

# Governing Refugees in Saudi Arabia (1948–2022)

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## ABSTRACT

Saudi Arabia is a non-signatory state to the Refugee Convention, with no domestic refugee law. Its refugee population is generally not categorised as such. Based on these facts, Saudi Arabia is largely missing from the refugee studies literature in general, and the increasing scholarship on refugee protection in states not signatory to the Refugee Convention in particular. What characterises refugee governance in wealthy, non-signatory states with a largely invisible refugee population? And, how does the “Saudi approach” to refugee protection relate to those of other non-signatory states? Based on hitherto unresearched archival material, interviews, and openly available sources it argues that while there are no legal framework for governing refugees in Saudi Arabia, the state has adopted ad-hocratic policies, which nevertheless followed a certain pattern when refugee situations emerge. This ad-hocratic approach is similar to that found in other non-signatory states in the Middle East and North Africa; the state responds to particular situations based on nationality or ethno-religious affiliations, keeping refugees strictly temporary and often on opaque terms. Where the situation in Saudi Arabia differs, is in the role undertaken by UNHCR who instead of acting as a “surrogate state” takes on a lobbying and monitoring role.

## 1. INTRODUCTION

Saudi Arabia is among 44 member states of the United Nations that are not signatories to the Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (the Refugee Convention). The majority of these non-signatory states are located in South-East Asia and the Middle East, regions

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known for hosting a large percentage of the world's refugees.<sup>1</sup> Understanding refugee protection in non-party states is important not only in itself; but crucial to be able to say anything substantial about the relevance of the convention, institutions, norms – and to convincingly assess the claim that refugee protection is fundamentally better in signatory states.<sup>2</sup> There has been a growing interest among scholars to include non-signatory states in the research agenda on international refugee protection.<sup>3</sup> Moreover, much research has been done exploring refugee protection inside non-signatory states known for hosting large populations of refugees. Very little is known, however, about the governing of refugees in states that are important donors to refugee situations and the UNHCR, such as the member-states of the Gulf Cooperation Council (GCC). Compared to other states in the Middle East and North Africa (MENA), Saudi Arabia has vast financial capabilities that make it a contributor, rather than a receiver of aid from international agencies and organisations. In popular perceptions, Saudi Arabia is often portrayed as not hosting refugees. What characterises refugee governance in such states? And, how does the “Saudi approach” to refugee protection relate to those of other non-signatory states? Taking these questions as a starting point, this article seeks to analyse the response by Saudi Arabia to various refugee situations occurring between 1948 and the present day.

On the one hand, Saudi Arabia has no domestic refugee legislation or provisions for granting a refugee status. In contrast to certain other non-signatory states where the United Nations High Commissioner for Refugees (UNHCR) has taken on the role of a “surrogate state,”<sup>4</sup> UNHCR and other organisations have limited access to registering and assisting refugees in Saudi Arabia. The official number of refugees under UNHCR mandate in the country has ranged between 117 and 561 over the last decade.<sup>5</sup> On the other hand, Saudi Arabia hosts the world's second largest migrant population in absolute numbers according to the United Nations, with more than 12 million migrants inside its borders.<sup>6</sup> According to UNHCR, 67 per cent of refugees globally under its mandate in 2020 came from just five countries, and three of these five have significant diasporas in Saudi Arabia: Syria, Afghanistan, and

1 M. Jones, “Expanding the Frontiers of Refugee Law: Developing a Broader Law of Asylum in the Middle East and Europe”, *Journal of Human Rights Practice*, 9, 2017, 212–215.

2 M. Janmyr, “The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda”, *International Journal of Refugee Law*, 33(2), 2021, 188–213.

3 *Ibid*; Jones, “Expanding the Frontiers of Refugee Law: Developing a Broader Law of Asylum in the Middle East and Europe”; R. Zaiotti, “Dealing with Non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment”, *International Journal of Refugee Law*, 18(2), 2006, 333–353.

4 M. Kagan, “We Live in a Country of UNHCR: The UN Surrogate State and Refugee Policy in the Middle East”, *New Issues in Refugee Research Paper no. 201*, UN High Commissioner for Refugees Policy Development and Evaluation Section (February 2011).

5 United Nations High Commissioner for Refugees (hereafter UNHCR), *Refugee Data Finder*, available at: <https://www.unhcr.org/refugee-statistics/download/?url=3HJ0lc> (last visited 6 Oct. 2021).

6 United Nations (hereafter UN) Economic and Social Commission for Western Asia (ESCWA) and International Organization for Migration (IOM), *Situation Report on International Migration 2019 The Global Compact for Safe, Orderly and Regular Migration in the Context of the Arab Region*, 2019, 34. According to the UN Department of Economic and Social Affairs, Saudi Arabia comes third following the USA and Germany, see *International Migration 2020 Highlights*, 2020, 10.

Myanmar.<sup>7</sup> Palestinian refugees, excluded from UNHCR's statistics, also have a considerable presence in Saudi Arabia.<sup>8</sup>

The absence of a formalised system of recognising, governing, or protecting refugees does thus not equal an absence of refugees. Yet, Saudi Arabia remains strikingly absent in studies of refugees in the MENA region. Arguably, a search for policy relevance has led scholars to focus on a certain type of refugee, making large groups of forced migrants invisible in research as well as policy and spaces of refuge not conforming to the dominant legal-institutional understanding of refugeehood overlooked.<sup>9</sup> In addition to speaking to the normative institutional view of who is considered a refugee, a lack of scholarly attention can also to some extent be explained by the view that Arab Gulf states are somewhat exceptional when it comes to governing and regulating migration.<sup>10</sup> Certain features of the dominant system of governing migration (known as the *kafala* system) and the large portion of foreign workers could be described as exceptional, but its mechanics and implications are not. Rather, the migrant labour policies found in the Gulf Cooperation Council states are comparable to broader, global, neoliberal capitalist practices.<sup>11</sup> Just as migration governance in Saudi Arabia should not be viewed as exceptional, and therefore separate from global trends and structures, neither should refugee governance. The majority of de-facto refugees are formally regulated as foreign workers, and, as is the focus of this article, the Saudi government has historically made amendments (formal and informal) to the system of migration governance to accommodate refugees inside the country. This way of governing refugees largely analogous to that in other non-signatory states in the MENA region.

The article is based on a wide set of sources. During two research trips to the UNHCR archives in Geneva, a body of hitherto unresearched material concerning refugees in Saudi Arabia, in particular pertaining to the 1970s, 1980s, and 1990s was gathered.<sup>12</sup> In addition, interviews with key government- and UNHCR actors, and

7 UNHCR, *Refugee Data Finder*. 2019 UN estimates suggest that there are more than 800,000 Syrian nationals, 469,324 Afghani nationals and 261,159 Myanmar nationals in Saudi Arabia. See United Nations (UN), *International Migrant Stock 2019*, 2019, available at: [https://www.un.org/en/development/desa/population/migration/data/estimates2/docs/MigrationStockDocumentation\\_2019.pdf](https://www.un.org/en/development/desa/population/migration/data/estimates2/docs/MigrationStockDocumentation_2019.pdf), (last visited 1 June 2022). There are no information on the South Sudan population in these numbers. Estimates based on Saudi press sources from 2013 suggests 1,000,000 Syrian, 500,000 Afghani and 250,000–600,000 Rohingya (“Burmese”). See F. De Bel-Air, *Demography, Migration and Labour Market in Saudi Arabia*, Gulf Research Center, Gulf Labor Market and Migration, explanatory note no. 1/2014, available at: [https://cadmus.eui.eu/bitstream/handle/1814/32151/GLMM%20ExpNote\\_01-2014.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/32151/GLMM%20ExpNote_01-2014.pdf?sequence=1&isAllowed=y), (last visited 1 June 2022).

8 The Refugee Convention does not apply to Palestinian refugees who are receiving assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in accordance with Article 1D. As the Gulf-region falls outside of the mandate of UNRWA, Palestinians in Saudi Arabia falls under UNHCR's mandate.

9 O. Bakewell, “Research Beyond the Categories: The Importance of Policy Irrelevant Research Into Forced Migration”, *Journal of Refugee Studies*, 21(4), 2008, 432–453; G. Cole, “Pluralising Geographies of Refuge”, *Progress in Human Geography*, 45(1) 2020, 88–110.

10 See e.g. K.P. Norman, *Reluctant Reception: Refugees, Migration and Governance in the Middle East and North Africa*, Cambridge, Cambridge University Press, 2020, 13.

11 M. Norbakk, *The Egyptians of Qatar: An Ethnographic Exploration of Middle-class Expatriation in the Arabian Gulf*, PhD-thesis, Bergen, University of Bergen, 246.

12 In addition, UN digital archives and the British Library India Office Records and Private Papers, digitised and made available through Qatar Digital Library was consulted.

individuals who were formerly living as refugees in Saudi Arabia were carried out in Oslo, Riyadh, and online.<sup>13</sup> These sources are complemented by official statements and press releases, NGO and government reports, and existing single-case studies. This legal-historical article takes a state-centric approach, offering a comprehensive examination of the governing of refugees in Saudi Arabia. This can, and should, in turn, form the basis of more “refugee-centric” future research on the situation of de-facto refugees in Saudi Arabia.

Following the introduction, the article is divided into four parts. The second section explores refugee governance in non-signatory states, and situates Saudi Arabia in a growing body of scholarship. The following section examines the formal frameworks governing refugees in Saudi Arabia. It provides a compressed overview of relevant domestic, regional, and international laws, regulations and treaties relating to the regulation of foreigners in general and refugees in particular, and concludes that there is virtually no protection provided to refugees in the legal framework. The fourth section presents six empirical cases, providing insight to the solutions implemented in practice across time; the “Saudi approach to refugee protection.” This approach to refugee protection is best described as ad-hocratic, but nevertheless follows a certain pattern that can be traced through different cases across time, characterised by issuing temporary residency permits, providing access to basic services (such as health and education), and a focus on temporary, economic integration. The conclusion discusses what the “Saudi approach” tells us about refugee governance in wealthy non-signatory states and how this differs (or not) from that in other non-signatory states – providing an argument for increased scholarly research on refugee protection in the former. It argues that while a separate rhetorical framework based in Islamic solidarity principles is adopted by the government, the ad-hocratic assistance to refugees is deeply entangled with a system of labour migration. Finally, this comes to show then that while UNHCR plays a significantly different role in wealthy non-signatory states, central characteristics of refugee governance, including an ad-hocratic approach wrapped in a rhetoric of hospitality, is related to central characteristics of other non-signatory states in the MENA.

## 2. REFUGEE GOVERNANCE AND NON-SIGNATORY STATES

The majority of states in the MENA region are non-signatories to the Refugee Convention.<sup>14</sup> One of the most common reasons proposed for these states’ reluctance to accede to the Convention is an unwillingness to offer permanent residence.<sup>15</sup> In the case of Saudi Arabia and the other GCC states, extensive socio-economic privileges available to citizens “serves to disincentivize states from

13 In total 22 semi-structured interviews 2020 and 2022, in Riyadh, Oslo and online. All interviewees are fully anonymised and each interview has been given a letter to distinguish between them.

14 Iran, Israel, Yemen, Egypt, Morocco, Tunisia, and Algeria are signatories to the Convention. Turkey is a signatory, but with a geographical limitation to refugees from Europe. Lebanon, Iraq, Jordan, Syria, Libya, Kuwait, Qatar, Oman, United Arab Emirates, Bahrain, and Saudi Arabia remains non-signatories.

