CROSS-FRONTIER CHILD PROTECTION: FAMILY MEDIATION AND THE ISLAMIC LEGAL TRADITION

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The Place of Child Protection under the Sharīʿah

- **SHARĪʿAH**
  - Civil Transactions (*Mu'amalāt*)
  - Religious Beliefs (*Ibadāt*)
  - Family Law (*Munakahāt*)
  - Principle of Permissibility (*Ibāhah*)

- **High degree of flexibility**

- **Immutable**

- **Child Protection**

- **Inclusiveness and Adaptability of Foreign Legal Rules**

- **THE MALTA PROCESS**

[Link to website: http://www.iium.edu.my]
Mediation and Cross-frontier Child Protection

1. Preventive Mediation
   - Prevents abduction
   - Helps in relocation decision

2. Consensual Mediation
   - Voluntary return
   - Mutually agreed custody
   - Assurances relating to contact rights
   - Sustained shared responsibility

3. Corrective Mediation
   - Less conflictual framework
   - Contact established between left-behind parent and child

4. Return Order Mediation
   - Facilitates speedy and safe return of child
   - Ensures joint contact with child

Qur’an 4: 114 – Mediation is essential for conflict management

Qur’an 4: 128 – Amicable settlement is preferred in family disputes

Qur’an 4: 35 – Early mediation is paramount for dispute avoidance

Qur’an 8: 1 – Differences to be resolved at any stage of the dispute

The Hague Return Proceedings

International “Child Abduction”

Breakdown of Relationship

Return Order of the Court

http://www.iium.edu.my
**Muslim States among the Original Members of the Working Party on Mediation**

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<th>Contracting States Members</th>
<th>Non-Contracting States Members</th>
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*Morocco Egypt, Jordan, Malaysia and Pakistan, Senegal*
Sulaiman bin Mahmud v. Zalina bt Muda [2014] 1 SHLR 59 at 72

Held: Plaintiff and defendant are jointly responsible for the welfare of the child

Islamic Family Law Act 1984 of Malaysia - Section 86(2)

Joint parental responsibility is the rule

Court may decide on physical custody of the child

Though physical custody may be granted to a party, joint contact with the child is paramount
CONCLUSION AND FUTURE DIRECTIONS

CROSS-FRONTIER CHILD PROTECTION: ENGAGING WITH THE MUSLIM STATES

Way Forward

- Research agenda
- Sustaining the ongoing dialogue
- Exchange of information on laws and practices
- Harmonisation of Legal Rules
  - Focus on areas of convergence
  - Further engagements to reconcile divergences

- Cross-frontier Shared Parenting requires Binding Mediation
- Binding Mediation – Acceptable to most States – A Flexible system
- No media sensationalism for child abduction cases

Moving Forward: Prospects of The Hague International Family Mediation Centre

Implementation: Regional Family Mediation Centres

All in the overall welfare and best interest of the Child
Thank You