular issues, has taken on some new functions to better serve Guatemalan emigrants, Guatemala has not created any new bureaucratic agency to exclusively deal with emigrant policies. The Guatemalan state is also remarkably inactive when it comes to recognizing the symbolic importance of em-

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1 Caballeros, "Perfil migratorio Guatemala 2012."

2 Ibid. 48.

igrants for the country. This does not mean, of course, that nothing is done in Guatemala to profit from the return, remittances, and the skills gained by emigrants abroad; only that these have mostly been left to civil society and private actors, and not really taken on by the state.

The Guatemalan state seems preoccupied with designing and developing a set of policies for emigrants residing in the USA, often using the same names that Mexican authorities use for many policies (probably to make it easier for their emigrants to identify the range of services, by now well-known among Latin American communities in the USA). Guatemala has envisioned a policy for the protection and assistance of Guatemalans abroad since 2007.<sup>3</sup> So far, few of these planned actions have become policies, even though a complete network of agencies is planned to take care of their design, development, and implementation. There is a wealth of documents of different kinds, from laws to protocols, defining tasks and functions of bodies that are supposed to handle emigrant issues, but these bodies are so far non-existent beyond mentions on paper.<sup>4</sup>

As in other Central American cases, authorities seem to have a clear idea about the directions in which policies should be developed, but lack the final legal and financial resources (i.e. secondary laws, regulations, or budgets) to do it. Guatemalan emigrant policies rarely go beyond providing basic documents to undocumented migrants, helping them while in detention or throughout judicial processes, accompanying the deportation of minors, and repatriating ill or deceased persons. It is fair to say that although these tasks seem rather basic and traditional for consulates (as opposed to the emigrant policies newly developed by other countries), these have taken a disproportionate dimension for Central American states given the increase in the amount of emigrants in recent decades, which makes their fulfilment costly in terms of human and financial resources.

The improvement of the consular network to meet the increased demand for these services has crystallized in the training of personnel in legal frameworks of the state where they are based, and the improvement of consular service to make it reliable.<sup>5</sup> This has been the start of a momentous change in the administration of state services for emigrants. Even if the changes mean mostly putting the traditional consular services to the challenge of current

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3 Ministerio de Relaciones Exteriores, “Política protección, asistencia y atención al guatemalteco en el exterior.”

4 This could be the result of lack of budgetary resources to create them and make them function; in any case they do not even have a webpage, or a constitution; they are not even established as part of a larger body. (Congreso de la República de Guatemala, *Ley del Consejo Nacional de Atención al Migrante de Guatemala, CONAMIGUA*).

5 This means not only the federal legislations in Mexico and the USA; but also the sub-national state legislation which is very relevant in the latter.

migration trends, it is important to note that this is no small feat given the volume of migrants and the pressing circumstances they may face in Mexico, the USA, or upon returning to Guatemala. Unfortunately, these types of changes are internal to the administration of the consular network and not really observable in the form of the new services to the community which we capture in this book.

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## CITIZENSHIP/NATIONALITY

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### DUAL OR MULTIPLE NATIONALITY REGULATION

Guatemalans by birth cannot be deprived of their nationality under any circumstances and thusly may take on additional citizenships or nationalities.<sup>6</sup>

Foreigners who wish to acquire Guatemalan nationality must renounce their nationality of origin,<sup>7</sup> unless there is a bilateral treaty of dual nationality, as is the case with Spain. However, people born in the Republics that constituted the Federal Republic of Central America (1823-40)<sup>8</sup> residing in Guatemala may apply for Guatemalan citizenship without renouncing their original nationalities and be considered Guatemalans by birth.<sup>9</sup>

Guatemalan nationality can be passed on to the first generation born abroad to Guatemalan parents.<sup>10</sup>

### LOSS OF CITIZENSHIP/NATIONALITY

Guatemalans by birth cannot be deprived of their nationality under any circumstances. Guatemalans by naturalization can lose nationality if they are absent from Guatemala for more than four years, unless they have acquired Guatemalan nationality by marriage, they are residing in another Central American countries, or can justify their absence with official reasons (service to the Republic, etc.).<sup>11</sup> The Constitution states, however, that those who have obtained Guatemalan nationality by origin or by naturalization preserve it with all its rights.<sup>12</sup>

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6 Asamblea Nacional Constituyente, *Constitución Política de la República de Guatemala*, Art. 144.