15 M. Janmyr & D. Stevens, “Regional Refugee Regimes: Middle East”, in C. Costello, M. Foster & J. McAdam (eds.), *The Oxford Handbook of International Refugee Law*, Oxford, Oxford University Press, 2021, 334–351.

broadening citizenship to additional groups of people.”<sup>16</sup> The long outstanding Palestinian issue further contributes to this rejection of providing permanency, based in a fear that local integration of Palestinian refugees could undermine the right to return. Others have pointed to a view of the Refugee Convention as based on “western” and “secular” values making it unsuitable in the case of Saudi Arabia.<sup>17</sup> Another factor that has influenced states’ perception of refugees (and migrants in general) is a view of these as a potential destabilising force. In Jordan for example, Palestinian militias called for overthrow of the monarchy, and were violently expelled from Jordan as a result.<sup>18</sup> The presence of a large number of revolutionaries in South Lebanon following the Six-Day War in 1967 resulted in a militarisation of the border areas, and subsequent “waves of migration from impoverished and marginalised townships of South Lebanon to the suburbs of Beirut, leading to substantial demographic change in the capital and the country at large.”<sup>19</sup>

A common feature of refugee protection in the Middle East is the shift of responsibility from the state to UNHCR, leading UNHCR to function as a “surrogate state.”<sup>20</sup> This refers to a transfer to UNHCR of tasks traditionally belonging to the state, including registering of refugees and the issuance of documents, administering camps, and providing basic services such as nutrition, health care, and education.<sup>21</sup> This arrangement further limits the role of the state to the protection of negative liberties, specifically avoiding detention and refolement.<sup>22</sup> As becomes clear from discussions later in this article, this is strikingly different from the division of labour between the state and UNHCR found in Saudi Arabia, where UNHCR takes on more of a monitoring and lobbying role vis-à-vis authorities, and in special cases intervene on behalf of refugees or facilitate resettlement to third countries. However, while the role of UNHCR vis-à-vis refugees is entirely different in Saudi Arabia and other wealthy non-signatory states where refugees are less visible, a similarity exists to the responsibility shift happening when the state assigns a sponsor as responsible for the migrant through the *kafala* system.<sup>23</sup> In Saudi Arabia, the majority of de facto refugees are treated as foreign workers, and there is a consistent aim to integrate those with a special status as refugees into this system, with the implication that “the foreigner’s relationship to the state is mitigated through the third party sponsor, thus facilitating the hosting of refugees without creating a binding relationship between foreigners and host states.”<sup>24</sup>

16 Z. Babar, “Economic Migrants and Citizenship in the GCC”, in Z. Babar (ed.), *Routledge Handbook of Citizenship in the Middle East and North Africa*, London, Routledge, 2020, 410–421.

17 J.A. Kéchichian & F. Alsharif, *Saudi Policies towards Migrants and Refugees: A Sacred Duty*, Sussex, Sussex Academic Press, 2021.

18 E.L. Sogge, *The Palestinian National Movement in Lebanon: A Political History of the Ayn Al-Hilwe Camp*, London, Bloomsbury Publishing, 2021, 25.

19 *Ibid.*, 26.

20 A. Slaughter & J. Crisp, “A Surrogate State? The Role of UNHCR in Protracted Refugee Situations”, *New Issues in Refugee Research*, Research paper no. 168, 2009; Kagan, “We Live in a Country of UNHCR: The UN Surrogate State and Refugee Policy in the Middle East”.

21 Slaughter and Crisp, “A Surrogate State? The Role of UNHCR in Protracted Refugee Situations”.

22 Kagan, “We Live in a Country of UNHCR: The UN Surrogate State and Refugee Policy in the Middle East”.

23 M. Kagan, “The UN Surrogate State and the Foundation of Refugee Policy in the Middle East”, *U.C. Davis Journal of International Law and Policy*, 18(2), 2021, 307–342.

24 *Ibid.*, 322.

As Jones explains, the “protection space” operated by UNHCR in many states is a result of ad-hocratic political negotiation.<sup>25</sup> The shift of responsibility to UNHCR (or another third party) does not render state policies irrelevant. In Lebanon, for example, UNHCR’s ability to provide international protection is affected by state policies aimed at reducing the presence of Syrian refugees.<sup>26</sup> With similar aims, states across the MENA region adopts policies of having no policy; reluctant to label refugees as such adopt universal and comprehensive national legislation, intentionally avoiding responsibility for providing rights to refugees.<sup>27</sup> States adopting such migration policies, characterised by informality, pragmatism, and flexibility are understood as practicing a form of “ad-hocratic immigration governance.”<sup>28</sup> The intentional ambiguity of such policies increases state control over immigration and ensures any rights given are temporary.<sup>29</sup> States adopting an ad-hocratic approach to migration should be interpreted as strategic actors “carefully select[ing] the policy most suitable to their domestic and foreign-policy goal while also attempting to utilize as few state resources as possible.”<sup>30</sup> In Saudi Arabia, Thiollet argues, migration governance is predominantly about political control, and marked by a certain “immigration denial,” the insistence on keeping migration temporary through rhetoric and policies.<sup>31</sup> Such immigration denial echoes discourses elsewhere: (permanent) immigration becomes a social, political, cultural issue, while (temporary) migration is portrayed as purely economic.<sup>32</sup>

A certain discourse of hospitality surrounding refugee issues, present in the MENA region and beyond, can underpin such ad-hocratic policies. Chatty argues that “national or domestic asylum laws are not part of the legislation of most countries of the Middle East largely because hospitality to the stranger is deeply rooted in notions of individual, family and group reputation.”<sup>33</sup> But when states adopt the *rhetoric* of hospitality based in social or religious traditions combined with ad-hocratic policies, the original meaning becomes obscured. While a paradigm of pan-Arab hospitality seemingly had a positive impact on the motility of Iraqi refugees in Jordan, in reality, many Iraqis faced few opportunities for both spatial and social mobility due to power differentials.<sup>34</sup> By refusing to recognise Iraqis as refugees and instead labelling them as “brothers” and “guests,” the Jordanian authorities intended to send a

25 Jones, “Expanding the Frontiers of Refugee Law: Developing a Broader Law of Asylum in the Middle East and Europe”.

26 M. Janmyr, “UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon”, *The International Journal of Human Rights*, 22(3), 2018, 393–419.

27 Zaiotti, “Dealing with non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment”.

28 K. Natter, “Ad-hocratic Immigration Governance: How States Secure Their Power Over Immigration Through Intentional Ambiguity”, *Territory, Politics, Governance*, 2021, 1–18.

29 *Ibid.*

30 Norman, *Reluctant reception: Refugees, Migration and Governance in the Middle East and North Africa*, 6–7.

31 H. Thiollet, “Migrants and Monarchs: Regime Survival, State Transformation and Migration Politics in Saudi Arabia”, *Third World Quarterly*, 43(7), 2021, 1–21.

32 *Ibid.*

33 D. Chatty, “The Duty to be Generous (Karam): Alternatives to Rights-Based Asylum in the Middle East”, *Journal of the British Academy*, 5, 2017, 177–199.

34 V. Mason, “The Im/mobilities of Iraqi Refugees in Jordan: Pan-Arabism, ‘Hospitality’ and the Figure of the ‘Refugee’”, *Mobilities*, 6(3), 2011, 353–373.

message “. . . that any stay was limited, as were any rights owed to Iraqis.”<sup>35</sup> In the case of Syrian refugees in Turkey, the state has taken on a contradictory position, where Islamic rhetoric is evoked to express solidarity, while the Syrian refugees are simultaneously “readily configured as an available pool of exploitable labour.”<sup>36</sup> The result is thus that a discourse of hospitality contributes to transferring the responsibility from the state, and renders refugee protection as a moral responsibility rather than a right of the displaced individual. As discussed below, this discourse of hospitality is particularly prevalent in official rhetoric concerning refugees within Saudi Arabia.

### 3. FORMAL FRAMEWORKS GOVERNING MIGRATION AND REFUGEES IN SAUDI ARABIA

Saudi Arabia has a long history of migration. As home to the two holiest sites in Islam, Mecca and Medina, located in the Hijaz region Saudi Arabia today receive as many as 2.5 million Muslim pilgrims yearly for Hajj, and another 4.5 million for Umrah.<sup>37</sup> The religio-historical significance of the Hijaz as a destination is not only one of pilgrimage, but also one of refuge; after the Revelation the prophet Muhammed fled persecution in Mecca and sought refuge in Medina. During Ottoman rule of Hijaz many exiled Indian Muslims sought refuge from British Colonial rule in the Hijaz.<sup>38</sup> In the late 19th century, the Ottomans in Hijaz imposed requirements for identity documents for pilgrims and other travellers, an example of an early regulation of migration.<sup>39</sup> The number of poor pilgrims staying behind after hajj was high enough to raise the concern of the Ottoman authorities, as well as the French and British imperial authorities that controlled many of the areas where the pilgrims originated and hence bore some responsibility for their return.<sup>40</sup> From the final decades of the 19th century, pilgrims were to secure a return ticket prior to traveling.<sup>41</sup>

Since the discovery of oil, migration regulations have increasingly been influenced by the need for labour in the petroleum industry. Political interference with foreign recruitment was common, and the government demonstrated a clear favouring of Muslim Arab migrants, but this was far from absolute and a number of priorities

35 D. Stevens, “Legal Status, Labelling, and Protection: The Case of Iraqi ‘Refugees’ in Jordan”, *International Journal of Refugee Law*, 25(1) 2013, 1–38.

36 T. Zaman, “Jiwar: From a Right of Neighbourliness to a Right to Neighbourhood for Refugees”, in R.J.a.S.F. Hassan (eds.), *Migration and Islamic Ethics. Issues of Residence, Naturalization and Citizenship*, Leiden, Brill, 2019, 47–66, 49.

37 A. Marwa Rashind, “Saudi Arabia Considers Barring Overseas Haj Pilgrims for Second Year, Sources Say”, *Reuters*, 5 May 2021, available at: <https://www.reuters.com/world/india/saudi-arabia-considers-barring-overseas-haj-pilgrims-second-year-sources-say-2021-05-05/> (last visited 27 Sep. 2021); F. De Bel-Air, “Irregular Migration in the Gulf States: What Data Reveal and What They Conceal”, in P. Fargues and N.M. Shah (eds.), *Skilful Survivals. Irregular Migration to the Gulf*. Dubai, Gulf Research Centre, 2017, 33–56.

38 M.C. Low, *Imperial Mecca: Ottoman Arabia and the Indian Ocean Hajj*, New York, Columbia University Press, 2020, 49–51. With Jeddah as the only exception, the Hijaz area was not accessible to non-Muslims.

39 U. Freitag, *A History of Jeddah: The Gate to Mecca in the Nineteenth and Twentieth Centuries*, Cambridge, Cambridge University Press, 2020, 307–309.

40 *Ibid.*, 309.

41 *Ibid.*, 311.

(including keeping salaries low and avoiding political agitation) influenced migration policy.<sup>42</sup> In 1938, King Abdulaziz introduced a regulation governing the residency of foreigners in Saudi Arabia. The regulation required foreign nationals to apply for residency if intending to stay for more than one year's "permanent residency," and a fee was imposed on renewing permits.<sup>43</sup> On 30 March 1938, the British Minister in Jeddah Sir R. W. Bullard, reported in a letter to the Foreign Secretary that many foreign Muslims objected to the regulations on religious grounds, "as drawing a distinction between one Moslem [*sic!*] and another, and implying that certain Moslems described as aliens had not the right to be in their Holy Land."<sup>44</sup> The reaction of foreign Muslim residents reflects the idea of Hijaz as principally a site belonging to Muslims, or a "non-territorial space of refuge."<sup>45</sup> Groups of Muslim refugees such as Uzbeks fleeing Soviet repression in the 1930s and Uighurs fleeing China in the 1950s claimed an "Islamic refugee identity" as *muhajirun* when seeking settlement in the Hijaz area, aiming to increase their chances of being accepted as refugees.<sup>46</sup> Such informal designations happened outside of the framework of international refugee law developed between the 1920s and the 1950s.

### 3.1. International conventions and treaties

Saudi Arabia is, as noted, not a party to the Refugee Convention, or any other international legally binding conventions relating to refugee protection. Nor is Saudi Arabia party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) or other conventions protecting migrant workers,<sup>47</sup> though it voted in favour of both the Global Compact for Migration (2018) and the Global Compact on Refugees (2018) – neither of which are legally binding agreements. Despite not signing the Refugee Convention, Saudi Arabia participated in the drafting process, in particular concerning the status of Palestinian refugees.<sup>48</sup> While Saudi Arabia did not approve the Protocol for the Treatment of Palestinians in Arab States (The Casablanca Protocol) adopted by the

42 G. Errichiello, "Foreign Workforce in the Arab Gulf States (1930–1950): Migration Patterns and Nationality Clause", *International Migration Review*, 46(2), 2012, 389–413, I.J. Seccombe & R.I. Lawless, "Foreign Worker Dependence in the Gulf, and the International Oil Companies: 1910–50", *International Migration Review*, 20(3), 1986, 548–574.

