



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

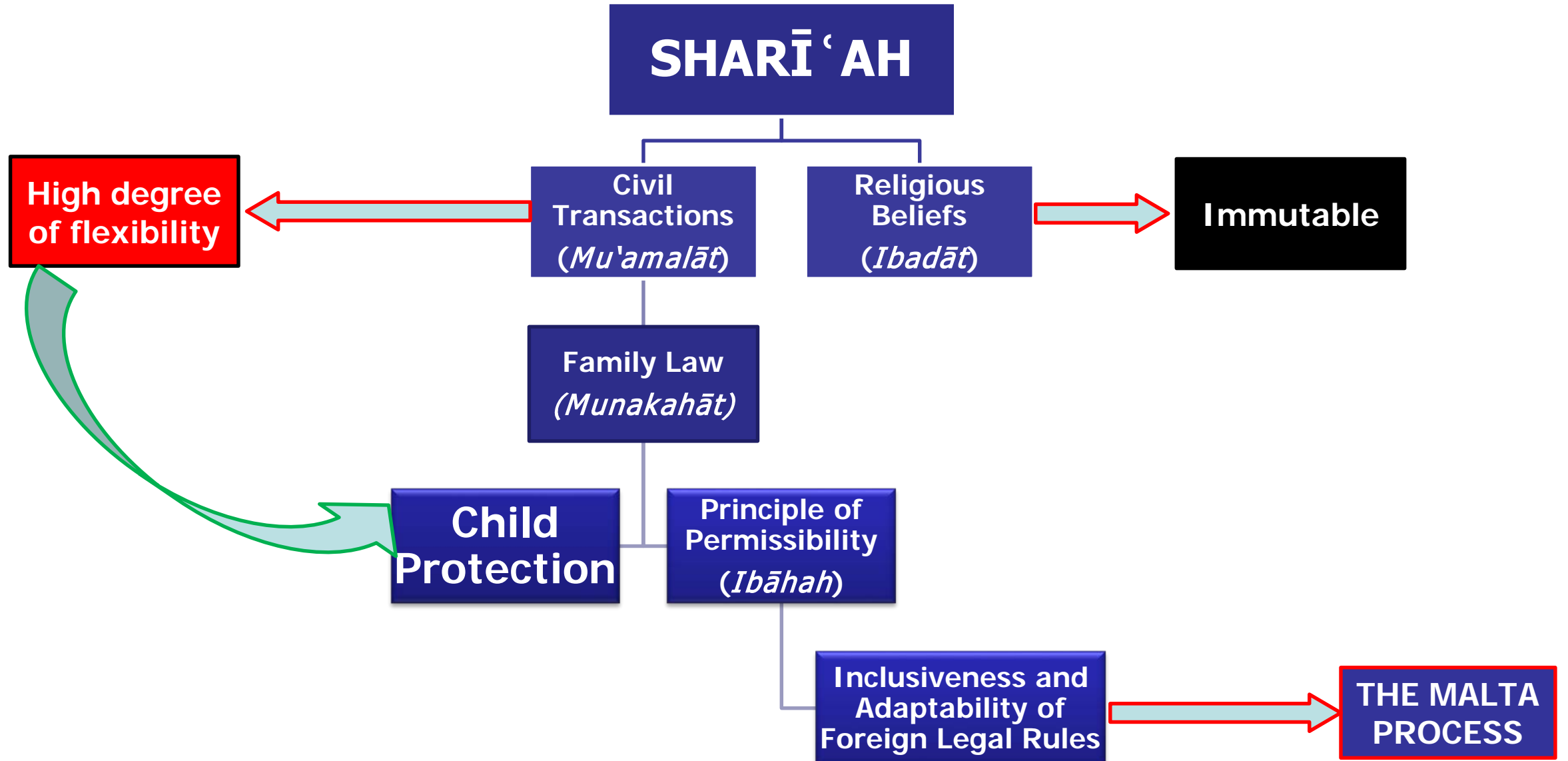
CROSS-FRONTIER CHILD PROTECTION: FAMILY MEDIATION AND THE ISLAMIC LEGAL TRADITION

Professor Dato' Sri Dr. Zaleha Kamaruddin

Rector, International Islamic University Malaysia

Fourth Malta Conference ("Malta IV") on Cross-frontier Child Protection and Family Law, Valletta, Malta (2 – 5 May 2016)

The Place of Child Protection under the Shari'ah



Mediation and Cross-frontier Child Protection

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

1. Preventive mediation

- Prevents abduction
- Helps in relocation decision

Breakdown
of
Relationship

International
"Child
Abduction"

2. Consensual Mediation

- Voluntary return
- Mutually agreed custody
- Assurances relating to contact rights
- Sustained shared responsibility

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

Return Order
of the Court

The Hague
Return
Proceedings

4. Return Order Mediation

- Facilitates speedy and safe return of child
- Ensures joint contact with child

3. Corrective Mediation

- Less conflictual framework
- Contact established between left-behind parent and child

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

Muslim States among the Original Members of the Working Party on Mediation

	Contracting States Members	Non-Contracting States Members
	Australia	Egypt*
	Canada	India
	France	Jordan*
	Germany	Malaysia*
	Morocco*	Pakistan*
	South Africa	Senegal*
	United Kingdom	
	United States of America	
OIC States	Morocco	Egypt, Jordan, Malaysia and Pakistan, Senegal



The Practice in Malaysia's Shari'ah Court: A Case Study

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

Joint Parental
Responsibility

Physical
Custody

Child Protection

CONCLUSION AND FUTURE DIRECTIONS

CROSS-FRONTIER CHILD PROTECTION: ENGAGING WITH THE MUSLIM STATES

- 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

Way Forward

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

Спасибо Gracías | شكر
Grazie Obrigado Спасибо Dank U
Eυχαριστώ Danke
Dziękuję Eυχαριστώ
Merci Thank You
Danke Ngiyabonga
Grazie Dank U
Merci Thank You
Dank U Diolch
Terima Kasih Ngiyabonga
Grazie Obrigado
Danke You
Merci
Dziękuję Eυχαριστώ
Diolch Gracías
Merci Dank U
Tack Tack Eυχαριστώ