7 Congreso de la República de Guatemala, *Ley de Nacionalidad*, Arts. 37, 52, 80.

8 The Republic was composed of present-day Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

9 Asamblea Nacional Constituyente, *Constitución Política de la República de Guatemala*, Art. 145.

10 Ibid. Art. 144.

11 Congreso de la República de Guatemala, *Ley de Nacionalidad. Decreto 1613*, Art. 53.

12 Asamblea Nacional Constituyente, *Constitución Política de la República de Guatemala*, Art. 3.

Citizenship can be lost if nationality is lost, or through voluntary service to nations at war with Guatemala or its allies, as long as that service constitutes high treason.<sup>13</sup> Citizenship can also be lost because of judicial sentence of imprisonment and recovered when the sentence is served, or if amnesty or pardon is granted.<sup>14</sup>

Dual nationals and naturalized citizens face some restrictions for the exercise of some citizen rights (mainly passive politico-electoral rights); for example, foreigners who naturalize in Guatemala are barred from the exercise of certain high public office positions: presidency, vice-presidency, deputies of the congress, judges, and army officers. Also, only Guatemalans by origin may own property 15 kilometers from the borders of the country. Furthermore, neither the naturalized nor Guatemalans by origin with another nationality may be army officers.<sup>15</sup>

#### **DIFFERENT RIGHTS FOR EXTERNAL CITIZENS**

No law deprives of non-residents of their citizen rights by virtue of their absence vis-à-vis national residents. According to Electoral Law, persons who lie about their place of residence to register in the electoral roll where they are not supposed to vote may be suspended of their electoral rights. This is important because there are no electoral rights for non-resident citizens/emigrants.

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#### **SUFFRAGE**

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Non-resident Guatemalans have no electoral rights, though there have been proposals to allow external voting.<sup>16</sup>

#### **VOTING RIGHTS OF NON-RESIDENT CITIZENS**

Guatemala does not provide active voting rights for non-resident citizens.

#### **CANDIDACY RIGHTS OF NON-RESIDENT CITIZENS**

Although formally there is no prohibition of passive electoral rights for non-residents, non-residents cannot register in the electoral roll and are thus not able to be candidates.

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13 Ibid. Art. 21.

14 Asamblea Nacional Constituyente, *Ley Electoral y de Partidos Políticos*, Art. 4-6.

15 Asamblea Nacional Constituyente, *Constitución Política de la República de Guatemala*. Arts. 162, (Deputy), 185 (President and Vicepresident), 207, 216, 217, 222 (judges of any kind and court), 247 (army officers). Property: Art. 123. Any popular election position: *Ley Electoral y de Partidos Políticos*, Art. 214.

16 Landaverde, "En peligro derecho al voto en el exterior para guatemaltecos."

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## REGULATION OF POLITICAL COMPETITION

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Guatemalan law does not explicitly regulate political competition abroad.

### PARTY OFFICES IN HOST COUNTRIES

No evidence of party offices abroad was found.

### POLITICAL CAMPAIGNS

Though funding by foreigners or foreign organizations is forbidden, the Electoral Law makes no mention of campaigns abroad.<sup>17</sup> There have been reports of Guatemalan politicians campaigning abroad.<sup>18</sup>

### MEMBERSHIP

The statutes of the various Guatemalan political parties generally do not regulate emigrant membership. Only two parties (of dozens), the National Development Action (*Acción de Desarrollo Nacional*) and the Patriot Party (*Partido Patriota*), have a secretary in charge of migrant issues, which indicates that migrants must be eligible for membership and that they are also, at least symbolically, considered a constituency.<sup>19</sup>