43 "Hejaz-Nejd: Internal Administration and Constitution; Various Laws", [19r] (39/392), British Library: India Office Records and Private Papers, Coll. 6/33, IOR/L/PS/12/2099, in Qatar Digital Library, available at: [https://www.qdl.qa/archive/81055/vdc\\_100050156187.0x00002a](https://www.qdl.qa/archive/81055/vdc_100050156187.0x00002a) (last visited 9 Apr. 2021), *Ibid.*, [19v] (40/392), available at: [https://www.qdl.qa/archive/81055/vdc\\_100050156187.0x00002b](https://www.qdl.qa/archive/81055/vdc_100050156187.0x00002b) (last visited 9 Apr. 2021).

44 *Ibid.*, [12r] (25/392), available at: [https://www.qdl.qa/archive/81055/vdc\\_100050156187.0x00001c](https://www.qdl.qa/archive/81055/vdc_100050156187.0x00001c) (last visited 9 Apr. 2021).

45 M.C. Low, "Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims, and the Capitulations in the Ottoman Hijaz", *Journal of the Ottoman and Turkish Studies Association*, 3(2), 2016, 299–323.

46 B. Balci, "Central Asian Refugees in Saudi Arabia: Religious Evolution and Contributing to the Reislamization of Their Motherland", *Refugee Survey Quarterly*, 26(2), 2007, 12–21.

47 A.M. Almutairi, "The Domestic Application of International Human Rights Conventions in Saudi Arabia and the Need to Ratify Conventions on Migrant Workers", *Middle Eastern Studies*, 54(1), 2018, 48–67.

48 M. Janmyr, "No Country of Asylum: 'Legitimizing' Lebanon's Rejection of the 1951 Refugee Convention", *International Journal of Refugee Law*, 29(3) 2017, 438–465.



Arab League in 1965, UNHCR holds that much of the protocol is adopted in practice.

Among the international human rights instruments ratified by Saudi Arabia, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) includes some rights applied to non-citizens, with a reservation stating the provisions will be implemented providing these do not conflict with Sharia.<sup>49</sup> Saudi Arabia has also ratified some of the International Labor Organization (ILO) provisions, but none relating specifically to migration.<sup>50</sup> Certain principles and treaties are considered to be part of customary international law, binding states regardless of ratification status. This is the case for the principle of non-refoulement, considered the cornerstone of the Refugee Convention, which prohibits returning refugees and asylum seekers to a country where they are in danger of persecution, in practice implying an obligation to provide refuge to those inside the states border which have fled persecution elsewhere.<sup>51</sup> This obligation is indeed acknowledged by Saudi officials working with refugee issues, who hold that the principle of non-refoulement forms the basis of the response to refugees domestically.<sup>52</sup> But the reality is more complex, and it is difficult for organisations such as the UNHCR to learn about a case and intervene before deportation taking place.<sup>53</sup>

Two organisations are tasked with overseeing Saudi Arabia's compliance with human rights; the National Society for Human Rights (NSHR, established in 2004) and the Human Rights Commission (HRC, established in 2005).<sup>54</sup> Neither the NSHR nor the HRC has dealt specifically with refugee protection, but a major focus of the latter is implementing Saudi Arabia's international commitments to combat trafficking in persons.

### 3.2. Refugees in the Saudi legal system

The legal system in Saudi Arabia is largely based on the principles of Sharia, as stated in Article 1 of the Saudi Basic Law of Governance of 1992: “[Saudi Arabia’s] constitution is Almighty Gods book, The Holy Qur’an, and the Sunna (Tradition) of the Prophet (PBUH).”<sup>55</sup> Large parts of the law are subject to interpretation, and not codified.<sup>56</sup> A distinction is made between areas of the *law* governed by religious sources (*qānūn*) and those governed by man-made regulations (*nizām*).<sup>57</sup> Courts can

49 Almutairi, “The Domestic Application of International Human Rights Conventions in Saudi Arabia and the Need to Ratify Conventions on Migrant Workers”.

50 *Ibid.*

51 UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 Jan. 2007, available at: <https://www.unhcr.org/uk/4d9486929.pdf>, (last visited 1 June 2022). The principle of non-refoulement is also secured in the Trafficking Protocol of the UN Conventions against Transnational Organized Crime (CTOC), which Saudi Arabia has ratified.

52 Interview “P”, Saudi official, Riyadh, Nov. 2021.

53 Interview “T”, UNHCR official, Online, Jan. 2022.

54 Both organisations are considered close to the government and have received international criticism.

55 النظام الأساسي للحكم [Basic System of Governance, normally referred to as Basic Law of Governance], Royal Decree No. A/90, 31 Jan. 1992.

56 F.E. Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*, Leiden, Brill, 2000.

57 M. Yamani, *Polygamy and Law in Contemporary Saudi Arabia*, Reading, Garnet Publishing Ltd, 2008, 134.

apply regulations as sources of law, in addition to sharia, provided they “do not contradict the Book or the Sunna.”<sup>58</sup> Regulations, issued by royal decree, generally concern areas of modern legal problems, such as nationality.<sup>59</sup> Regulations are thus complementary to the Islamic law, while also having a subordinate status.<sup>60</sup> Religious scholars are routinely consulted when drafting regulations, though should a regulation be interpreted as in conflict with Sharia, the latter would be superior.<sup>61</sup>

The governing of refugees, however, falls between these two sources of legal regulation. In official discourse, refugees are described as brothers, visitors, or guests hosted in Saudi Arabia.<sup>62</sup> Such rhetoric suggests that Islamic norms and traditions forms the basis of state response to refugees domestically. At the same time, in practice, governance of most de-facto refugees is subsumed within the governance of labour migration, organised since 2004 under the Ministry of Labour. This is governed by regulations. The concept of sponsorship central to migration regulation is rooted in the Islamic concept of *kafala*, though Jureidini and Hassan argue that the contemporary practice has no resonance in the original Islamic notion of the concept.<sup>63</sup> A key point here is that residency status for all non-nationals is treated as an administrative issue rather than a legal one. This means that de-facto refugees with an irregular status in Saudi Arabia have few realistic possibilities of legal recourse, or appeal.

As noted, Saudi Arabia does not have a domestic law governing the status determination or registration of refugees, or otherwise providing for them. Both the 1952 Residence Regulations Law and the 1992 Basic Law of Governance allows for foreigners to seek asylum in Saudi Arabia.<sup>64</sup> However, Article 33 of the Residence Regulations Law provides the Ministry of Interior with the absolute power to instruct any foreigner to leave the country without providing a reason. Procedures for applying for asylum are not regulated in any official document. Nor are objective criteria for seeking refuge from deportation, or other protection as a forcibly displaced person. In the absence of such regulations, certain amendments have been made to

58 Article 48, the Basic Law of Governance

59 Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*; Yamani, *Polygamy and Law in Contemporary Saudi Arabia*, 174.

60 In the time of writing, large judicial reforms are expected to be under way in Saudi Arabia, with an aim of full codification.

61 Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*; Yamani, *Polygamy and Law in Contemporary Saudi Arabia*, 175.

62 See e.g. M. Al Saud, “Saudi Arabia – Prince Addresses General Debate, 71<sup>st</sup> Session”, United Nations Web TV, 21 Sep. 2016, available at: <https://media.un.org/en/asset/k1n/k1nyojycmc>, (last visited 1 June 2022), *Executive Committee of the Programme of the United Nations High Commissioner for Refugees, Summary record of the 695<sup>th</sup> meeting*, 4 Oct. 2016, UN Doc. A/AC.96/SR.695, para. 27; UNGA, *Executive Committee of the Programme of the United Nations High Commissioner for Refugees, Summary Record of the 721st Meeting*, 2 Apr. 2020, UN Doc. A/AC.96/SR.721, paras. 32, 33.

63 R. Jureidini & S.F. Hassan, “The Islamic Principle of *Kafala* as Applied to Migrant Workers: Traditional Continuity and Reform”, in R. Jureidini & S.F. Hassan (eds.), *Migration and Islamic Ethics. Issues of Residence, Naturalization and Citizenship*, Leiden, Brill, 2019, 92–109. See also O.H. AlShehabi, “Policing Labour in Empire: The Modern Origins of the *Kafala* Sponsorship System in the Gulf Arab States”, *British Journal of Middle Eastern Studies*, 48(2), 2021, 291–310, on the role of the British colonial administration in institutionalising the *kafala* system in the Gulf.

64 See in particular Art. 42 of the Basic Law of Governance, and Arts. 3, 30, and 50 of the Residence Regulations (نظام الإقامة), Supreme Royal Order no. 17/2/25/1337, 4 June 1952, available in translation at <https://www.refworld.org/pdfid/3fb9f0d44.pdf> (last visited 02 May 2022).

accommodate de-facto refugees in specific cases, while the *kafala* system remains the dominant system for regulating the residency of foreigners.

### 3.3. Temporary provisions, permanent precarity: Regulating refugees as labour migrants

Over the years, several reforms have sought to transform or remove the *kafala* system, but the same mechanics remain central to the dominant framework for governing migration.<sup>65</sup> In short, this means that a Saudi sponsor is responsible for any foreign worker in the country, and that their entrance and residency are directly connected to an employment contract. A work contract must be in place prior to entering the country. Saudi authorities have previously stated that “there are no migrant workers in the Kingdom,” avoiding the term migrant due to (perceived) associations to permanent residency, insisting instead that all foreign workers are in Saudi Arabia on a temporary basis.<sup>66</sup> Instead, the term “Temporary Foreign Workers” is preferred by authorities. The insistence on migration as purely temporary must be seen in connection to the issue of citizenship. The vast socioeconomic benefits available to citizens, made possible by rent from petroleum exports, are central to the social contract between rulers and citizens and obtaining citizenship through naturalisation or other permanent arrangements is therefore close to impossible.

Reducing the number of foreign residents in Saudi Arabia is a continuous policy aim for the government. As early as 1952, the Residence Regulation stated that no less than 75 per cent of the labour force in a foreign enterprise should be constituted of Saudi nationals.<sup>67</sup> The aim of reducing the portion of foreigners in the workforce was stipulated in the 1980s,<sup>68</sup> and a 1995 decree established the first national employment quotas.<sup>69</sup> In 2011 the government launched the Saudization programme (*al-niṭāqāt*) which “combines incentives that encourage firms to hire Saudis and sanctions for non-compliant ones.”<sup>70</sup> These attempts have not been particularly successful, so since 2018 fees for foreign workers have increased dramatically making it

65 See generally M. Zahra, *Saudi Arabia's Legal Framework of Migration*, Gulf Research Center, Gulf Labor Market and Migration, explanatory note no. 4/2013, 2013, available at: [https://cadmus.eui.eu/bitstream/handle/1814/32152/GLMM%20ExpNote\\_04-2013.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/32152/GLMM%20ExpNote_04-2013.pdf?sequence=1&isAllowed=y), (last visited 1 June 2022), Migrant-Rights.org, “Saudi Labour Reforms to Come Into Force”, 13 Mar. 2021, available at: <https://www.migrant-rights.org/2021/03/saudi-labour-reforms-to-come-into-force-tomorrow/> (last visited 13 Mar. 2021), and S. Hertog, “A Comparative Assessment of Labor Market Nationalization Policies in the GCC”, in S. Hertog (ed.), *National Employment, Migration and Education in the GCC*, Berlin, Gerlach Press, 2021.

66 Office of the United Nations High Commissioner for Human Rights (hereafter OHCHR), “Report of the Working Group on the Universal Periodic Review. Saudi Arabia. Addendum”, 28 Feb. 2014, UN Doc. A/HRC/25/3/Add.1, OHCHR, “Universal Periodic Review. Report of the Working Group on the Universal Periodic Review. Saudi Arabia. Addendum”, 9 June 2009, UN Doc. A/HRC/11/23/Add.1. See also International Labour Organization (ILO), “Media-Friendly Glossary on Migration: Middle East Edition”, 20 Jan. 2017, available at: [https://www.ilo.org/beirut/projects/fairway/WCMS\\_552778/lang-en/index.htm](https://www.ilo.org/beirut/projects/fairway/WCMS_552778/lang-en/index.htm) (last visited 20 Apr. 2022).

