

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.

PALESTINE

Overview

The law currently applied in the Palestinian territories has been shaped by several traditions, including Ottoman law and custom, the Sharia, customary rules, British mandate legislation and common law practices. Article 4(2) of the Basic Law, signed in 2002 by Yasser Arafat, establishes that the principles of the Sharia are a main source of law.

As regards the application of family law legislation, the 1976 Jordanian Law of Personal Status is applied in the West Bank and in East Jerusalem. Family law in Gaza is applied in accordance with the 1954 Gaza Law on Family Rights (GLFR). This law was established while Gaza was under the governance of Egypt but subsequent amendments introduced into Egyptian law are not applied in Gaza. This chapter on Palestine will provide information on the family law applied in Gaza. For the West Bank and East Jerusalem please refer to the section on Jordan for the relevant information.

Palestine has a Muslim majority and a significant Christian population. The most influential school of Islamic Law is the Hanafi School.

Foreign Orders

The procedure for the enforcement of foreign judgements is governed by the Law on the Enforcement of Foreign Judgements of 1952, however we were unable to obtain a copy of this law.

Court Structure

Palestine has a dual system of secular and religious courts. As established in Article 92(1) of the Basic Law matters of personal status are heard in Sharia

Courts or other Religious Courts, depending on the religious affiliation of those concerned.

The regular court system is divided into three levels and hears civil and criminal cases. The first level is the Court of First Instance. Appeals from these courts are heard by the Appeal Court, which constitutes the second level. At the third level is the Supreme Court. This court is subdivided into the High Constitutional Court, the Court of Cassation, which is the final court of appeal for civil, commercial and criminal matters, and the High Court of Justice for administrative disputes. The Sharia and Ecclesiastical Courts, which have jurisdiction over family matters, are similarly divided into three levels.

In 1995 a Higher State Security Court was established in Gaza.

Filiation

A child born outside marriage is illegitimate. An illegitimate child will inherit only from the mother.

Custody

According to the GLFR the period of *hadana*, or the mother's custody, lasts until a male child is seven and a female child is nine. When a male child reaches the age of fifteen he may choose whom he resides with. A female child does not have this choice. The court has the authority to extend the custody period in the interests of the child to nine for a male child and eleven for a female.

If the mother is absent or unable to meet the criteria for custody, then custody will pass to the maternal grandmother and then the paternal grandmother. A female custodian will lose custody if she remarries and both the custodian and the guardian must be sane, adult, trustworthy and must not be an apostate from Islam or be an atheist. They must also not live with a child in a place where the child is disliked.

Guardianship

The father has the most right to guardianship, followed by the paternal grandfather and the full brother. Guardianship is of the money and the

person of a minor child and lasts until a child reaches the age of majority at eighteen.

Access

Access is guaranteed to both parents and should preferably take place once a week. In the absence of the parents this right is guaranteed for the grandfather, the grandmother and then the paternal uncles.

The child is not permitted to stay overnight away from his or her home during the period of custody, except with the permission of the custodian.

Non-Muslim Family Law

According to ecclesiastical law, custody of the children is normally given to the mother until they reach the age of fourteen, at which point the court will review the situation in light of the best interests of the child. If either parent were to remarry this would normally prohibit them from being awarded or retaining custody.

Nationality

The Basic Law states that issues of citizenship shall be dealt with in a special law, however this has not yet been drafted.

Leaving the Jurisdiction

A foreign mother with custody may exercise this right in her own country if the marriage has taken place there. If the custodian is not the mother then she is not permitted to travel with the child.

Women do not need permission to travel. Children need the permission of the father to obtain a passport and to travel if unaccompanied by the father.

Child Abduction

Child abduction is an offence if the child is under the age of fourteen. The offence is punishable by seven years imprisonment according to Article 188 of the 1936 Penal Code.

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