

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.

## **SAUDI ARABIA**

### **Overview**

The legal system in Saudi Arabia is based almost entirely on the Sharia. Therefore, the Quran and sunna are regarded as the Constitution. In 1992 a Basic Law was promulgated, which establishes Islam as the religion of the State in Article 1. Sources of law are the Sharia, particularly Hanbali jurisprudence, state regulations, custom and practise. Islamic law, in accordance with the Hanbali school, is applied in several areas, including criminal and personal status law, whereas areas such as commerce, tax and oil are governed instead by royal decrees and codes. Article 48 of the Basic Law directs the courts to apply the rules of Islamic Sharia and any codes decreed by the ruler of Saudi Arabia that do not contradict the Quran or sunna.

The majority of the population are Sunni Muslims who follow the Hanbali School of Islamic jurisprudence. There is a minority of Shia Jaafari Muslims and a significant expatriate community.

### **Foreign Orders**

Foreign orders are not enforced, however, there is an agreement among the Gulf States whereby Islamic judgements can be recognised.

Saudi Arabia does not recognise Islamic divorces granted outside the Kingdom.

### **Court Structure**

The court structure is based around Sharia Courts, which have general and residual jurisdiction. There are four levels of Sharia Court. At the first level

is the Summary or Limited Sharia Court, which has jurisdiction over minor civil and criminal matters. The next level is the General Sharia Court, which is the court of first instance for all other matters including family law cases. At the third level is the Appeal Court. The decisions of this court are usually final and cases are heard by three judges. At the apex of this system is the Supreme Judicial Council. This court administers the judicial system and is also the court of final appeal.

In addition to the Sharia Courts there are other judicial and quasi-judicial bodies. These include the Boards of Grievance and various committees such as the Tax Appeal Committee and the Committee for the Settlement of Labour Disputes.

### **Filiation**

Paternity is established by the birth of a child within a valid marriage or by a declaration of paternity by the father. A child born outside marriage and not acknowledged by the father has no legal relationship with the father.

### **Custody**

Article 9 of the Basic Law reads that the family is at the centre of Saudi society and its members should be raised in accordance with Islamic principles. This importance placed on an Islamic upbringing is the central element in the court's consideration of the welfare of a child.

According to Hanbali jurisprudence in the event of a divorce the mother has the right to have the physical custody of her children until they reach the age of seven, which is considered to be the age of discernment, meaning the age at which a child can understand religious principles. At this age a child is considered able to choose his or her custodian, although in practise tradition ensures that the physical custody of the children will often revert to the father.

The mother must be an adult and of sound mind in order to be granted custody of her young children and there are circumstances in which a mother will lose custody, even if she was previously granted it. The mother may lose custody if she remarries someone who is outside the prohibited degree of relationship to the child, or if she does not raise a Muslim child as a

Muslim. Because of the emphasis placed upon an Islamic upbringing in an Islamic environment it would be difficult for a non-Muslim or foreign mother to obtain custody of her Muslim children.

A non-Saudi parent raising a custody case in the Kingdom must go through a Saudi lawyer.

### **Guardianship**

The father is the guardian of the person and the property of his children whether he has physical custody or not. The right to guardianship passes along the father's male line.

### **Access**

Although Islamic law confirms that a child should have access to both parents, this cannot be guaranteed in practise in Saudi Arabia. An access order is very hard to implement and the system of sponsorship for entry into Saudi Arabia makes it difficult for a non-Saudi parent to obtain a visa to enter the country for contact visits with their child. It is particularly difficult for a non-Saudi mother who was not married to the father of her child to obtain a visa for entry into Saudi Arabia to visit a child abducted there.

### **Nationality**

A Saudi woman cannot transmit her nationality unless the father is stateless, whereas a Saudi man will transmit his nationality automatically to his children, wherever their place of birth in accordance with Article 7 of the Saudi Nationality Act No. 4 of 1954. Saudi Arabia does not recognise dual nationality.

### **Leaving the Jurisdiction**

Children need the permission of their father and a woman of her guardian or, if married, her husband in order to leave Saudi Arabia.

### **International Law**

Saudi Arabia ratified the UN Convention on the Rights of the Child in 1996, entering a general reservation.

## **Child Abduction**

It is not a crime for a father to remove his children because he has legal authority over them. It is a crime for a woman to remove her children without permission from the child's guardian and to travel without her guardian.

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