67 Seccombe & Lawless, “Foreign Worker Dependence in the Gulf, and the International Oil Companies: 1910-50”.

68 S. Hertog, *Princes, Brokers, and Bureaucrats*, Ithaca, Cornell University Press, 2010, 211.

69 Hertog, “A Comparative Assessment of Labor Market Nationalization Policies in the GCC”.

70 F. De Bel-Air, “The Socio-Political Background and Stakes of ‘Saudizing’ the Workforce in Saudi Arabia: The Nitaqat Policy”, Gulf Research Center, Gulf Labor Market and Migration, explanatory note no. 3/

both harder for employers and foreigners to maintain permits.<sup>71</sup> In 2017, new fees for foreign workers sponsoring family members were also introduced, amounting to 100 Saudi Arabian Riyal (SAR) or about 27 US dollars (USD) per family member per month. Subsequent steep annual increases brought this fee to 400 SAR or more than 100 USD/month in 2020.<sup>72</sup>

In 2017, residency permits for foreign workers in the private sector were reduced from two years to one. In 2021, reforms made it possible for workers to transfer their sponsorship without the consent of their current sponsor (after a minimum of 1 year), and apply for exit visas directly from the authorities.<sup>73</sup> For virtually all migrants, residency must be renewed regularly, leaving those with no real option of return to a country or origin – including de-facto refugees – particularly vulnerable. As residency is directly tied to the employer (or other sponsor), the migrant runs the risk of being illegalised should the relationship with the sponsor deteriorate or their employment be terminated. Foreigners unable to afford the rising fees for dependent family members cannot renew their permits, which brings a serious risk of deportation.<sup>74</sup> Though amnesty has been given to these with expired visas or residency permits on several occasions irregular migrants do not have access to basic services and have an imminent risk of being deported.<sup>75</sup> It is challenging to establish the numbers of irregular migrants in Saudi Arabia – a category including people who have crossed the border without a valid visa or permit, overstayed pilgrimage or other visas, or absconded from their work contract – but estimates suggest over 2 million.<sup>76</sup> However, real figures might be even higher: one report suggested around 2 million had been detained in 2018.<sup>77</sup> While programmes have attempted to regularise or give temporary amnesty to those in an irregular situation, many irregular migrants prefer to live under the radar due to low institutional trust.<sup>78</sup> Overall, efforts at reducing the numbers of foreigners in the country put de-facto refugees, whether they are regulated as foreign workers or irregular, in a seriously vulnerable situation.

2015, available at: [https://cadmus.eui.eu/bitstream/handle/1814/34857/GLMM\\_ExpNote\\_03\\_2015.pdf](https://cadmus.eui.eu/bitstream/handle/1814/34857/GLMM_ExpNote_03_2015.pdf), (last visited 1 June 2022), 13.

71 Okaz/Saudi Gazette, “Expat Fee Pushes 1.05 Million Foreigners Out of Employment Market”, *Saudi Gazette*, 18 Jan., available at: <https://saudigazette.com.sa/article/616000> (last visited 20 Apr. 2022).

72 Landinfo, *Temanotat. Saudi-Arabia. Opphold, arbeid og inn- og utreise for utenlandske borgere (herunder jemenitter, syrerer og palestiner)* [Thematic Note. Saudi Arabia. Residency, Work and Entry and Exit for Foreign Citizens (Including Yemenis, Syrian and Palestinian)], 19 Nov. 2020, available at: <https://landinfo.no/wp-content/uploads/2020/11/Temanotat-Saudi-Arabia-Opphold-arbeid-og-inn-og-utreise-for-utenlandske-borgere-19112020.pdf>, (last visited 1 June 2022).

73 Migrant-Rights.org, “Saudi Labour Reforms to Come Into Force”.

74 A. Shaker, “Overview: Administrative Detention of Migrant Workers in Saudi Arabia”, *Migrant-rights.org*, 22 July 2019, available at: <https://www.migrant-rights.org/2019/07/overview-administrative-detention-of-migrant-workers-in-saudi-arabia/> (last visited 28 Sep. 2020).

75 *Ibid.*

76 See e.g. N.M. Shah, “Introduction: Skilful Survivals - Irregular Migration to the Gulf”, in P. Fargues & N.M. Shah (eds.), *Skilful Survivals. Irregular Migration to the Gulf*, 1–12.

77 Shaker, “Overview: Administrative Detention of Migrant Workers in Saudi Arabia”.

78 F. Alsharif, “Undocumented Migrants in Saudi Arabia: COVID-19 and Amnesty Reforms”, *International Migration*, 60, 2022, 188–204, Kéchichian and Alsharif, *Saudi Policies towards Migrants and Refugees: A Sacred Duty*, 159–160.

### 3.4. UNHCR in Saudi Arabia

Despite Saudi Arabia not being a party to the 1951 Convention, a UNHCR Regional Office has been operating in the country since the 1990s. Prior to establishing a permanent presence, relations between Saudi Arabia and UNHCR was handled through the UNDP office in Riyadh, the permanent mission for Saudi Arabia in Geneva and the Saudi Embassy in Beirut. In the 1970s and 1980s, the UNHCR used these channels to contact Saudi authorities on behalf of refugees, mainly originating in Africa or South-East Asia. In addition, UNHCR helped facilitate working permits in Saudi Arabia for refugees that took part in the agency's humanitarian training and employment scheme, through its Cairo office.<sup>79</sup>

UNHCR's permanent presence in Saudi Arabia goes back to 1987, when a Liaison Office focusing mainly on fund-raising and public relations was opened. The office received individual applications for asylum, and referred these to UNHCR Cairo for processing.<sup>80</sup> As a result of the Gulf War and its aftermath, UNHCR was able to open a permanent office in Riyadh, and negotiate a formal agreement with the government in the form of a Memorandum of Understanding (MoU). The MoU was slightly amended in 2010, and still forms the basis for UNHCR presence in Saudi Arabia.<sup>81</sup>

Initially, the major focus of the UNHCR office in Saudi Arabia was to resettle Iraqi refugees from the Rafha camp to third countries.<sup>82</sup> In 2001, UNHCR noted that the regional office had since "re-oriented and expanded its role by extending UNHCR's protection mandate to new categories of refugees and reinforcing its promotion of refugee law and capacity building and fund raising activities."<sup>83</sup> In terms of awareness, promotion of refugee law and capacity building, UNHCR continues to engage in activities such collaborating with local universities on training in international refugee law and refugee protection,<sup>84</sup> and cooperating with the Saudi government. By 2001, the office had also assumed a role of monitoring the situation of "other persons of concern to UNHCR."<sup>85</sup>

As there is no established framework for designating refugee status, and Saudi Arabia is not bound by the same legal definitions of refugees as UNHCR, it is not clear who are the refugees entitled protection in accordance with the MoU. UNHCR is provided with little autonomy in dealing with refugees, and this happens "in close

79 "Mission to Saudi Arabia from 7-14 December 1981", Undated; Proposed Mission to Saudi Arabia, 9-11 Feb. 1982 - Cancelled; Series 2; Sub fonds 2; Fonds 13; Archives of the United Nations High Commissioner for Refugees (hereafter UNHCR Archives).

80 "Final Report: Mission to Kingdom of Saudi Arabia 17 October - 18 December 1991", 24 Dec. 1991; 010.SAU External Relations. Relations with Governments. Saudi Arabia (1986-1994); Series 3; Fonds 11; UNHCR Archives.

81 M. Janmyr & C. Lysa, "UNHCR's Expansion to the GCC States: Establishing a UNHCR Presence in Saudi Arabia 1987-1993", *Middle East Critique*, forthcoming.

82 UNHCR, "Report of the United Nations High Commissioner for Refugees", 6 Oct. 1993, UN Doc. A/48/12, available at: <https://www.unhcr.org/excom/unhcrannual/3ae68c7a0/report-united-nations-high-commissioner-refugees-1993.html>, (last visited 1 June 2022).

83 UNHCR, "Situation Operations Plan Gulf Countries", 2001, available at: <https://www.unhcr.org/3c6398174.pdf>, (last visited 1 June 2022).

84 Interview "I", UNHCR official, Riyadh, Sep. 2021, Interview "M", UNHCR official, Riyadh, Oct. 2021.

85 UNHCR, "Situation Operations Plan Gulf Countries".

cooperation with the Government.” A possibility of seeking asylum with UNHCR Riyadh exists, but such a status does not grant any rights and is not recognised by the Saudi authorities.<sup>86</sup> The UNHCR office provides some assistance on case to case basis, either through cash-based assistance or intervention with authorities regarding fees or residency status.<sup>87</sup> In very specific cases, UNHCR seeks resettlement in third countries. The total number of individuals resettled from Saudi Arabia as the first country of asylum between 2017 and 2021 is 80.<sup>88</sup>

#### 4. LOCATING THE “REFUGEE” AMONG MIGRANTS

The number of refugees in Saudi Arabia is disputed, and estimates vary greatly because de facto refugees are not distinguished from other migrants.<sup>89</sup> No publicly available statistics exist on the numbers of migrants by nationality, nor on the duration of or reason for their stay. While a significant number of migrants in Saudi Arabia come from so-called refugee producing countries,<sup>90</sup> not all of these necessarily qualify as refugees, while individuals with other backgrounds might do so due to risk of individual persecution. Someone who qualifies as a refugee according to international refugee law, might not self-identify as such and prefer other avenues for protection (such as labour migration) over seeking asylum. Moreover, motivations for migrating to Saudi Arabia can be mixed, or change during the stay, and many do have a legal and regulated residency as a migrant worker despite being a de facto refugee by criteria stipulated in international refugee law.

In 1982, a UNHCR official noted that “The Kingdom of Saudi Arabia has, since its foundation, been one of the great asylum countries,”<sup>91</sup> where more than “five hundred thousand have found a refuge that has allowed them to escape from the persecution to which they were subjected in their country of origin.”<sup>92</sup> The official nevertheless expressed concern that this “liberal attitude” was diminishing and that rising tensions would cause an “increasingly restrictive policy.”<sup>93</sup> But the individuals who were refugees in the eyes of UNHCR were never formally recognised as refugees by the Saudi government, nor were they labelled as such. The government, in the view of UNHCR, was in the early 1980s pushed by a fear that the presence of

86 UNHCR, “Registration with UNHCR”, undated, available at: <https://help.unhcr.org/ksa/en/registration-with-unhcr/> (last visited 25 Apr. 2022).

87 Interview “I”, UNHCR official, Riyadh, Sep. 2021, Interview “M”, UNHCR official, Riyadh, Oct. 2021.

88 See UNHCR, “Resettlement Data Finder”, undated, available at: <https://rsq.unhcr.org/en/#yZ8J> (last visited 20 Oct. 2021). The nationalities of the refugees were South Sudan, Eritrea, Iraq, and Syria.

89 See generally F. De Bel-Air, *A Note on Syrian Refugees in the Gulf: Attempting to Assess Data and Policies*, Gulf Research Center, Gulf Labor Market and Migration, explanatory note no. 11/2015, available at [https://gulfmigration.grc.net/media/pubs/exno/GLMM\\_EN\\_2015\\_11.pdf](https://gulfmigration.grc.net/media/pubs/exno/GLMM_EN_2015_11.pdf), (last visited 1 June 2022).

90 Jakobsen and Valenta estimates that 2.6 million immigrants to the whole GCC come from refugee-producing countries based on a definition of more than five refugees per 1000 people according to the World Bank database. As Yemen only recently had become a major producer of refugees. Including Yemenis, the number rises to 3.5 million. See M. Valenta & J. Jakobsen, “Mixed Migrations to the Gulf: An Empirical Analysis of Migrations From Unstable and Refugee-Producing Countries to the GCC, 1960–2015”, *Refugee Survey Quarterly*, 36(2), 2017, 33–56.

91 “Visit to Jeddah from 9 to 11 February 1982”. 4 Feb. 1982; Proposed Mission to Saudi Arabia, 9–11 Feb. 1982 – Cancelled; Series 2; Sub fonds 2; Fonds 13; UNHCR Archives, para. 30.

92 *Ibid.*, para 15.

