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Saudi Arabia's Legal Framework of Migration

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Saudi Arabia's Legal Framework of Migration

Maysa Zahra

Abstract: The following note offers an overview of Saudi Arabia's regulatory framework of migration. It serves as a guide to researchers looking to navigate the system of laws and implementing regulations covering a broad range of migration-related issues from entry/exit conditions to rights, settlement, and citizenship.

Keywords: Saudi Arabia; Laws and Regulations; Irregularity; Migration; Citizenship; Trafficking; Sponsorship; Labour Rights.

The Saudi regulatory framework of migration has been modified over the last decade through the enactment of a new Labour Law and the Anti-Trafficking in Persons Law. While the latter sets down rules for better working conditions, it still grants the local sponsor (the employer) control over the migrant's ability to enter and exit the country and seek other employment.

The Basic Law of Governance enacted in 1992 was the first legislative act to grant certain rights and protections to foreign residents of the Kingdom, the most important of which is the right to file a lawsuit.

The Saudi Labour Law, which was amended through Royal Decree No. M/51 in 2005 affords a number of protections to all workers, foreign and national, but excludes domestic workers. These include limits on working hours, restrictions on salary deductions, rest days, and mechanisms for resolving labour disputes. The recruitment of any foreign worker is done through a Saudi sponsor who bears responsibility for the worker's recruitment fees and residence permit. In order to leave the country or transfer his

employment to another employer, the worker must obtain the sponsor's consent in the form of an exit visa or a non-objection certificate.¹

The Anti-Trafficking in Persons Law of 2009 affords minimal protections to victims of human trafficking. The government has yet to put in place adequate mechanisms to identify potential victims from among at-risk groups. In reality, victims of trafficking are detained and deported when they attempt to escape a situation resulting from human trafficking, such as running away from an abusive employer. In such cases, fleeing victims are considered to have an irregular migration status.²

The issue of statelessness is a prominent one in Saudi Arabia. According to a UNHCR estimate, there are approximately 70,000 stateless persons ("Bidun") in the country. Most of them are of Arab origin – these non-citizens are marginalised and, until recently, had no access to basic services such as education, healthcare and employment. Moreover, they are unable to travel abroad and seek better opportunities because they are denied passports or travel documents. An estimated 240,000 Palestinians reside in the Kingdom and are not registered as refugees.³



Legal Framework	Outward Migration	Inward Migration
General Legal References	<ul style="list-style-type: none"> • 1954, Saudi Arabian Nationality Law⁴ • 2009, Anti-Trafficking in Persons Law issued by Royal Decree No. M/40⁵ • 2005, Royal Decree No. M/51 issuing the Saudi Labour Law⁶ • 2007, Implementing Regulation of Saudi Labour Law⁷ 	<ul style="list-style-type: none"> • 1952, The Residence Regulations, Law No. 17/2/25/1337⁸ • 1954, Saudi Arabian Nationality Law⁹ • 1978, The Imprisonment and Detention Law issued by Royal Decree No. M/31 • 1992, The Basic Law of Governance¹⁰ • 1999, The Cooperative Health Insurance Law (No. 71)¹¹ • 2000, Law of Real Estate Ownership & Investment by Non-Saudis issued by Royal Decree No. M/15¹² • 2005, Royal Decree No. M/51 issuing the Saudi Labour Law¹³ • 2007, Implementing Regulation of Saudi Labour Law¹⁴ • 2009, The Implementing Regulations of the Cooperative Health Insurance Law¹⁵ • 2009, Anti-Trafficking in Persons Law issued by Royal Decree No. M/40¹⁶

Legal Framework	Outward Migration	Inward Migration
Entry and Exit	Visas	Visas
	Saudi citizens do not need a visa to enter other Gulf Cooperation Council (GCC) countries.	To enter, foreign nationals must present a passport or valid travel document, and a visa (Law No. 17/2/25/1337). Visas are waived for citizens of Gulf Co-operation Council countries.
Irregular Migration		A foreigner entering the Kingdom illegally will be imprisoned until s/he is deported from the country. Excluded from this provision are individuals seeking asylum and those who were forced to do so by force majeure situations such as an emergency landing (Art. 50, Law No. 17/2/25/1337).
	<p style="text-align: center;">Human Trafficking</p> <p>Penalizations: Saudi law defines and prohibits all forms of human trafficking, prescribing punishments of up to 15 years' imprisonment and fines of up to 1,000,000 Saudi Riyals for violations. Penalties may be increased under certain circumstances, including trafficking committed by an organized criminal group or committed against a woman, child, or a person with disabilities, or if trafficking is committed by a law enforcement officer (Art. 3 & 4, 2009 Anti-Trafficking Law).</p> <p>Protection: The Anti-Trafficking Law does not afford victims of human trafficking protection from prosecution for their irregular migration status.</p> <p>The issue of withholding passports and exit visas, thereby forcing the worker to continue working, is prohibited and considered as a punishable albeit lesser offense under the Council of Ministers' Decision 166 of 2000.</p>	
	<p style="text-align: center;">International agreements regarding Irregular Migration</p> <ul style="list-style-type: none"> ● United Nations Convention against Transnational Organized Crime (ratified January 18, 2005) ● Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (ratified July 20, 2007) ● Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air (ratified July 20, 2007) 	

