



Project funded by the
European Union



EUROMED JUSTICE III PROJECT

COMPONENT II: RESOLUTION OF CROSS-BORDER FAMILY CONFLICTS

RESEARCH REPORT

**“Overview of the current situation
in the ENPI South region and comparative
review of national experiences in the field of
resolution of cross-border family conflicts”**

Gianluca P. PAROLIN
Expert

Implemented by:



Lead Firm

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of EIPA and can in no way be taken to reflect the views of the European Union

FOREWORD

Since the Barcelona Declaration in 1995, justice has become a key element of Euro-Mediterranean cooperation, both at the regional and bilateral level. The EU and its Mediterranean partners have established an effective dialogue that has done much to stimulate cooperation on legal matters.

Building on the Barcelona acquis, successive Euromed Ministerial Conferences have stressed at the political level the importance of developing the Euro-Mediterranean partnership in the justice sector. The framework document adopted by the Ministers of Foreign Affairs in Valencia in 2002 formally endorsed the idea of a regional programme in the field of justice, freedom and security.

Following the success of the first two regional programmes launched in the justice sector, Euromed Justice I (2004-2007) and Euromed Justice II (2008-2011), Euromed Justice III continues to encourage and facilitate the dialogue between the Euro-Mediterranean partner countries on issues related to access to justice and legal aid, on the resolution of cross-border family conflicts and on criminal and penitentiary law. The EU is funding this project with a budget of € 5 million during the 2012-2014 period.

It is in the framework of the Euromed Justice III project that the present research report on the resolution of cross-border family conflicts in the ENPI South countries has been prepared. It is based on a detailed survey providing comparative review of the national experiences of the South Mediterranean countries on cross-border family conflicts.

It is in the framework of Euromed Justice III project that this research report on in the ENPI South countries has been conducted. A detailed survey has been prepared to provide an overview and comparative review of the national experiences of the South Mediterranean countries in this field.

Family law is one of the most complex branches of law, as it has an impact on religious, social and cultural habits. By providing an analysis of how cross-border family conflicts are dealt with in the different countries, the present report contributes to the reinforcement and promotion of the mutual Euro-Mediterranean understanding of different legal systems and traditions.

Michael A. Köhler.
Director Neighbourhood

INDEX

Opening remarks and methodology.....	08
Acknowledgments.....	12
Introduction	14
Participating countries	17
Objectives.....	17
Calendar	18
Report.....	19
 A. CIVIL AND RELIGIOUS JURISDICTIONS IN CROSS-BORDER FAMILY CONFLICTS.....	20
A1. Jurisdiction	20
(i) Number and typology of jurisdictions (A1.01).....	21
(ii) Foreignness (A1.02)	22
(iii) The family court bench (A1.03-08)	24
(iv) Multiple jurisdictions (A1.09-12).....	29
(v) Conflicts of jurisdictions (A1.13-18)	31
(vi) What defines family? (A1.19).....	37
A2. Applicable Law	38
(i) Conflicts of applicable law (possibility, resolution, challenge) (A2.01-04)	39
 B. ALTERNATIVE DISPUTE RESOLUTION IN CROSS-BORDER FAMILY CONFLICTS.....	42
B1. Mediation.....	42
(i) Availability and compulsory nature (B1.01-02)	42
(ii) Mediation procedure (B1.03-07)	43
(iii) Mediation and the court (B1.08-10)	43
B2. Conciliation	44
(i) Availability and compulsory nature (B2.01-02)	44
(ii) Conciliation procedure (B2.03-07)	46
(iii) Conciliation and the court (B2.08-10)	48
B3. Other ADR procedures.....	49
(i) Existence of other ADR procedures (B3.01).....	49
 C. DIVORCE AND LEGAL SEPARATION IN CROSS-BORDER FAMILY CONFLICTS.....	51
(i) Jurisdiction (C.01)	51
(ii) Applicable Law (C.02).....	52
(iii) Enforcing foreign judgments on divorce and legal separation (C.03)	54
(iv) The construction of public policy (C.04).....	56

D. PARENTAL RESPONSIBILITIES AND MEASURES FOR THE PROTECTION OF THE CHILD IN CROSS-BORDER FAMILY CONFLICTS 59

D1. Parental Responsibilities	59
(i) Definition (D1.01-02)	59
(ii) Jurisdiction (D1.03)	62
(iii) Domestic regulations (D1.04-05)	63
(iv) Multiple applicable laws (D1.06-07)	65
(v) The courts (D1.08-09)	66
(vi) The child (D1.10-12)	68
D2. Custody	70
(i) Definition (D2.01-02)	70
(ii) Jurisdiction (D2.03)	72
(iii) Domestic regulations (D2.04-05)	73
(iv) Multiple applicable laws (D2.06-07)	75
(v) The courts (D2.08-16)	76
(vi) The child (D2.17-20)	81
(vii) The non-custodial parent (D2.21-24)	84
(viii) Parental agreements (D2.25)	86
D3. Non-Parental Care of the Child (and Its Property)	87
(i) Domestic regulations (D3.01-05)	88
D4. Child's Property	92
(i) Domestic regulations (D4.01)	92
D5. Enforcement of Foreign Judgments	93
(i) Conflict of Jurisdictions Regulations (D5.01)	93
(ii) Procedure (D5.02-04)	94
(iii) Exceptions and Public Policy (D5.05-07)	96
(iv) Bilateral Agreements (D5.08)	98
D6. Rights of Contact	99
(i) Definition (D6.01)	99
(ii) Exercising the Right of Contact (D6.02-25)	101
(iii) Bilateral Agreements (D6.26)	111
D7. International Obligations	112
(i) Status of International Agreements in Domestic Law (D7.01)	112
(ii) 1989 UN Convention on the Rights of the Child (D7.02)	113
(iii) 1996 Hague Convention (D7.03)	114
(iv) Implementing Legislation (D7.04)	115
(v) Bilateral Agreements (D7.05)	115