93 *Ibid.*, para 30.

foreigners represents a threat both to the stability of the country and its traditions and customs into “denying that there are any refugees at all in their country.”<sup>94</sup>

With the exception of the period the Rafha camp was operating, this reluctance to acknowledge the presence of “refugees” within the states borders lasted until 2015, when a change in public rhetoric occurred after criticism towards the Gulf states’ perceived lack of efforts towards the Syrian refugee crisis. Saudi Arabia rejected the accusations, and held that it hosted a large number of Syrians, “not as refugees in camps, but on the basis of brotherly and ethical principles in order to maintain their dignity and safety.”<sup>95</sup> Founded in 2015 and reporting directly to the King, the King Salman Relief Center (KSRelief) is the main agency handling Saudi Arabia’s humanitarian engagement and aid distribution, including reporting on assistance provided to refugees inside and outside of the country. In 2022 KSRelief reported that Saudi Arabia “has hosted around 1.07 million refugee (visitors) in recent years, equivalent to 5.5 percent of the Saudi population.”<sup>96</sup> The same figure has been repeated by UNHCR’s regional representative for the GCC countries, Khaled Khalifa.<sup>97</sup> This number is an estimate based on the number of people from three groups residing in Saudi Arabia: Syrians, Yemenis, and Rohingya. KSRelief further states that members of these three communities have benefitted from assistance cumulating to a total of 16 billion USD since 2011.<sup>98</sup> These are often referred to as guests, brothers or visitors in public statements as well as interviews. The designation applied to the beneficiaries in this case is “refugees (visitors).”<sup>99</sup>

The high number of refugees in Saudi Arabia according to the government stands in contrast to the low number registered under UNHCR’s mandate. Except when Palestinians were included in the statistics between 2001 and 2008, the official number of refugees under UNHCR’s mandate has stayed well below 1000 since the repatriation of Iraqis from the Rafha camp following the American invasion of Iraq in 2003. Likewise, very few asylum applications are registered with the UNHCR in Riyadh. What is clear is that there is no established way of counting, determining or assisting refugees in Saudi Arabia. Yet, at different times, certain groups have received some kind of assistance on the basis of being de facto refugees. In the following, six such cases are analysed.

94 *Ibid.*, para 31.

95 Al Saud. “Saudi Arabia – Prince Addresses General Debate, 71<sup>st</sup> Session”

96 M. Hamid, *Why the World Needs Partnership with Saudi Arabia: Saudi Arabia’s Global Humanitarian and Development Aid*, Special Reports, Jan. 2022, available at: <https://www.kfcris.com/en/view/post/368>

97 “UNHCR Representative to Asharq Al-Awsat: Refugees in Saudi Arabia Are 5.5% of the Total Population”, *Asharq Al-Awsat*, 20 June 2021, available at: <https://english.aawsat.com/home/article/3037076/unhcr-representative-asharq-al-awsat-refugees-saudi-arabia-are-55-total> (last visited 20 Oct. 2021).

98 KSRelief, “Refugees (visitors) in KSA”, undated, available at: <https://refugees.kswire.org/Pages/NewsDetails/c9001c44-ada1-46d9-a08b-863cba3baacd> (last visited 7 Dec. 2021).

99 In the Arabic version, the designation is opposite: al-za’irun (al-laji’iun dakhil al-mamlakah), Eng. The visitors (the refugees inside the Kingdom). In relation to refugees outside of the borders of Saudi Arabia, KSRelief essentially adopts the Convention definition, see KSRelief, “Who Are Refugees”, undated, available at: <https://refugees.kswire.org/Pages/NewsDetails/39912b92-5805-4666-9ef2-34d80de6c70c> (last visited 7 Dec. 2021).

#### 4.1. Permanent refugee communities (1948–2018)

Palestinian and Rohingya are both refugee communities with a long history of settlement in Saudi Arabia, which can be traced back to the exodus from their respective native lands starting in 1948 with arrivals continued through the following decades.<sup>100</sup> Members of these groups have nevertheless been welcomed and tolerated by authorities, especially in earlier years, and in practice developed into permanent communities in Saudi Arabia. Many arrived holding travel documents from neighbouring countries, such as Bangladesh in the case of the Rohingya,<sup>101</sup> and Egypt, Jordan, Lebanon, and Syria in the case of the Palestinians. UNHCR has estimated that at least 240,000 Palestinians reside in Saudi Arabia, though the real number is believed to be much higher and other sources have suggested an upper estimate of as high as 1,000,000.<sup>102</sup> Among the Rohingya, there are at least 250,000 registered Rohingya and an estimated 150,000 unregistered. UNHCR have suggested an upper estimate of 500,000, while others claim the numbers can be as high as one million.<sup>103</sup> According to government organisation KSRelief, the number of Rohingya today “represents about more than 1.2% of the total Saudi population.”<sup>104</sup>

The two groups have been subject to different policies by the Saudi government. During negotiations on regional resettlement opportunities for Palestinian refugees in 1949, the potential of settlement in Saudi Arabia was among the opportunities explored.<sup>105</sup> While some potential was identified, in particular an estimated number of 1,000 (5,000 including family members) eligible for employment in ARAMCO,<sup>106</sup> the United Nations Conciliation Commission for Palestine (UNCCP)<sup>107</sup> generally noted only small numbers of Palestinian refugees residing in Saudi Arabia at the time.<sup>108</sup> In UN meetings, Saudi Arabia expressed a strong view that Israel should

100 M. Alsaifi, “Language Proficiency and Usage Among Second- And Third-generation Rohingya Refugees in Mecca”, *Journal of Multilingual and Multicultural Development*, 42(1), 2021, 37–51.

101 *Ibid.*

102 De Bel-Air, *Demography, Migration and Labour Market in Saudi Arabia*.

103 US Department of Justice, *Saudi Arabia 2019 Human Rights Report*, 2019, available at: <https://www.justice.gov/eoir/page/file/1258886/download#page=29>, (last visited 1 June 2022), Interview “K”, Bangladesh diplomat, Riyadh, Sep. 2021.

104 KSRelief, *Assistance By Beneficiary Nationality – Rohingya*, undated, available at: <https://refugees.ksrelief.org/InternalStatistics/CountryDetails/3> (last visited 12 Nov. 2022).

105 United Nations (1949), Proposal re. settlement of refugees in other Arab countries – UNCCP’s Technical Committee on Refugees – Working paper, available at: <https://www.un.org/unispal/document/auto-insert-211511/> (last visited 1 June 2022), “Middle East (Official) Committee: Reconstruction”, [410r] (823/940), British Library: India Office Records and Private Papers, Coll 54/1(S), IOR/L/PS/12/4756, in Qatar Digital Library, available at: [https://www.qdl.qa/archive/81055/vdc\\_100043455638.0x000018](https://www.qdl.qa/archive/81055/vdc_100043455638.0x000018) (last visited 19 Apr. 2021).

106 “Middle East (Official) Committee: Reconstruction”, [410r] (823/940), British Library: India Office Records and Private Papers, Coll 54/1(S), IOR/L/PS/12/4756, in Qatar Digital Library, available at: [https://www.qdl.qa/archive/81055/vdc\\_100043455638.0x000018](https://www.qdl.qa/archive/81055/vdc_100043455638.0x000018) (last visited 19 Apr. 2021).

107 UNCCP was a commission established by the UN in 1948 in accordance with UN Resolution 19, as a mediator in the Arab–Israeli Conflict.

108 UN, *Note by UNCCP on UNSG’s Draft Report on the Work of UNRPR*, 27 Oct. 1949, UN Doc. A/AC.25/W/28, available at: <https://www.un.org/unispal/document/auto-insert-210492/>, (last visited 2 May 2022), UN, *Proposal Re. Settlement of Refugees in other Arab Countries – UNCCP’s Technical Committee on Refugees – Working Paper*, 8 May 1949, UN Doc. A/AC.25/Com.Tech/W.1, available at: <https://www.un.org/unispal/document/auto-insert-211511/>, (last visited 2 May 2022).



fulfil its obligation to allow all refugees to return as stipulated in the UN General Assembly resolution 194,<sup>109</sup> with King Abdulaziz insisting that a resolution of the refugee problem was an absolute condition for durable peace.<sup>110</sup> Inherent in a position of the right to return as an absolute condition lies a rejection of any possibility of accepting resettlement of refugees within the state border, as such an acceptance would undermine the demand for Israel to fulfil their responsibilities vis a vis the displaced Palestinians. Yet, in May 1949, a recruitment office for ARAMCO was set up in Beirut to cater to Palestinian refugees, on the request of the king.<sup>111</sup> In later years, the Saudi state have also recruited Palestinians abroad for work in the public sector through embassies and UNRWA has functioned as a facilitator for employment in the Gulf, including Saudi Arabia.<sup>112</sup> Most of the Palestinians in Saudi Arabia thus came as foreign workers (often after initially being displaced), and are formally governed as such. In 2006, UNHCR noted that “the standard of treatment of some Palestinians has been slowly and silently moving from the status of expatriate to something else, to a new category with a more favourable treatment that still does not exist in the local legislation.”<sup>113</sup> Given the particular history of the Palestinian refugee issue and Saudi Arabia’s historical stance, the situation of Palestinian refugees in Saudi Arabia is sensitive, and there are no publicly announced regulations pertaining specifically to Palestinians. Nevertheless, it is clear that Palestinian refugees historically have quietly been given a special status.

In earlier periods, Saudi authorities were generally tolerant towards Rohingya, allowing them to enter Saudi Arabia provided they had a form of travel document.<sup>114</sup> Unlike the Palestinians, largely governed as labour migrants, large parts of the Rohingya community have had an irregular status since their arrival. The authorities has implemented measures to regulate their status, again primarily by integrating Rohingya into the labour force. In contrast to the Palestinians, efforts directed at the Rohingya population have been publicly announced: In 2005 for example, then Minister of Interior Nayef bin Abdulaziz stated that “the Burmese” came as Muslims performing hajj, but unfortunately could not return, and were given residency and

109 UN, *Palestine Refugees; Repatriation and Resettlement – UNCCP – Working Paper/Revised*, 2 Oct. 1949, UN Doc. A/AC.25/W/82/Rev.1 available at: <https://www.un.org/unispal/document/auto-insert-210679/>. Saudi Arabia, along with other Arab states, voted against the resolution based on a view that the Israeli state was an illegitimate one.

110 UN, *Mtg. w/ the Saudi King Re. Peaceful Settlement of the Palestine Question – UNCCP Summary Record*, 17 Feb. 1949, UN Doc. A/AC.25/SR/G/7, available at: <https://www.un.org/unispal/document/auto-insert-210941/>, (last visited 21 April 2022)

111 It is worth noting that, while ARAMCO recruitment offices existed in several countries the request to employ 1,000 Palestinians came directly from the King. The same number (employment opportunities for 1,000) is reported in British documents from earlier that spring suggesting that the possibility of employing Palestinian refugees in relation to the refugee crisis was already part of diplomatic negotiations.

112 A. Hovdenak, J. Pedersen, D.H. Tuastad, & E. Zureik. (1997). *Constructing Order: Palestinian Adaptions to Refugee Life*, Fafo-report 236, Fafo Institute for Applied Social Sciences, 1997, available at: [https://www.faf.no/media/com\\_netsukii/236.pdf](https://www.faf.no/media/com_netsukii/236.pdf), (last visited 1 June 2022)

113 *Ibid.*

114 Interview “K”.

permission to work.<sup>115</sup> Further, he encouraged employers to recruit from the Rohingya community.<sup>116</sup> This encouragement was later regularised by the Ministry of Labour, which announced that a worker from Myanmar would only count as a quarter of a foreign worker within the Saudization programme.<sup>117</sup> The Saudization programme regulates how many foreign workers can be employed in an enterprise, hence this announcement implies that an employer can choose to hire four Rohingya in the place of one worker with a different nationality, creating incentives for employers to prioritise the Rohingya population already inside the country. The Saudi government claims to have contributed more than 1.3 billion USD to assist the Rohingya community in Saudi Arabia between 2011 and 2020, in the health and education sectors alone. In 2013 the government established a committee to regulate the status of Rohingya and ensure permits for work and residency.<sup>118</sup> In 2017, it was announced that residency permits had been issued free of charge to 250,000 Rohingya.<sup>119</sup> Charity schools were also regularised and Rohingya students enrolled in public schools, and health care provided to the community.<sup>120</sup> The regulations only applied to Rohingya arriving in Saudi Arabia prior to 2008, while those arriving later were not eligible for residency status.<sup>121</sup>

Starting in 2017, the situation has deteriorated for both groups, and the preferential treatment of Palestinians, including exemption from fees for dependents, is reported to have ceased.<sup>122</sup> In 2018, it was reported that Saudi authorities had instructed visa agencies to stop issuing visas to Palestinians holding temporary travel documents.<sup>123</sup> In general, Rohingya (both documented and not) were not subject to deportation before 2018, but after the expiration of permits in 2018 hundreds of Rohingya have been deported to Bangladesh, even without having any connection to the country prior to being (re)patriated.<sup>124</sup> As many Rohingya do not hold valid identification papers, or have any connection to Bangladesh, it is difficult for the Bangladeshi authorities to fulfil Saudi requests to provide an increasing number of Rohingya with Bangladeshi documents in order to facilitate their “return” or deportation. However, due to the large number of Bangladeshi workers in Saudi Arabia, Bangladesh brings little leverage to negotiations.<sup>125</sup>

115 Saudi Press Agency “سمو الامير نايف بن عبدالعزيز / لقاء صحفي إضافة خامسة وأخيرة” [His Highness Prince Nayef bin Abdulaziz / press interview fifth and final addition], SPA.gov.sa, 16 Oct. 2005, available at: <https://www.spa.gov.sa/296567> (last visited 31 Apr. 2022).

