

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Algeria that appertain to international parental child abduction, contact and relocation as they were at that time. **reunite** International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

## **MOROCCO**

### **Overview**

As a result of Morocco's colonial history the legal system is heavily influenced by French civil law. However, the Personal Status Law in Morocco (the *mudawwana*) is inspired by Maliki jurisprudence, which is the dominant school of Islamic law in Morocco and according to Article 6 of the Moroccan Constitution Islam is the State religion. The Personal Status Law was amended in 1992, 1993 and 2004, including in the areas of custody and guardianship, in order to increase the gender equality of the law.

Morocco has a majority Muslim population with Jewish and Christian minorities. The Maliki School of Islamic Law has the most influence in Morocco.

### **Foreign Orders**

Foreign court orders can be considered in a Moroccan court but they are only enforceable if they do not conflict with Moroccan Law. An order may be submitted for consideration to the President of the court in the jurisdiction to which the child has been abducted.

### **Court Structure**

Post-independence the independent local tribunals that had previously applied customary law were abolished and a four-tier court system was introduced. At the first level is the Communal or *Sadad* Court. There are 27 Communal Courts, which are organized into Civil, Penal, Commercial and Administrative sections. There are also separate Rabbinical and Sharia sections that hear matters of personal status. The Communal Court has jurisdiction over all minor criminal and civil matters. The more serious matters, as well as appeals from the Communal Court, are dealt with by the Regional Courts that make up the second tier. Appeals from this court are

heard by one of the nine Courts of Appeal. The highest court and final court of appeal is the Supreme Court, which is located in the capital city Rabat. This court is divided into five chambers, including constitutional, civil, penal, social and administrative chambers.

There is also a Commercial Court and an Administrative Court.

### **Filiation**

Legitimate filiation establishes rights of succession and rights and obligations on the father. An illegitimate child does not have any legal links with the father and his family, although they are established with the mother. In issuing a new Family law in February 2004, an attempt has been made to widen the scope of legal evidence required to establish paternity of a child born in a marriage that is not officially registered. Previously 12 witnesses were needed to establish paternity in such cases.

A child born at least six months after the conclusion of a marriage contract is the legitimate child of the father, as long as there is the possibility that sexual relations could have taken place. Even if the marriage is declared void a child born after at least six months is legitimate, as long as the marriage has been consummated. A child born more than one year after the separation of the spouses is not legitimate. If a woman gives birth outside of marriage her partner will be regarded as the legitimate father if the child is born between 6 months to one year of the relationship. Only a judgement can withdraw the paternal filiation of a child.

Adoption is not recognised by law.

### **Custody**

A new Moroccan Family Law was introduced in 2004, which amended the original law of 1958 in order to improve gender equality and to introduce provisions to protect child welfare. Article 163 reads that during the subsistence of a marriage both parents have an equal obligation to fulfil the duties of custodianship of a child. In the event of divorce custodianship goes firstly to the mother. If the mother is unable to fulfil the duty of custodianship it is conferred upon the father, then the maternal grandmother. Then the judge has the authority to decide who should be awarded custody with regard to the best interests of the child.

Article 166 of the 2004 Family law gives a child who has attained the age of fifteen the right to choose whether the mother or father will be their custodian. If the parents are absent the child may nominate one of their relatives. This reflects a shift in emphasis away from arbitrary decisions regarding custody based on age and gender and allows a child some autonomy with regard to where they will live.

There are conditions placed upon the eligibility of a custodian whether it is the mother, father or any other relative. A custodian must be an adult, of good character, able to safeguard the health and moral education of the child and be free from contagious diseases. Article 175 allows the possibility that a mother who is the custodian will be able to retain custody of her children, even if she were to remarry. However, this is subject to conditions. She will not lose custody if the child is under the age of seven or the child's separation from the mother would cause great harm, if the new husband is a *mahram* or the legal representative of the child or if the child is ill or handicapped making it difficult for a person other than the mother to act as custodian. If the custodian is not the mother, she may only retain custody if she marries a *mahram* to the child or the child's legal representative.

