

SAUDI ARABIA BANS DOMESTIC WORKERS' PASSPORT CONFISCATION: SIGNIFICANCE AND PROSPECTS

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The New Saudi Domestic Workers Law, which entered into force on 21 September 2024, introduces for the first time an explicit ban on passport confiscation. Saudi Arabia has indeed recently reformed the law governing Foreign Domestic Workers in the country with Ministerial Decision No. 40676 of 2 October 2023 (03/17/1445 AH). Other key reforms include the establishment of maximum working hours, and the introduction of occupational safety and health regulations.

The ban on passport confiscation constitutes a significant step forward in the recognition of Foreign Domestic Workers' rights and safeguards. The old law was silent, and employers were implicitly allowed to confiscate passports, visas and phones, confining domestic workers and leaving them powerless, unable to escape exploitative conditions or seek legal protection, practically trapping them in the household.

The Saudi Labour Law (SALL), the central instrument governing labor relations, was already reformed in March 2015 to include, among others, provisions prohibiting the seizure migrant workers' passports with related fines of SR\$2,000 (US\$533). Though that reform did not extend safeguards to "domestic helpers and the like" since the SALL excludes them from its provisions (art. 7). Now that the provision is entrenched in the "Regulation for Domestic Workers and Those in Similar Positions", employers are obliged to fulfill the obligation "*Not to withhold the domestic worker's passport or any of his/her personal documents, papers, or belongings*".

This is a significant step in the fight against human trafficking and modern slavery, as passport seizure allows employers to control workers' freedom of movement and prevent them from leaving the employment. Passport confiscation is confirmed as an indicator of forced labor, if workers are unable to access their documents on-demand and if they feel they cannot leave the job without risking their loss. "Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else", appears indeed among the OECD Key Trafficking Indicators¹ because it leads to increased vulnerability to abuse, limited access to justice, and restriction of movement.

The effectiveness of the reform hinges on its implementation and enforcement. The 2024 TIP Report of The U.S. State Department's Office to Monitor and Combat Trafficking in Persons reveals that, despite the recent reforms implemented, migrants continued to document and assert being subjected to passport retention. It is therefore crucial that Saudi authorities apply strict enforcement of laws against passport confiscation, screen vulnerable individuals (including those seeking police assistance for alleged employer abuse) and provide accessible mechanism to access remedial justice when the new provision is violated.

¹ <https://sherloc.unodc.org/cld/zh/education/tertiary/tip-and-som/module-6/key-issues/indicators-of-trafficking-in-persons.html#:~:text=Be%20unable%20to%20leave%20their,Show%20fear%20or%20anxiety>



Global Justice Kenya considers this legal reform a significant and positive step toward recognition of the rights of migrant domestic workers in Saudi Arabia and the fight against Human Trafficking. Addressing issues of major concern, like the one of passport confiscation, is crucial for safeguarding the rights and well-being of migrant domestic workers in Saudi Arabia but is still far behind including them in Saudi Labour Law and treating them as workers from any other sector. Sustained efforts are now necessary to ensure the implementation of these newly gained rights.

What is a passport?

A passport is a government-issued official travel document that verifies and certifies an individual's identity and nationality. It is required for international travel, granting the holder permission to enter and temporarily stay in a foreign country, access local assistance and protection, and seek consular support from their government. Beyond facilitating travel, passports play a crucial role in border security and migration control.²

Is a Passport a personal document and is the right of the holder to retain it?

A passport certifies the personal identity and nationality of its holder. It cannot be shared or transferred.

This means that it is **the right of every passport holder** whether travelling for work or otherwise, **to always have their passport in their passport**. Passports are indeed critical to exercise the freedom of movement enshrined in article 13 of the Universal Declaration of Human Rights.

Art.13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country³.

Few are the limitations to the Freedom of Movement that States can impose. These restrictions must be clearly stated in the law and aimed at protecting national security, public order, public health, or morals.

² From Wikipedia, the free encyclopedia

³ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>



What is the impact of Passport confiscation?

The confiscation of a passport severely limits a person's ability to travel internationally, effectively restricting their freedom of movement. This can lead to serious issues in their life particularly when they live abroad or in a foreign country (including potential job loss, family separation, and challenges in accessing essential services). When employers withhold foreign workers' passports, they effectively trap them in the country, making it difficult for them to seek help or return home. This situation often leads to:

- **Increased Vulnerability to Abuse:** Without the ability to leave, workers may endure physical, emotional, and sexual abuse without recourse.⁴
- **Limited Access to Justice:** The fear of deportation or legal repercussions can deter workers from reporting mistreatment.
- **Conditions of Forced Labor:** The inability to leave can result in situations akin to modern slavery, where workers are compelled to continue labor under duress.

⁴ adhrb.org