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## INSTITUTIONAL PARTICIPATION

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### CONSULTATIVE BODIES AT NATIONAL LEVEL

The Guatemalan National Council of Migrant Services (*Consejo Nacional de Atención al Migrante de Guatemala, CONAMIGUA*) is an inter-ministerial policymaking body based on inter-institutional coordination. There is an advisory council, composed of institutional representatives and delegates of Guatemalan emigrants, that supports the *CONAMIGUA* in its inter-institutional coordination and international attention to emigrants and their families in Guatemala.<sup>20</sup> This council is consulted at least once a year and may be convened at any time. The council is purely advisory and only has the right to observe the work of the *CONAMIGUA*. So far the fairness of the voting and

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17 Asamblea Nacional Constituyente, *Ley Electoral y de Partidos Políticos*.

18 Caballeros, "El Tema Migratorio en la agenda de los partidos políticos"; Red por la Paz y el Desarrollo de Guatemala. Guatemala Peace and Development Network, "Walda Barrios Concluye Exitosa Visita a Nueva York."

19 Asociación de Investigación y Estudios Sociales, "Partidos políticos guatemaltecos: dinámica internas y desempeño", Guatemala, 2012, pp. 8, 12, 105.

20 *CONAMIGUA, Reglamento del Consejo Asesor del CONAMIGUA*, Art. 8.

validation procedures have been contested.<sup>21</sup> The leadership of the advisor council *CONAMIGUA* is neither specified in legislation, but proposals to reform it suggest it is chaired by the Minister/Secretary of Foreign Affairs. When the *CONAMIGUA* advisory council gives recommendations, there is no right to a response established in law; as they are invited as observers.<sup>22</sup>

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## ADMINISTRATION

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### CONSULATES

As of 2014 Guatemala had 64 consulates and consular offices in 56 countries, not counting honorary consulates.<sup>23</sup>

Guatemala also operates monthly mobile consulates from the general consulates<sup>24</sup> and some consulates had special opening times.<sup>25</sup>

Guatemalan consulates offer legal or judicial consultancy through two programs. The first is the *Justicia global* program, which connects lawyers of different branches of law with Guatemalans in the US through general consulates. The second is an online platform, *PALMIGUA (Portal de asistencia al migrante guatemalteco)*, that allows migrants to send legal questions in different formats (written, in videoconferences, or chats) to the consulate. The idea of the program is to help Guatemalans know their rights and prevent abuse by unscrupulous lawyers.<sup>26</sup>

Regarding additional services and given the amount of undocumented Guatemalan migrants in the USA (estimated at 800,000), it is worth mentioning that Guatemalan consulates issue the “*tarjeta de identificación consular*” which is an identity document that does not substitute the passport, but allows Guatemalans to get certain services in the US, as opening bank accounts, getting driving licenses, depending on the state where they reside.

### HOME COUNTRY ADMINISTRATION

Emigrant issues are dealt with in the Guatemalan home administration through the Vice-Ministry of Foreign Affairs for Human Rights and Migrant Services (*Viceministerio de relaciones exteriores en derechos humanos y atención al mi-*

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21 Morales, “Conamigua señala fraude en elección de consejo asesor.”

22 CONAMIGUA, *Reglamento del Consejo Asesor del CONAMIGUA*, Art. 10.

23 Caballeros, “Marco general de la política migratoria de Guatemala 2012-2016, Presidente Otto Pérez Molina.”

24 Consulado General de Guatemala, “Consulados del 2014.”

25 Alegre, “Consulado de Guatemala organiza jornada sabatina.”

26 Rodas Melgar, “Informe ejecutivo de los principales resultados del Ministerio de Relaciones Exteriores durante 2009, de acuerdo a lineamientos para el periodo 2008-2012,” 10.

*grante*) under the Ministry of Foreign Affairs created in 2005.<sup>27</sup> There is no indication that a vice-minister is especially in charge of Guatemalans abroad.