116 *Ibid.*

117 Ar-riyadh, «تصحيح أوضاع 249 ألف برماوي خلال عامين.. وإدماجهم في المجتمع» [Correcting the status of 249 thousand Barmawi within two years.. And integrating them into society], Ar-riyadh, 28 Apr. 2015, available at: <https://www.alriyadh.com/1043173> (last visited 31 Apr. 2022).

118 Alshafi, “Language Proficiency and Usage Among Second- And Third-generation Rohingya Refugees in Mecca”.

119 *Ibid.*

120 *Ibid.*

121 US Department of Justice, *Saudi Arabia 2019 Human Rights Report*.

122 F.P. Albanese & L. Takkenberg, *Palestinian Refugees in International Law*, Oxford, Oxford University Press, 2020, 260.

123 D. Kuttab, “Millions of Palestinians No Longer Eligible for Saudi Visas”, *Al-Monitor*, 16 Nov. 2018, available at: <https://www.al-monitor.com/originals/2018/11/saudi-arabia-ban-palestinians-travel-umrah-hajj.html#ixzz7RTvtvq85G> (last visited 31 Apr. 2022).

124 US Department of Justice, *Saudi Arabia 2019 Human Rights Report*.

125 Interview “K”.

Among the Rohingya a small number – about 2,000 – have gained citizenship, so has a small number of early arriving Palestinians.<sup>126</sup> Both the Rohingya and Palestinians have continued to migrate to Saudi Arabia, while many of those arriving in the early days have remained. These cases are thus similar: they are both long-standing; more refugees continue to arrive; and they have turned into permanent settlements in Saudi Arabia, despite being unrecognised as such. In different ways both groups were attempted at regularised through integration in the regular system of migration governance.

#### 4.2. Providing refuge through royal orders (1960s–1990s)

In contrast to the permanent aspects of the Rohingya and Palestinian case, other refugee groups have been subject to special regulations based on conflicts that have been more confined in time. This has been the case for Eritreans during the Eritrean war of independence and Iraqis in the aftermath of the Gulf War of 1991. Both of these cases stand out; the Iraqis were hosted in the only refugee camp in the history of the modern Saudi state, while Eritreans were able to enter and stay in Saudi Arabia under the cover of the Eritrean Liberation Front (ELF). Yet, despite these features, the cases resonate with other earlier and later cases of refugee governance in Saudi Arabia; they are connected to larger political priorities and foreign policy, and governed through ad-hocratic response to specific situations.

Thiollet argues that Saudi Arabia and other Arab countries supported the Eritrean independence movement economically as well as ideologically – and in practice provided them with asylum.<sup>127</sup> In 1977, UNHCR said that the number of Eritrean in Jeddah specifically was in the thousands, possibly over 10,000, with some estimates going as high as 30,000.<sup>128</sup> The fee for residence permits was dismissed for Eritreans and undocumented Eritrean migrants were tolerated and not detained or deported.<sup>129</sup> In UNHCR's assessment, it was still fairly difficult to obtain a visa to Saudi Arabia: many arrived in Saudi Arabia either on temporary visas (transit or pilgrimage), through relatives or by being recruited to work in Saudi Arabia after first arriving in Sudan.<sup>130</sup> In addition, however, the ELF was through royal decrees issued in 1974 and 1979 also able to obtain visa and work permits for supporters – in other words granted a status as a sponsor through an evasion of the *kafala* system.<sup>131</sup>

This arrangement was relatively short-lived, and the policies providing special privileges for Eritreans was abolished in 1981. That same year, UNHCR was approached by an ELF representative expressing concern over more than ten

126 US Department of Justice, *Saudi Arabia 2019 Human Rights Report*.

127 H. Thiollet, "Migration as Diplomacy: Labor Migrants, Refugees, and Arab Regional Politics in the Oil-rich Countries", *International Labor and Working-Class History*, 79(1), 2011, 103–121.

128 "Report on visit to Jeddah (18-21 August) by Huub Gaymans", 6 Sep. 1977; Refugees in Saudi Arabia – General; Series 2; Sub fonds 10; Fonds 11; UNHCR Archives.

129 H. Thiollet, "Refugees and Migrants from Eritrea to the Arab World: The Cases of Sudan, Yemen and Saudi Arabia 1991-2007", *Migration and Refugee Movements in the Middle East and North Africa*, Cairo, Egypt, 2007, available at: <https://hal-sciencespo.archives-ouvertes.fr/hal-01675538/document>, (last visited 1 June 2022), Refugees in Saudi Arabia – General.

130 "Report on visit to Jeddah (18-21 August) by Huub Gaymans", UNHCR Archives.

131 Thiollet, "Migration as Diplomacy: Labor Migrants, Refugees, and Arab Regional Politics in the Oil-rich Countries", Refugees in Saudi Arabia – General.

thousand refugees in Saudi Arabia “escaping from Ethiopia’s suppression,” which according to the official were facing imprisonment in or deportation from Saudi Arabia.<sup>132</sup> UNHCR later confirmed that Eritreans were being deported to Sudan, Somalia and Djibouti.<sup>133</sup> In a meeting in 1981, a Saudi official told the UNHCR “off the record” that “the Saudi authorities were restricting the entry of the Eritreans to the Kingdom for social and moral reasons,” implying that some Eritrean women engaged in prostitution.<sup>134</sup> In other words, the migration policies for Eritrean refugees in Saudi Arabia not only shifted from favourable to neutral – but to unfavourable.

In line with Saudi policies towards the new Eritrean leadership, only certain opponents of the new regime were granted asylum after the end of the war.<sup>135</sup> In 2006, UNHCR was providing assistance to a group of Eritrean “ex-military refugees” who had been provided a temporary status by the government and the UNHCR’s task was mainly monitoring the situation as well as seeking resettlement for these refugees.<sup>136</sup> The expenses of the support provided to the specific group of Eritrean refugees was covered by the Saudi government. A total of 237 Eritrean refugees were resettled from Saudi Arabia between 2006 and 2020, of whom 172 departed in 2006.<sup>137</sup> In addition, many Eritreans likely to fill the criteria for asylum elsewhere have continued to migrate to Saudi Arabia for work, not being recognised as refugees but governed as regular foreign workers.<sup>138</sup> The shifting circumstances and regulations that have been affecting different parts of the Eritrean community shows not only the mixed motivations of refugees in Saudi Arabia, but also the changing and uncertain systems of governing them, and the interconnection of these systems with broader policy priorities.

Like Eritrean nationals, Iraqi migrants have not enjoyed any general nationality-based privileges in Saudi Arabia in times of peace, though some individuals have a dual citizenship and certain members of the Iraqi Muslim Brotherhood have lived in exile in Saudi Arabia.<sup>139</sup> However, following the Gulf War of 1991 and the violent repression of the uprisings against Saddam Hussein that followed, about 33,000 Iraqi refugees seeking protection by the coalition forces in Iraq, were eventually sheltered in two camps in Saudi Arabia as “guests of the King”: Artawiyah and Rafha.

Among the refugees, those initially designated as Prisoners of War (POW), including rebels, army deserters and POWs from the ground operation of Desert Storm refusing repatriation were sheltered in the all-male Artawiyah camp. Those designated as civilians, primarily families, were settled in Rafha. The two camps were

132 “Incoming cable. Dispatched from Abu Dhabi on 14.04.81”, 15 Apr. 1981; Refugees from Chad in Saudi Arabia [100.SAU.AFG – Refugees from Afghanistan in Saudi Arabia – 100.SAU.ETH – Refugees from Ethiopia in Saudi Arabia]; Series 2, Subfonds 10; Fonds; 11. UNHCR Archives.

133 “Mission to Saudi Arabia from 7-14 December 1981”, UNHCR Archives.

134 *Ibid.*

135 Thiollet, *Refugees and Migrants from Eritrea to the Arab World: The Cases of Sudan, Yemen and Saudi Arabia 1991-2007*.

136 UNHCR, *UNHCR Country Operations Plan 2007 - Kingdom of Saudi Arabia & Gulf countries*.

137 UNHCR, “Resettlement Data Finder”.

138 G. Cole, “Sampling on the Dependent Variable: An Achilles’ Heel of Research on Displacement?”, *Journal of Refugee Studies*, 34(4), 2021, 4479–4502.

139 G. Chatelard, “Migration from Iraq Between the Gulf and the Iraq Wars (1990-2003): Historical and Sociospacial Dimensions”, Working Paper No. 68, University of Oxford, 2009.

consolidated in the Rafha camp in November 1992, after those wanting to be repatriated had returned to Iraq and those remaining were determined to be refugees. Already in the fall of 1991, UNHCR noted that “all Iraqi residents of both camps are now recognized as refugees by the government of Saudi Arabia and have been given temporary asylum.”<sup>140</sup>

The camp was fully funded by the Saudi government, and material conditions, including access to food, were good. In 1993, it was reported that the Saudi government had spent 670 million USD on the camps and services to the refugees.<sup>141</sup> Schools and health facilities were built in the Rafha camp to cater to refugees, and some refugees were permitted to work inside the camp. In the fall of 1991, UNHCR described the conditions of both camps as follows:

Full medical facilities at both sites are provided by either Iraqi doctors or a Filipino medical team. Medical referrals to town and city facilities are routine. A complete food basket is provided, including fresh meat, vegetables, fish and fruit. Refugee labor is used and paid at in-country rates for virtually all internal activities. Bottled water supplies are supplemented by drilled bore wells. Toilets, showers and washing facilities are serviced by trucks and piped delivery and drainage systems. Plans have been established for the creation of cottage industries and vocational training schools, and for the establishment of businesses to provide consumer goods in the camps. Refugees are also given significant cash stipends for miscellaneous expenses and clothing. Employment outside the camps is not currently foreseen.<sup>142</sup>

This account is supported by accounts by refugees, who described the conditions along similar lines.<sup>143</sup> However, freedom of movement was highly restricted, and both refugees and organisations described the camps, surrounded by fences, as “prison-like.” This is particularly true for the Artawiyah camp, which was practically run as a POW-camp until it was shut down in 1992. Refugees were rarely allowed to leave the camps, except on trips organised by the camp authorities for pilgrimage or nearby towns, or for medical assistance or applying for visas through embassies in Riyadh, and could not seek work outside of the camp. On multiple occasions, refugee protest was met with violence by Saudi guards leading to refugees being killed, injured, and imprisoned. In 1993, clashes between refugees and guards left at least nine refugees as well as four Saudi guards dead, and Saudi authorities announced that the monthly allowance provided for refugees would be discontinued.<sup>144</sup> In 1994,

140 “Draft Project Description. Regional Resettlement Programme” in “Final Report: Mission to Kingdom of Saudi Arabia 17 October – 18 December 1991”, 24 Dec. 1991; 010.SAU External Relations. Relations with Governments. Saudi Arabia (1986-1994); Series 3; Fonds 11; UNHCR Archives.

141 Y.A. Saleh, *Iraqi Refugees in Saudi Arabia. Facts and Evidence*, London, The Kensal Press, 1993, 77

142 “Draft Project Description. Regional Resettlement Programme”, 27 Nov. 1991; 010.SAU External Relations. Relations with Governments. Saudi Arabia (1986-1994); Series 3; Fonds 11; UNHCR Archives.