Rights and Settlement

Protection of person is provided for all citizens and residents of the Kingdom. No one may be confined, arrested or imprisoned without reference to the Law (Art. 36, The Basic Law).

Permanent residence may be granted to foreigners who have lived in the Kingdom continuously for 20 years or more at the time of publication of the Residence Law in 1952 and who have lost their connection to their home country and their nationality, if they have a good reputation (Art. 62 bis, Law No. 17/2/25/1337). It may also be granted to every Muslim foreigner, male or female, who can prove that s/he has lived in the Kingdom before reaching the age of seven, has no adult family member, and has never left the country for any period of time before reaching the age of maturity (Art. 48 bis, Law No. 17/2/25/1337).

Access to real estate ownership for the purpose of private residence is granted to non-Saudi natural persons legally residing in the Kingdom, following permission from the Ministry of Interior. However, a non-Saudi may not own real estate located within the cities of Mecca and Medina other than by way of inheritance (Art. 2 & 3, Law of Real Estate 2000).

Limited social rights for foreign nationals: Foreign workers face deportation for any union or strike activity.

Access to healthcare: Each sponsor responsible for a resident must ensure to subscribe to the cooperative health insurance on his behalf. A residence permit may not be granted or renewed until after the Cooperative Health Insurance document has been provided and it must cover the whole duration of residence (Art. 3, Cooperative Health Insurance Law 1999)

Labour	<p>Agreements regarding Labour Migration</p> <p>Bilateral Agreements: None</p> <p>International Agreements: 15 ILO Conventions ratified</p>
Citizenship	<p>Citizens are prohibited from acquiring a foreign nationality without prior permission from the Saudi Prime Minister. (Art. 11, Nationality Law 1954).</p> <p>A Saudi national may be denaturalised if he acquires another nationality, works in the armed forces of a foreign country without prior permission from the Saudi government, serves the interest of another country, which is in a state of war with the Kingdom of Saudi Arabia, or accepts a job in a foreign country or in an international institution and remains in that job despite receiving an order from the Saudi government to leave it (Art. 13, Nationality Law 1954).</p> <p>A Saudi woman may not lose her nationality if she marries a foreign national unless she acquires his nationality. She may reclaim her Saudi nationality upon the dissolution of her marriage and her return to reside in the Kingdom (Art. 17 & 18, Nationality Law 1954).</p>
International Protection	<p>Asylum may be granted, provided that it is in the public interest (Art. 42, The Basic Law 1992).</p> <p>International agreements related to international protection: Saudi Arabia has not acceded to the 1951 Convention relating to the status of refugees</p>

Endnotes

1. Human Rights Watch, "As If I am Not Human," July 14, 2008, p.5. Retrieved from: http://www.hrw.org/node/24444/section/5#_ftn45.
 2. United States Department of State, *Trafficking in Persons Report*, June 2013. Retrieved from: <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215608.htm>.
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 16. Kingdom of Saudi Arabia Bureau of Experts at the Council of Ministers, <http://www.boe.gov.sa/printsystem.aspx?lang=ar&systemid=275>, accessed September 14, 2013.
 17. United States Department of State, *Trafficking in Persons Report*, June 2013. Retrieved from: <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215608.htm>.
 18. This includes the following: Labour Inspection Convention (No. 81), Equal Remuneration Convention (No. 100), Abolition of Forced Labour Convention (No. 105), and Worst Forms of Child Labour Convention (No. 182).
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About the Author



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She worked as a legal researcher with the MATTIN Group, a voluntary human rights-based partnership in Palestine, researching provisions of third state and European Union legislation that create obligations corresponding to those that result from the customary international law on third state responsibility. She also participated in several lobbying interventions with the European Union aimed at promoting greater consistency between its contractual relations with Israel on the one hand and its human rights obligations on the other.

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