



et Développement Canada

INTERNATIONAL SEMINAR

Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children

Monday 7 April 2014, The Hague, the Netherlands

On 7 April 2014, representatives from States, as well as judges, representatives from regional and non-governmental organisations and experts from academia met at The Hague for the seminar "Islamic Legal Perspectives on Cross-Border Family Disputes Involving Children". The seminar was organised by the Government of Canada and the Permanent Bureau of the Hague Conference on Private International Law, and hosted by the Netherlands Ministry of Foreign Affairs.

The objective of the seminar was to further encourage international dialogue on crossborder family disputes in order to secure better protection mechanisms for children in situations where the relevant Haque Children's Conventions do not apply.

The seminar also marked the tenth anniversary of the Malta Process that was launched at a first so-called "Malta Conference" held in St. Julian's, Malta in 2004.

The Malta Process is a dialogue between Contracting States to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Child Abduction Convention) and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Child Protection Convention) and non-Contracting States with Sharia-based or influenced legal systems.

The Malta Process aims at improving State co-operation in order to assist with resolving difficult cross-border family law disputes in situations where the relevant international legal framework is not applicable. It seeks in particular to improve child protection between the relevant States by ensuring that the child's right to have continuing contact with both parents is supported (even though they live in different States) and by combating international child abduction.

In 2009, following a recommendation by the participants at the third Malta Conference, the Working Party on Mediation was established to promote the development of mediation structures. The objective was to give individuals involved in cases to which no international legal framework applies some assistance, in the interim, by encouraging the use of mediation.

The Working Party on Mediation developed the "Principles for the establishment of mediation structures in the context of the Malta Process" (the Principles) that call, among others, for the establishment of a Central Contact Point for international family mediation in each State. This Central Contact Point is intended to facilitate the provision of information on available mediation services in the respective jurisdictions, access to mediation, and information regarding other important related issues, such as relevant legal information. Some States have already taken measures to implement the Principles in their jurisdictions and have designated Central Contact Points (Australia, France, Germany, Pakistan, Slovakia and the United States of America).

The discussions in the Malta Process and in the Working Party on Mediation are guided by the relevant international legal framework, in particular the *United Nations Convention on the Rights of the Child* of 1989 (the UNCRC), the 1980 Child Abduction Convention, the 1996 Child Protection Convention, as well as relevant regional instruments, such as the Organisation of the Islamic Cooperation's Covenant on the Rights of the Child in Islam.

The 1980 Child Abduction and the 1996 Child Protection Conventions enshrine the same fundamental principles set out or implicit in the UNCRC, such as:

- the best interests of the child as a primary consideration in all actions concerning children;
- the right of a child whose parents reside in different States to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contact with both parents;
- the obligation of States to take measures to combat the illicit transfer and non-return of children abroad;
- the opportunity for a child to learn, to know and respect the culture and tradition of both parents.

It has been noted that all of these principles are also underlying principles of Sharia law.

An overview of the Islamic perspective on how to solve cross-border family disputes involving children was explained in particular in the keynote speech given by Professor Zaleha Kamaruddin from Malaysia (available at Annex 1) as well as by Judge Mohammad Al Natsheh, from Jordan and Dr Arik Jeop, from Malaysia in the following panel session.

The value of alternative dispute resolution mechanisms, in particular mediation, in solving international family conflicts was elaborated in the keynote speech given by Judge Annette Olland (available at Annex 2) from the Netherlands and discussed in the panel that followed with Alison Shalaby (Reunite, UK), Dr Umar Oseni, Malaysia and Ms Els Prins (International Child Abduction Center, Netherlands). These speakers presented the efforts their States or organisation has undertaken to promote and facilitate mediation in international family conflicts, such as international child abduction cases.

At the end of the seminar, Mr William Crosbie, Canada summed up the discussion and reflected on the Way Forward including in the Malta Process and its Working Party on Mediation.

He emphasised the value of the Malta Process as a unique process to bring together Contracting States to selected Hague Family Law Conventions and non-Contracting States whose legal systems are based on or influenced by Sharia. The Working Party on Mediation will continue to promote practical solutions through the creation of Central Contact Points and the use of mediation to facilitate the resolution of difficult cross-border family conflicts involving children.

It is hoped that more countries will support the work of the Working Party on Mediation and undertake efforts to implement the Principles. The ultimate goal is that these practical measures will yield solutions in difficult cross-border family conflicts involving children, including disputes about custody and access.

The Working Party on Mediation will continue to organise regional seminars, including in South East Asia, in the Gulf Region and the Maghreb.