143 Interview “A”, Iraqi refugee, Oslo, Nov. 2020, Interview “H”, Iraqi refugee, Oslo, May 2021, Interview “N”, Iraqi refugee, Online, Oct. 2021.

144 “Meeting with Prince TURKI on 15.03.1993,” 16 Mar. 1993; 010.SAU External Relations. Relations with Governments. Saudi Arabia (1986-1994); Series 3; Fonds 11; UNHCR Archives.

Amnesty International issued a report expressing concern about torture, extrajudicial executions and forced return to Iraq, primarily in response to protests.<sup>145</sup>

Following these events, and international criticism directed at Saudi Arabia, UNHCR took up a closer role monitoring the conditions at the camp. In addition, UNHCR's role mainly concerned the resettlement of the refugees who soon became a prioritised group for resettlement by UNHCR globally: in 1992 the Rafha refugees made up the majority of the persons UNHCR sought resettlement for.<sup>146</sup> In 2006, "approximately, 24,000 were resettled in 16 countries over the years and 5000 opted for spontaneous repatriation after the regime change in Iraq."<sup>147</sup> In 2005 UNHCR reached a deal with the Saudi authorities who for the first time authorised the settlement of 363 of the refugees in urban areas, providing them with refugee identification cards, access to healthcare and education and allowing them to work.<sup>148</sup> Only 95 refugees were left in the Rafha camp in September 2006, and the camp was closed down in 2009. The Rafha case is unique not only as the only case of camp settlement, in contrast to the urban settled groups discussed in this article, but also as it led to the establishment of the UNHCR Regional Office in Riyadh and the signing of the MOU.<sup>149</sup> Yet, both the focus on basic services through humanitarian support, and the temporariness of the solution bears resemblance to other refugee situations in Saudi Arabia.

### 4.3. The bureaucratisation of hospitality (2012–2022)

Saudi Arabia has been an important destination for Yemeni and Syrian labour migration for decades. Following the Arab spring and the outbreak of civil wars in both countries, nationals from both states have been subject to a specific set of migration policies, providing them a channel to regularise their stay and obtain a work permit without first obtaining a sponsor. For the Syrian and Yemenis, the de facto refugee policies are not implemented silently as in the case with Palestinians. The privileges are given by royal orders, but further bureaucratised through the issuance of a "visitor"-status and an online portal for the application of work permits, Ajeer. Launched by the government in 2016, Ajeer is a digital platform for applying for temporary work permits, including for Syrian and Yemeni "visitors." While these arrangements were put in place in response to the ongoing war, were Saudi Arabia is a major actor,<sup>150</sup> the system has a certain historical precedence in the case of the Yemenis.

145 Amnesty International, *Saudi Arabia: Unwelcome 'guests': the plight of Iraqi refugees*, May 1994, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde230011994en.pdf>.

146 UNHCR, "Report of the United Nations High Commissioner for Refugees," 1993, UN Doc. A/48/12, paras. 57–58.

147 UNHCR, *UNHCR Country Operations Plan 2007 - Kingdom of Saudi Arabia & Gulf countries*, 1 September 2006, available at: <https://www.refworld.org/docid/45221de92.html> (last visited 17 October 2022)

148 *Ibid.* The time frame for this arrangement is not mentioned, and it is still clear if the group still benefit from a special status.

149 Janmyr and Lysa, "UNHCR's Expansion to the GCC States: Establishing a UNHCR Presence in Saudi Arabia 1987-1993".

150 Saudi Arabia intervened in the Yemeni civil war in 2015, and has since been heavily criticised for its role in the war. Saudi Arabia is also the largest humanitarian to Yemen.

Until 1990 Yemeni nationals were exempted from the regulations pertaining to other immigrants concerning restrictions on working and running businesses.<sup>151</sup> The removal of these exceptions, in interplay with reactions to the Yemeni support for the Iraqi invasion of Kuwait, led to a mass return of Yemenis from Saudi Arabia.<sup>152</sup> Estimates suggest the total number of Yemenis in Saudi Arabia by 1990 to be between 800,000 and 1.2 million, of which nearly all returned to Yemen in the following year.<sup>153</sup> The formalisation of the special arrangements for Yemenis are routinely ascribed to the Treaty of Taif of 1934,<sup>154</sup> but while the treaty itself contains no specific reference to such privileges,<sup>155</sup> later correspondence between two countries specify that movement shall continue “as in the past” until a specific agreement regulating such movement is drawn up.<sup>156</sup> In 1944, and in relation to the issue of poor pilgrims remaining in Saudi Arabia after pilgrimage, King Abdulaziz warned the British that poor Yemenis (and other poor foreigners) would no longer be allowed into the Kingdom.<sup>157</sup> This supports a view that the privileges granted Yemeni nationals were rooted in customary practices rather than stipulated in legally binding agreements.<sup>158</sup> Further, when Saudi Arabia revoked special privileges to Yemenis in 1960 and 1990 the Yemeni government argued that this was a breach of the Treaty of Taif.<sup>159</sup> Saudi Arabia has denied that such privileges were part of the treaty, though the official Saudi

- 151 N. Van Hear, “The Socio-Economic Impact of the Involuntary Mass Return to Yemen in 1990”, *Journal of Refugee Studies*, 7(1) 1994, 18-38. North-Yemenis were exempted from regulations requires workers to have a sponsor, see H. Cook & M. Newson, “Yemeni Irregular Migrants in the Kingdom of Saudi Arabia and the Implications of Large Scale Return: An Analysis of Yemeni Migrants Returning from Saudi Arabia”, in Z. Babar (ed.), *Arab Migrant Communities in the GCC*, Oxford, Oxford University Press, 2017, 135.
- 152 Van Hear, “The Socio-Economic Impact of the Involuntary Mass Return to Yemen in 1990”; Cook & Newson, “Yemeni Irregular Migrants in the Kingdom of Saudi Arabia and the Implications of Large Scale Return: An Analysis of Yemeni Migrants Returning from Saudi Arabia”, 139.
- 153 Cook & Newson, “Yemeni Irregular Migrants in the Kingdom of Saudi Arabia and the Implications of Large Scale Return: An Analysis of Yemeni Migrants Returning from Saudi Arabia”, 135. see also T.B. Stevenson, “Yemeni Workers Come Home: Reabsorbing One Million Migrants”, *Middle East Report*, 181, 1992, 15–20.
- 154 G. Okruhlik & P. Conge, “National Autonomy, Labor Migration and Political Crisis: Yemen and Saudi Arabia”, *The Middle East Journal*, 51(4), 1997, 554–565, Stevenson, “Yemeni Workers Come Home: Reabsorbing One Million Migrants”.
- 155 While the Treaty does not include a reference to the freedom of movement or related privileges of the subjects of the two states, it does include a prohibition of accepting refugees from one state by the other. Translation of the treaty available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/SA%20YE\\_340520\\_Treaty%20of%20Islamic%20friendship%20and%20Arab%20brotherhood%20%28Treaty%20of%20Taif%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SA%20YE_340520_Treaty%20of%20Islamic%20friendship%20and%20Arab%20brotherhood%20%28Treaty%20of%20Taif%29.pdf), (last visited 1 June 2022).
- 156 “File 25/2 Saudi-Yemen Treaty”, [34r] (67/84), British Library: India Office Records and Private Papers, IOR/R/15/2/638, in Qatar Digital Library, available at: [https://www.qdl.qa/archive/81055/vdc\\_100024390676.0x000044](https://www.qdl.qa/archive/81055/vdc_100024390676.0x000044) (last visited 21 Apr. 2021). See also a discussion on the 1936 agreement between Saudi Arabia and Yemen, in: A. Al-Enazy, “‘The International Boundary Treaty’ (Treaty of Jeddah) Concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000”, *The American Journal of International Law*, 96(1), 2002, 161–173.
- 157 Freitag, *A History of Jeddah: The Gate to Mecca in the Nineteenth and Twentieth Centuries*.
- 158 A. Al-Enazy, *Long Road from Taif to Jeddah*, London, IB Tauris, 2005, 115.
- 159 *Ibid*.

stance on the matter has been far less consistent and the legal rationale has been made clear for neither the granting nor the revoking of these privileges.<sup>160</sup>

When the opportunity to obtain a “visitor”-status was introduced for Yemeni nationals in 2015, it was as a response to the war and followed a system already established for Syrian nationals.<sup>161</sup> More than 500,000 Syrians were residing in Saudi Arabia in 2010, before the war broke out, and estimated numbers suggest the figure had increased to 750,000 by 2017.<sup>162</sup> Syrians already residing in Saudi Arabia therefore make up a large proportion of the total number of Syrians in Saudi Arabia, a number officials have claimed to be as high as 2.5 million.<sup>163</sup> Many who were resident as regular labour migrants opted to bring more family members to Saudi Arabia on visit visas (not to be confused with the “visitor” permit), made possible by a certain flexibility exhibited by Saudi authorities following the outbreak of the war. Since 2012, the government has issued a number of royal decrees with a goal of regulating the residency of Syrians who could not otherwise renew their permits. More than 673,000 Syrians were staying in Saudi Arabia on “visitor” permits as of 2018 according to government figures.<sup>164</sup> In 2022, the numbers of Syrian with a special status was around 220,000 according to officials.<sup>165</sup> They have not been punished for over-staying, and have been able to renew their visas after their passport has expired.<sup>166</sup>

According to UNHCR, more than 400,000 Yemeni nationals had regularised their status by August 2015.<sup>167</sup> In 2022, more than 560,000 Yemenis are considered refugees in Saudi Arabia according to officials.<sup>168</sup> The visitor permits would be valid for 6 months, and the government has announced renewal of these regularly through royal decrees.<sup>169</sup> In 2016, male Syrian and Yemeni nationals between 18 and 60 years of age were made eligible for a work permit.<sup>170</sup> As of 2022, being registered as a “visitor” was a prerequisite to obtain such a permit for Syrian nationals, while holding a Yemeni passport was sufficient for Yemeni nationals.<sup>171</sup> The work permit for a Syrian visitor is valid for certain occupations for 6 months and costs 1,200 SAR,<sup>172</sup>

160 *Ibid.*, 115, Al-Enazy, “The International Boundary Treaty’(Treaty of Jeddah) Concluded between the Kingdom of Saudi Arabia and the Yemeni Republic on June 12, 2000”.

161 See also E. Osmandzиков, “Integration of Displaced Syrians in Saudi Arabia”, *Border Crossing*, 10(2), 2020, 91–110..

162 M. Valenta, J. Jakobsen, D. Župarić-Ilić & H. Halilovich, “Syrian Refugee Migration, Transitions in Migrant Statuses and Future Scenarios of Syrian Mobility”, *Refugee Survey Quarterly*, 39(2), 2020, 153–176.

163 Saudi Press Agency, “The Kingdom Receives around 2.5 m. Syrians, Since the Outbreak of the Crisis, Official Source Says”, SPA.gov.sa, 11 Sep. 2015, available at: <https://www.spa.gov.sa/viewstory.php?newsid=1397412> (last visited 5 May 2021).

164 Osmandzиков, “Integration of Displaced Syrians in Saudi Arabia”.

165 Interview “Q”.

166 Osmandzиков, “Integration of Displaced Syrians in Saudi Arabia”.

167 UNHCR, *Regional Update - Middle East and North Africa*, Executive Committee of the High Commissioner’s Programme, 24 Sep. 2015, available at: <https://www.unhcr.org/en-my/560505e09.pdf>, (last visited 1 June 2022).

168 Interview “Q”, Saudi official, Nov. 2021.

169 US Department of Justice, *Saudi Arabia 2019 Human Rights Report*.

170 Osmandzиков, “Integration of Displaced Syrians in Saudi Arabia”.

171 *Ibid.*

172 Ajeer.com.sa, “تصاريح أجبر” [Ajeer permits], undated, [https://www.ajeer.com.sa/about\\_notices](https://www.ajeer.com.sa/about_notices) (last visited 25 Apr. 2022).



while for Yemeni nationals the permit is valid for certain occupations, for 12 months, and costs 1,800 SAR as of 2022.<sup>173</sup> Needless to say, these fees are very high for an average Syrian or Yemeni refugee. Previously, such permits were free of charge for Yemenis. For both groups, the visitor permits are renewable after 6 months, and the government regularly announces when the permits can be renewed. In other words, the permits are temporary and thus entails a degree of uncertainty as to when renewal will no longer be possible.