The General Directorate of Consular and Migrant Affairs deals with emigrant issues, but also with wider migration issues and the regular consular organization. The Migrant Services Center within the Ministry of Foreign Relations serves as the headquarters for CONAMIGUA and was created with the objective of providing improved service to Guatemalan migrants and their families. It provides on-site services in the areas of protection, free internet, a conference room, legal counselors, an employment office, a health office, and an investment counseling section. Additionally, consultations can be made on Guatemalans who are missing, deceased, or detained abroad.<sup>28</sup>

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## ECONOMIC POLICIES

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### REMITTANCES

Guatemalan migrants contribute enormously to the Guatemalan economy, with some estimates<sup>29</sup> indicating that remittances amount to some 11% of the GDP of Guatemala, and yet, there are no programs to incentivize the sending of remittances or to improve the channels to transfer money (e.g. fee controls, banking agreements).

### INVESTMENT

*Encuentro con el Migrante* is part of the *Programa Nacional de Competitividad (Pronacom)*, led by the Ministry of the Economy, and attempts to provide incentive for investment and the creation of productive businesses, using family remittances in sustainable projects.<sup>30</sup>

### BRAIN-CIRCULATION NETWORKS AND BRAIN-GAIN PROGRAMS

No brain circulation networks directed at Guatemalan emigrants exist.

### RETURN POLICIES

Recognition of degrees, titles and diplomas is addressed by the Constitution, but there is no mention of the process's duration. Guatemala has agreements with Mexico for automatic recognition of qualifications and with Cuba for homologation of titles of Guatemalans studying medicine in Cuba. Degrees

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27 Maldonado Ríos, Zea Wellmann, and Caballeros, "Marco general y descripción de acciones del Estado de Guatemala en materia migratoria."

28 Caballeros, "Perfil Migratorio Guatemala 2012." 77.

29 Maldonado Ríos, Zea Wellmann, and Caballeros, "Marco general y descripción de acciones del Estado de Guatemala en materia migratoria." 15.

30 Ibid. 65.

and titles from Central American universities are fully valid in Guatemala.<sup>31</sup> The Universidad de San Carlos is the only institution responsible for the recognition of foreign qualifications.

There is also an exemption from import duties for Guatemalans who resided abroad permanently. This includes VAT on their belongings, the import of a car every five years, and to cash their retirement pension in Guatemala.<sup>32</sup> It is worth mentioning that this tax incentive is also applied to foreigners who move to Guatemala for retirement only, and is thus part of a general immigration policy, rather than a policy developed solely for Guatemalan emigrants. There are no other programs that aim to facilitate the re-integration of returnees in Guatemala in a fuller sense.

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## OBLIGATIONS

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### MILITARY SERVICE, SOCIAL SERVICE, TAXES

It is a duty of all Guatemalans to do military for 18 months, but it is not clear how emigrants are supposed to comply with this. While there are exemptions, there is no mention of being excused due to absence from the territory. However, there is suggestion that if the person enlists, but is not called to service within one year, the obligation is considered fulfilled.<sup>33</sup> Civic service is voluntary. The President, together with ministers, decides how many people are needed and may be called to serve every year.<sup>34</sup>

Tax legislation in Guatemala is based on the principle of territoriality, which means that taxes are applied to economic activities that take place in Guatemalan territory. If Guatemalans abroad derive any income from an economic activity domiciled in Guatemala, then they are obliged to pay taxes in Guatemala.<sup>35</sup>

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## CULTURAL POLICIES

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There are no cultural centers abroad managed and funded by the Guatemalan state. There are also no cultural promotion offices within consulates, apart from the mixed touristic and cultural promotion within embassies.

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31 Asamblea Nacional Constituyente, *Constitución Política de la República de Guatemala*, Art. 87.

