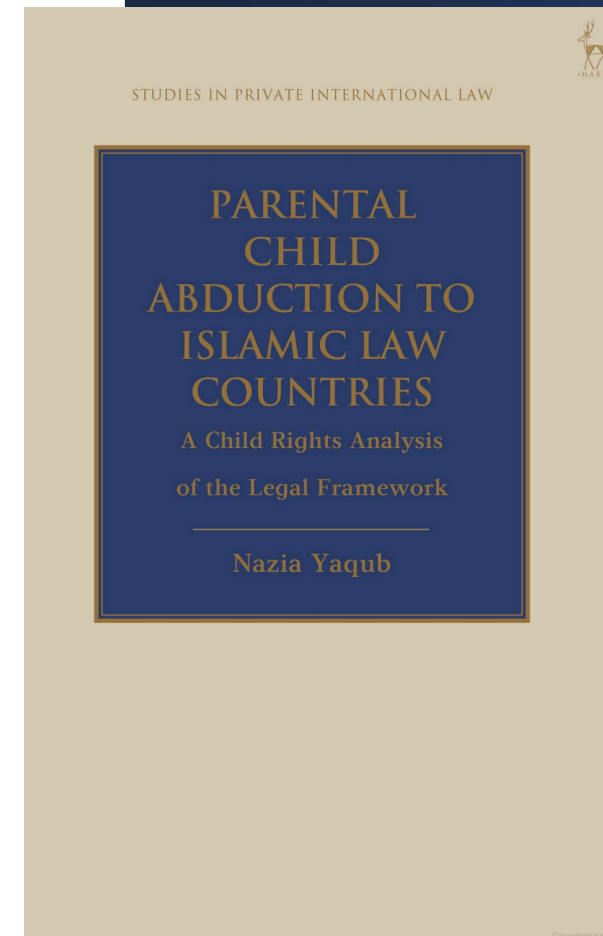


How the courts in Islamic law countries respond to incoming cases of cross-border parental child abduction

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To discuss:

- Global Patterns Reflected in the Brazilian Cases
- Why these outcomes occur
- How the cases in my study were resolved



Global Patterns Reflected in the Brazilian Cases

Cross-border child abduction to Islamic law jurisdictions: what the evidence shows

Children's experiences (from the study)

Pattern in 27 of 29 cases

Brazilian cases mirror these structures

Why These Outcomes Occur

The court in an Islamic law country will respond to a case of parental abduction before it as a custody matter.

The distinction between *wilāya* and *ḥiḍāna* is deemed necessary to avoid confusing physical custody of a young child (*ḥiḍāna*) with legal management of the child's financial and other affairs (*Wilāya*).

The best interests of the child under Islamic (shariah) law

Conditions on the mothers (*ḥiḍāna*) custodial authority:

- As the Islamic courts respond to a case of parental abduction as a custody dispute, when deciding with which parent a child shall live, Islamic law presumes it is in the best interests of a child that she or he:
 - (i) lives with a Muslim parent;
 - (ii) lives with a mother who has not remarried;
 - (iii) lives near the father.
- These factors are set out in statute in most Islamic law countries, and so there is no opportunity for a judge to assess the best interests of a child abducted to an Islamic law country if the three fundamental criteria are not satisfied.

Observations from the cases examined, Religious Faith as Condition of *ḥiḍāna*

*“I had to **pretend I was a Muslim** to have any chance of winning. I’m not proud of it, but they gave me no choice.”*

Another left-behind mother explained this was not enough to persuade the courts: “My ex told the court I didn’t provide a suitable environment my children needed to be brought up in their religion, that I am a false Muslim and that I **wear the headscarf** to trick people.”

“When we were in England, my father couldn’t see us every day, so he decided to take us to Libya to save us, that’s what he thinks he did. He can’t control us in England; he wanted us to be Muslim. I can’t say that I agree, and I can’t say that I don’t agree because I don’t know what the best solution was. I wish they fixed the problem and stay together because it’s hard to stay away from one of them.”

Observations
from the cases
examined,
*Limiting the
Mother's
Exercise of
Ḥiḍāna:
Remarriage*

*"It was because I remarried. He said if I divorced my new husband, he would send the girls straight back. He was worried about the girls living with another man. **I wish I hadn't told him.** He didn't mind the boys being with me; it's different for girls."*

"For my dad, it was why should another man be around my daughter, and I think that's what he couldn't deal with, I don't think it was a love thing taking me. Things got bad when we moved into my stepdad's house. I remember when he'd pick me up, he'd ask lots of questions. If I'd been to a birthday party the week before he'd be like who took you there? And I'm like, oh my friend's mum came and picked me up, and he'd be like you're lying to me, he [step-father] took you, didn't he? He was just paranoid about him, I think I started to like my stepdad a lot more than my dad, and I think it made my dad quite jealous and angry."

Observations
from the cases
examined,
*Limitations on
relocating with
the child beyond
a distance of 48
miles (78
kilometres)*

*“The lawyer told me exactly what I needed to do to get custody; to **convert to Islam and get papers in an order stating I had lived there** [in the Muslim country] **for six months and had a stable job there**. But then she told me even if you get custody; it doesn’t mean you can take your child home because that’s still the father’s decision and she said even though you win in court, no authority’s going to make the family hand over the child.”*

“When I used to do the visits, we were just locked into a room, the house was locked, we couldn’t go out of the gates together, we couldn’t do anything except be in a room together and guarded.”

How the cases were resolved for the 54 children

- 31 remain living in the Islamic law country (57.4%)
- 2 abductees (aged five and 25) sadly passed away while still in the 'abduction' situation (3.7%).
- 21 abductees returned to the UK (38.8%). Of these 21, four returned once aged 18 and over and the remaining 17 who returned were aged below 18 at the time of return.

Opportunities for return varied

- Of the four abductees who were aged over 18, two males could legally leave independently as adults. The remaining two returnees were female; one returned with the abducting father's consent to attend university in the UK. The fourth, aged nineteen, was allowed by her abducting father to return to the UK after several unsuccessful attempts to escape.
- Of the 17 returnees aged below 18, **three returned with the assistance of the States' rulers**, seven returned with the abducting father's agreement, two children escaped at the age of 14 and 15, and two were re-abducted by their left-behind mothers. Two children were able to return after the abducting father returned to the UK and later obliged with the High Court order for the children's return to England. One child returned as a result of family mediation.

Conclusion: Treaty Relations and Diplomacy

- Brazil has done what it can through accepting the accessions of the few Islamic law states that have joined the 1980 Convention — more than, for example, the UK.
- UK–Pakistan abductions illustrate the problem: without UK acceptance of accession, Hague returns cannot operate.
- Morocco's practice shows that Hague cooperation *can* work with Islamic law jurisdictions when both states are in treaty relations.
- But in non-Hague states, outcomes still depend overwhelmingly on diplomacy, not litigation.