Besides providing options for formal regulations, Saudi Arabia says it has provided extensive humanitarian support to Syrian and Yemeni refugees inside the country since 2011: more than 5 billion USD on Syrian refugees,<sup>174</sup> and over 9 billion USD on programmes assisting Yemeni refugees.<sup>175</sup> In addition to funds provided through free education and health services “Services provided by the Directorate General of Passports” is a significant expenditure post, highlighting the importance of regulating status. It is further noteworthy that assistance all the way back to 2011 is included: the special status for Yemenis was formally introduced only in 2015, suggesting that the figures include basic services to Yemeni regular migrants. Deportations of an estimated number of 400,000 Yemenis occurred between 2013 and 2014 as part of a clamp down on irregular foreigners.<sup>176</sup>

In 2012, a royal decree made Syrian holders of the visitor permits and their families eligible to free healthcare and public schools, and it is reported that 140,000 children attended public schools on these grounds.<sup>177</sup> The following year, it was announced that Syrian students would be accepted in public universities.<sup>178</sup> However, it remains very unclear how easy it is for Syrian refugees to obtain the visitor permits or receive assistance in practice and some report having tried without succeeding.<sup>179</sup> In 2018 the Ministry of Education announced that Syrians as well as Yemenis would no longer be able to attend public schools or universities free of charge, but would rather have to enrol in private institutions at their own cost.<sup>180</sup> The changing policies towards Syrians are visible in the UNHCR statistics. The number of asylum applications received by the UNHCR office in Riyadh had been less than 100 annually until 2018 when it rose to a little more than 2000, before reaching 9,434 in 2020. Syrian nationals account for the whole increase.<sup>181</sup>

173 *Ibid.*

174 KSRelief, *Assistance By Beneficiary Nationality – Syrian*, undated, available at: <https://refugees.ksrelief.org/InternalStatistics/CountryDetails/2> (last visited 12 Nov. 2022).

175 KSRelief, *Assistance by beneficiary Nationality – Yemeni*, undated, available at: <https://refugees.ksrelief.org/InternalStatistics/CountryDetails/1> (last visited 12 Nov. 2021).

176 Cook & Newson, “Yemeni Irregular Migrants in the Kingdom of Saudi Arabia and the Implications of Large Scale Return: An Analysis of Yemeni Migrants Returning from Saudi Arabia”, 141.

177 Osmandzikovic, “Integration of Displaced Syrians in Saudi Arabia”.

178 Landinfo, *Temanotat. Saudi-Arabia. Opphold, arbeid og inn- og utreise for utenlandske borgere (herunder jemenitter, syrere og palestinere)*.

179 Interview “O”, Syrian refugee, Online, Nov. 2021.

180 US Department of Justice, *Saudi Arabia 2019 Human Rights Report*.

181 See UNHCR, *Refugee Data Finder*. UNHCR noted in 2020 that “Only those asylum-seekers facing acute or imminent protection risks are registered by UNHCR. In addition, there are some 6,100 other asylum-seekers who were individually assessed, counselled and advised to inform UNHCR of any changes in their situation, which would justify a decision to register them.”

#### 4.4. A Saudi approach to refugee protection?

The majority of the individuals who are likely to qualify for a refugee status in accordance to international refugee law residing in Saudi Arabia are regulated as foreign workers. What the above cases reveal is that in the absence a formalised system for governing refugees, the Saudi government has adopted ad-hocratic policies on a case to case basis when faced with refugee situation inside the states borders. These ad-hocratic policies nevertheless follows a certain pattern, in particular in seeking to provide ways of regularising the status of those not able to secure a legal residency on their own. For the Palestinians, this has largely been an informal, unregulated practice, while formalised programmes have been put in place to regularise the status of Rohingya, Syrian, and Yemenis in Saudi Arabia, a similar dynamic to other states in the MENA region.<sup>182</sup> This tolerance of overstaying and willingness to provide a residency permit has primarily targeted those members of the groups already inside the country, while for the Iraqis (POWs and refugees) and Eritreans (those sponsored by the ELF), the status given was also what provided entry to Saudi Arabia.

In seeking to regularise refugees, authorities prefer integrating refugees in the labour force and dominant system of migration governance. This is evident already in the case of Palestinian refugees after 1948 who were directly targeted for requirement, owing to a need for labour combined with solidarity towards the Palestinian cause. The case of the Rohingya, Syrian and Yemeni refugees exemplifies how the solutions for refugees within the state borders with a need to regulate their residency have centred on work. The emphasis on labour took a different form in the case of Eritrean and Iraqi refugees; while the Iraqi refugees was employed as labour inside the camp, the status given to the ELF as sponsor provided Eritreans with opportunities to regulate their presence within the *kafala* system. Overall, on the one hand, individual refugees outside the country have been targeted for requirement; while on the other, efforts have been taken by the government to facilitate the integration of individuals inside the country into the work force. The refugees, with the exception of the Iraqi camp population, are then seen as part of the migrant work force rather than refugees with other needs and rights than that of a regular migrant. According to authorities, the emphasis on livelihood is to ensure dignity for refugees, often presented in contrast to the situation in camps where refugees are passive receptors of aid. While this indeed can ensure both a legal residency and work, it also leaves refugees vulnerable to increasing fees and policy aims of radically reducing the migrant work force – in reality pressuring many to leave.

The 1993 MoU with UNHCR explicitly highlights UNHCR's role as finding solutions for the Iraqi refugees outside of Saudi Arabia. While this initially was aimed at the population of the Rafha camp, UNHCR continues to pursue resettlement for a very low number of people, principally those who cannot regulate their residency or otherwise find a safe haven elsewhere. With generally very limited options for permanent settlement or paths to citizenship for foreign residents, the means for permanent solutions for refugees inside Saudi Arabia are few – if any. As asylum policies are tightened in both non-signatory and signatory states many refugees seeks

182 Zaiotti, "Dealing with Non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment".

alternative avenues for refuge, which highlights the need for understanding the individual consequences of governing refugees as foreign workers.

Importantly, a shared feature across all groups is the temporariness of the residency status, leaving the risk of illegalisation or deportation constantly lingering. The increasing expat-fees introduced in later years makes the situation even more precarious. The refugees, as other migrants, are thus left in a state of what Vora has termed “permanent temporariness.”<sup>183</sup> Like many other migrant worker communities, certain refugee groups in Saudi Arabia have long moved past a temporary presence and become practically permanent residents. Yet they continue to be regulated on temporary, sometimes unclear and shifting terms. The precarious situations created by such temporary assistance becomes clear through the case of Syrians, for whom the introduction of fees has had an impact on many families and made their situations in Saudi Arabia more or less unsustainable. The temporariness leaves refugees in a particularly vulnerable situation.

Finally, another clear feature of the Saudi approach is the discriminatory nature of the ad-hocratic assistance provided to certain groups of refugees. When assistance is given on a group basis and not through a universal formal system of asylum, (shifting) political priorities matter greatly. Whether this results in a consistent favouring of Muslims or Arabs in particular is not completely clear. For all six cases discussed above, authorities have adopted a terminology based in Islamic solidarity. However, after the Russian invasion of Ukraine in 2022 the government announced that Ukrainians inside Saudi Arabia would get their visas automatically extended free of charge “for humanitarian considerations.”<sup>184</sup> Meanwhile, not all persecuted Muslim groups receive special treatment in Saudi Arabia, and human rights organisations have in recent years expressed concerns about the deportation of Uyghurs to China.<sup>185</sup> In a historical parallel, the UNHCR noted in the early 1980s that “more than two hundred thousand” Lebanese Christians had sought asylum in Saudi Arabia, but “cause[d] virtually no trouble.”<sup>186</sup> This stands in contrast to the “more than one hundred thousand people” from Central and Western Africa, many of whom were Muslim, of whom UNHCR showed great concern.<sup>187</sup> In other words, refugees in Saudi Arabia are subject to a hierarchisation based on shifting priorities by both UNHCR and authorities, similar to what has been observed in other non-signatory states.<sup>188</sup>

183 N. Vora, *Impossible Citizens*, Durham, Duke University Press, 2013.

184 Saudi Press Agency, *Royal Directive to Extend Visas for Ukrainians in Saudi Arabia*, SPA.gov.sa, 17 Mar. 2022, available at: <https://www.spa.gov.sa/2338407>, (last visited 17 Mar. 2022).

185 Human Rights Watch, *Saudi Arabia: Imminent Deportation of Uyghur Detainees*, 10 Jan. 2022, available at: <https://www.hrw.org/news/2022/01/10/saudi-arabia-imminent-deportation-uyghur-detainees> (last visited 31 Apr. 2022), Amnesty International, *Saudi Arabia: Uyghur Child Among Four ‘Booked for Deportation’ to China Tonight*, 13 Apr. 2022, available at: <https://www.amnesty.org/en/latest/news/2022/04/saudi-arabia-uyghur-child-among-four-booked-for-deportation-to-china-tonight/> (last visited 31 Apr. 2022).

186 “Visit to Jeddah from 9 to 11 February 1982”, UNHCR Archives.

187 *Ibid.*

188 M. Janmyr, “Sudanese Refugees and the “Syrian Refugee Response” in Lebanon: Racialised Hierarchies, Processes of Invisibilisation, and Resistance”, *Refugee Survey Quarterly*, 41(1), 2022, 131–156.

## 5. CONCLUSION

This article set out to analyse Saudi Arabia's governing of refugees as a wealthy state, non-signatory to the Refugee Convention. On a descriptive level, Saudi Arabia differs from other non-signatory states in the MENA region more prevalent in scholarship on refugee protection in that the refugee population is largely not recognised as such, and therefore less visible. Whereas in many non-signatory states, UNHCR has taken on a role as a "surrogate state," this is not the case in Saudi Arabia where the central government remains in control of all refugee matters, including providing humanitarian assistance in certain cases. UNHCR then assumes a monitoring role, while only assisting refugees in a limited number of specific cases. More research is needed to examine how UNHCR carry out its mandate in wealthy non-signatory states compared to those with a reliance on UNHCR to handle refugee groups.

Where the "Saudi approach" aligns with that of other non-signatory states is in the ad-hocratic nature of the policies governing refugees. As discussed above, shifting policies are adopted as immediate responses to situations when they occur, motivated by a combination of immediacy and overarching political priorities. In analysing this ad-hocratic response as applied in Saudi Arabia three common features arises. First, to integrate refugees in the labour force and the dominant system of migration tied to the labour market, second to ensure that any regulation is temporary and third, the adoption of a discourse of hospitality, referring to refugees as "guests," "brothers," or "visitors."

While the discourse of hospitality has a grounding in the religio-ideological fabric of the Saudi state, this should not be taken to mean that traditional concept of hospitality alone is the single factor determining authorities' approach to the governing of refugees within the state's border. Adopting the discourse of hospitality, labelling refugees as guests and brothers, contributes to obscuring the rights of and responsibilities towards displaced people and underpins the overall ad-hocratic nature of the policies. Categorising refugees as guests suggest that they are not right-holders, but rather underlines their stay as temporary and depending on the goodwill of the host. While finding connotations both in traditions of hospitality and in Sharia such (informal or formal) categorising must be seen in light of their political and humanitarian implications. Regardless of the origins or the intent behind the hospitality-paradigm, categorising refugees in line with categories associated with the traditions of hospitality can thus have adverse consequences. Overall, the Saudi approach to refugee protection within the states borders is first and foremost ad-hocratic responses to situations as they emerge, on temporary and shifting conditions; aiming to integrate refugees into the migrant work force governed by the *kafala* system.

The overlapping dynamics of refugee governance in wealthy and less wealthy non-signatory states highlights how viewing the GCC countries as exceptions in refugee protection is faulty. On the contrary, more research should be conducted as these states are home to a large number of refugees, even if not categorised as such. This is important, not only for the purpose of a comprehensive and conclusive understanding of refugee governance in non-signatory states in general, but also as asylum policies are being tightened across the globe. This is likely to cause even more refugees to seek alternative routes to safety – including through temporary integration as migrant workers in systems resembling those in Saudi Arabia and the other GCC-states.