The custodian may also retain custody if she moves away from the area where the father lives according to Article 178. However this is only the case if she moves within Morocco and the court will take into account the distance and the circumstances of the father or guardian.

### **Guardianship**

As well as a custodian, a child who has not attained the age of majority, which is fixed at 18 in Morocco, also has a guardian who has authority over the finances and person of the child. The person most eligible for this is the father. In the event of the death of the father, or if he is unable to perform the role of guardian, the mother becomes the guardian. Although she would still need authorisation from the court to dispose of the child's effects. If she could not perform this role then guardianship would then pass to the person nominated by the father.

### **Access**

Article 180 states that the non-custodial parent must not be prevented from having contact with the child. The parents can agree access arrangements between themselves. If they cannot agree the court can issue a ruling on contact times and location. A child may not spend the night away from the residence of the custodian, except where the court decides otherwise in the best interests of the child.

### **Nationality**

Morocco does not recognise dual nationality and a child born of a Moroccan father is automatically a Moroccan citizen.

### **Leaving the Jurisdiction**

A guardian can petition the court for an order to prevent a custodian from travelling with the child outside of Morocco without the permission of the guardian. If the guardian does not give permission for the custodian to travel permission can be sought from the judge.

### **International Law**

Morocco has bilateral agreements with France and Belgium, both established in 1981. Morocco is party to an agreement with Spain on cooperation in the civil field and a second on the status of persons, families and the kidnapping and holding of minors. These were signed in 1997. Morocco also has an agreement with Germany on cooperation in the judicial field relating to the Code of Personal Status signed in 1985. In addition, Morocco signed agreements with Algeria (15 March 1963), Egypt (22 March 1989), Syria (25 September 1995) and Bahrain (February 1997).

Morocco is a signatory to the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and has declared the intention to ratify the 1980 Hague Convention.

Morocco ratified the Convention on the Rights of the Child in 1993. It has one reservation against Article 14, which provides for freedom of religion.

Provisions referring to Morocco's international agreements on children's rights have been inserted into the new Family Law legislation.

### **Parental Child Abduction**

Article 467 of the Penal Code states that a person who fails to hand a child in their care over to a person who has been awarded the legal right to his or her custody will be punished by one month to one year in prison. Anyone who obstructs an order to hand a child to a person with legal custody will be fined 200 to 1,000 dirhams. This penalty also applies to a person who, personally or by inciting another person(s), kidnaps a child, with or without force, from the legal custody of a guardian. If the person committing this offence has been banned from parental custody of the child, the penalty shall be three years in prison.

Article 477 of the Penal Code states that any person who abducts a minor placed in his or her custody or from the place where the minor has been placed will be punished by imprisonment for one month to one year and a fine of 200 to 1,000 dirhams. If the abductor in this situation has previously been denied parental custody of the minor the punishment is increased to three years' imprisonment. Furthermore, Article 478 states that a penalty of imprisonment for one to five years and/or a fine of 120 to 500 dirhams, is imposed on any person who intentionally conceals a minor who has been abducted from the authority of a legal guardian.

### **Contacts**

Ministère de la Justice  
Direction des Affaires civiles  
Palais de la Mamounia  
RABAT  
Tel.: +212 (37) 721 151  
Fax: +212 (37) 730 551  
E-mail: [elyoussefi@justice.gov.ma](mailto:elyoussefi@justice.gov.ma)

Ministère des Affaires Etrangères et de la Coopération  
Avenue F. Roosevelt - Rabat - MAROC  
Tél. (+212) 37 76 15 83  
(+212) 37 76 11 23

(+212) 37 76 21 95  
Fax: (+212) 37 76 55 08  
(+212) 37 76 46 79  
E-mail: [mail@maec.gov.ma](mailto:mail@maec.gov.ma)

Secretariat d'Etat charge de la protection sociale, famille & de l'enfance  
31 Avenu El Abtal-Agdal 1000  
B.P. 8101, Rabat  
Ph#: 037 77 05 09/037 77 32 31  
Fax#: 037 77 21 97  
E-mail: [sech@iam.net.ma](mailto:sech@iam.net.ma)

**Approved by Jean Gabriel Tomaly**

EI 11/08/05