

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of The Gambia 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.

## **THE GAMBIA**

### **Overview**

According to the 1997 Constitution of The Republic of The Gambia the sources of law in Gambia include: Acts of the National Assembly made under the Constitution, orders, regulations or other subsidiary legislation made by a person or authority according to the power invested in them by the Constitution. In addition to the existing laws, common law, principles of equity and customary law are also sources of law. The Sharia provides the basis for laws applied in the marriage divorce and inheritance matters of the Muslim community.

There is no State religion, but the majority of the population of The Gambia are Muslims of the Malaki School of Islamic jurisprudence. There is also a Christian minority and a small minority that follow indigenous religions.

### **Foreign Orders**

Foreign court orders are enforceable in accordance with the Foreign Judgements Reciprocal Enforcement Act No.6 of 1936. This Act provides for the registration and execution of the judgements of the superior courts of foreign jurisdictions.

### **Court Structure**

The subordinate courts of The Gambia include the Magistrates' Court, the District Tribunals and the Cadi Courts. The Cadi Courts are Islamic courts and have jurisdiction in matters related to Muslim marriages, divorce and inheritance in the first instance for the Muslim community. The District Tribunals generally apply a mixture of customary and Islamic law.

The superior courts include the Supreme Court, which is the highest court in The Gambia, the Court of Appeal and the High Court.

### **Filiation**

Under Islamic law in The Gambia an illegitimate child cannot inherit from either the father or the mother. Article 17 of the Maintenance of Children Act states that if a child is born outside a marital relationship the mother can apply for a paternity order.

### **Custody & Guardianship**

Custody is determined by the courts on the basis of the personal law of the child as determined by his or her religion. Therefore, the Cadi Courts and District Tribunals have jurisdiction over matters regarding Muslim children. These courts will normally apply Maliki jurisprudence, which gives the mother custody of male children until puberty, the maximum age recognised for puberty in males being 15, and female children until marriage. However, if one parent is not Muslim then the children must live with the Muslim parent. If the mother moves more than seventy-two miles from the place of residence of the father she will lose custody.

Parents who married under the Civil Marriage Act of 1938 can have the custody and guardianship of their children determined by the Magistrates' Courts according to the Maintenance of Children Act No. 11 of 1988, although it will not apply to any child named on an order for custody in proceedings under the Matrimonial Causes Act. According to article 11(1), on the application of a parent or other qualified person the court can award legal custody of a child. In this case parent means any person in relation to whom the child was treated as a child of that household. The court will only hear an application from a person other than the parent if it is satisfied that it is in the best interests of the child to do so.

In accordance with Article 14 of the Maintenance of Children Act in making an order for custody the court shall consider the best interests of the child and Islamic law if the child is Muslim. In order to determine the best interests of the child the courts can consider a report made by a Social Welfare officer, an officer of a District Tribunal or local government authority. The importance of the best interests of the child is confirmed by Section 29(1) of the Constitution. Under the Matrimonial Causes Act no.16

of 1986 Article 24, the court has the power to award custody and regulate the access of any person to the child. The Gambian courts shall have jurisdiction under this Act where either party to the marriage is a citizen of Gambia, is domiciled in the Gambia or has been ordinarily resident in the Gambia for at least three years immediately prior to the commencement of proceedings.

A custody order terminates when the child reaches the age of twenty-one or marries.

### **Access**

It is acknowledged that there are some difficulties in ensuring that both parents can maintain contact with the children if they divorce. Judicial intervention can be sought to ensure that access and custody orders are obeyed.

### **Non-Muslim Family Law**

Christians seeking orders under the Maintenance of Children Act should make an application to the Magistrates' Court. However, divorce and custody matters arising from such a monogamous marriage are determined by the High Court. Either parent may apply for custody.

Non-Muslims and non-Christians could have their matters determined under the Maintenance of Children Act if the case relates to a matter over which the Act provides.

### **Nationality**

Men and women can transmit their nationality to their children. This is established in Sections 9 and 10 of the Constitution, which state that a child born in The Gambia to at least one parent of Gambian nationality, or a child born outside The Gambia to Gambian parents, will acquire Gambian nationality.

### **Leaving the Jurisdiction**

Children need the permission of both parents to obtain a passport and visas but do not require permission to travel. There is no standard definition of a

child in Gambian law. The Constitution states in section 39 (1) that “Every citizen of the Gambia being of eighteen years or older and of sound mind shall have the right to vote for purposes of elections”. However, The Maintenance of Children Act, Cap 44:03 Laws of the Gambia 1990, which makes provision for the maintenance of children, defines a child as a person who is below 21 years old, or younger, if married. This is confirmed by the Nationality and Citizenship Act.

### **International Law**

The Republic of The Gambia ratified the Convention on the Rights of the Child (CRC) in 1990 without reservations.

### **Child Abduction**

Child abduction is an offence under Gambian law.

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