32 Congreso de la República de Guatemala, *Ley de Migración. Reglamento de la Ley de Migración*, Art. 27, 30.

33 Alonzo, "Jóvenes de Servicio Cívico Reciben Inducción."

34 Congreso de la República de Guatemala, *Ley del Servicio Cívico*, Art. 1, 2.

35 Congreso de la República de Guatemala, *Ley del ISR Guatemala*, Art. 1.

## EXIT AND TRANSIT POLICIES

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The constitution states that “any person may enter, remain, transit and exit national territory and change domicile and residence without further limitation by the law.”<sup>36</sup> However, the migration law specifies that any person who intends to exit the national territory must do so through established places intended for exit, with the proper documentation and submit to migration control.

To promote safe transit, the Ministry of Labor and Social Provision has organized an information campaign in Spanish and indigenous languages to disseminate information about the rights of migrants, the dangers associated with migration, and recommendations to obtain proper documentation and denounce any abuse by employers or authorities in Mexico.<sup>37</sup> The Ministry of Social Wellbeing and Save the Children Guatemala broadcasted two radio spots, a song and one *radionovela* (radio soap opera) about transit in Spanish and Mayan languages through channels available to the Ministry of Education in local communities.<sup>38</sup>

Furthermore, the Guatemalan government had planned to publish a manual with information on the protection, assistance, and attention that consulates offer in transit (Mexico) and destination (US, Canada) countries, and addresses and telephone numbers of Guatemalan representations abroad, mainly in North America.<sup>39</sup> Rather than a manual, this became a directory with some important telephone numbers and addresses.

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## SOCIAL POLICIES

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There is no employment insurance in Guatemala and no other employment benefits that could be maintained abroad. Pensioners who reside abroad but had a contract relationship in Guatemala and contributed to a state pension scheme may get a declaration that exempts them from the periodic verification of their survival with the confirmation of the consul in order to keep receiving their retirement pension abroad.

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36 Asamblea Nacional Constituyente, *Constitución Política de la República de Guatemala*, Art. 26.

37 Comisión Interamericana de Derechos Humanos, “Informe Anual 2002. Capítulo VI, Migrantes.”

38 Alonzo, “Campaña ‘¡Quédate!’ Para evitar migración de menores, se oirá en idiomas mayas.”

39 Ministerio de Relaciones Exteriores, “Política protección, asistencia y atención al guatemalteco en el exterior.”

For social security in general there are neither bilateral, nor multilateral agreements/treaties in force as of May 2015.

Emigrants do not have access to healthcare schemes available in Guatemala under the same conditions as resident citizens. Guatemalan consulates have begun to offer healthcare counseling in their consulates across the USA, and there are plans to participate in the so-called Bi-national Health Weeks.<sup>40</sup>

Since 2007, the Ministry of Foreign Affairs, the Ministry of Education and the consular missions of Guatemala abroad collaborate in literacy programs directed at Guatemalans abroad.<sup>41</sup>

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### SYMBOLIC POLICIES

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There are no symbolic policies developed by the Guatemalan state. Private actors abroad and associations of Guatemalans abroad sponsor fairs to celebrate Guatemalan national days or culture (e.g. *ferias chapinas*, independence day, *fiesta maya*) in some localities in the USA and sometimes have the support of the Ministry of Foreign Affairs with the presence of a consul or diplomats. There is no policy to celebrate officially with emigrants or to finance any events.<sup>42</sup>

September 1, declared the day of the migrant by Pope Benedict XV in 1914 and commemorated by the Catholic Church in Guatemala, is recognized by the state as a legitimate celebration in Guatemala, but it is not devoted to emigrants only. There has also been a proposal in Congress to declare December 18 (International Migrants) National Migrants Day in Guatemala, but this is not yet a law.<sup>43</sup>

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40 Renglones especiales de gasto MINEX, 2013

41 Ministerio de Relaciones Exteriores, “Política protección, asistencia y atención al guatemalteco en el exterior,” 26.

42 MINEDUC et al., “Análisis y estudio de las migraciones según el curriculum nacional base. Una visión desde la perspectiva de Guatemala.” 44.

43 Comisión de Migrantes del Congreso de la República de Guatemala, “Día Nacional del Migrante”.

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