E. WRONGFUL REMOVAL OR RETENTION OF THE CHILD IN CROSS-BORDER FAMILY CONFLICTS 117

(i) Wrongful Character (E.01)	117
-------------------------------------	-----

E1. First Contact Point	119
(i) For Parents (E1.01)	119
(ii) For Foreign Institutions (E1.02).....	120
(iii) National Body with Expertise (E1.03).....	121
E2. Jurisdiction and Applicable Law	122
(i) Jurisdiction (E2.01).....	122
(ii) Applicable Law (E2.02)	123
E3. Applications for Return	124
(i) Procedure (E3.01-03)	124
E4. Locating a Child and Preventing Removal	126
(i) Locating the Child (Timing, Required Information, Available Ways) (E4.01-03)	126
(ii) Preventing a Wrongful Removal (E4.04-05).....	128
E5. Legal Representation	129
(i) Compulsory Nature (E5.01)	129
(ii) Assistance with Arranging Legal Representation (E5.02).....	130
(iii) Expenses (E5.03)	130
E6. Return Procedures	131
(i) Starting the Procedure (E6.01)	131
(ii) Procedure Delays (E6.02).....	132
(iii) Participation (E6.03).....	133
(iv) Alternative Participation and Its Costs (E6.04).....	133
(v) Hearings (E6.05-06).....	134
(vi) Appeal (E6.07).....	135
(vii) Travel Arrangements and Expenses (E6.08).....	135
E7. Consequences of Wrongful Removal or Retention of the Child.....	136
(i) Domestic Regulations (E7.01-02).....	136
E8. International Obligations	137
(i) 1980 Hague Convention (E8.01)	138
(ii) Implementing Legislation (E8.02)	138
(iii) Bilateral Agreements (E8.03)	138
F. CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE IN CROSS-BORDER FAMILY CONFLICTS	139
(i) Domestic Definition and Regulation (F.01-02).....	139
(ii) Jurisdiction (F.03)	140
(iii) Enforcing Foreign Judgments on Child Support (F.04-07).....	141
(iv) 2007 Hague Convention (F.08).....	144
(v) Implementing Legislation (F.09).....	144
(vi) Bilateral Agreements (F.10)	145
G. ADOPTION IN CROSS-BORDER FAMILY CONFLICTS	146
(i) Domestic Definition and Regulation (G.01)	146
(ii) Recognition of Foreign Adoptions (G.02).....	146
(iii) 1993 Hague Convention (G.03).....	147

(iv) Implementing Legislation (G.04)	147
(v) Bilateral Agreements (G.05)	147
H. INSTITUTIONS ASSISTING CROSS-BORDER FAMILY CONFLICTS RESOLUTION.....	148
H1. Central Authority	148
(i) Existence and Operation (H1.01-09)	148
H2. Joint Advisory Commission	149
(i) Existence and Operation (H2.01-08)	149
H3. Other Institutions Assisting in Cross-Border Family Conflicts	150
(i) Existence (H3.01)	150
I. REFORMS UNDERWAY	152
(i) Reforms Underway (I.01)	152
Closing Remarks and Recommendations	153

Opening Remarks and Methodology

Following the previous work developed in this field under the Euromed Justice II Project, the Directorate-General Development and Cooperation - EuropeAid included in the Terms of Reference of this project the drawing up of a Research Report on “Overview of the current situation in the ENPI South region and comparative review of national experiences in the field of resolution of cross-border family conflicts “

Consequently this Research Report is focused on the current situation in the ENPI South region and contains a comparative review of the different national experiences in the field of resolution of cross-border family conflicts

Based on the information provided by the Beneficiary Countries to the expert in charge of drawing up the Research Report, Mr Parolin, and to the Project Team, the report contains an overview of the current situation in the ENPI South region in relation to the different topics and elements that, once compiled into the Report, are linked to the idea of resolving cross-border family conflicts.

You will also find a series of recommendations prepared by the expert as a result of the analysis of the information obtained from and of the technical visits carried out in the ENPI South partner countries that contributed to the development of the Report.

We should highlight that without the agreement and voluntary cooperation of the ENPI South partners’ authorities involved in this project and which were able to supply the required information, it would not have been possible to develop this activity and to guarantee the expected results.

The following general methodology for the preparation and delivery of the Research Report was applied, although adapted to the specificity of the Report and the members of the research group:

(i) Review of materials and documents of interest for the development of the research, which may have been compiled during EMJ II (e.g. previous research, questionnaires, materials discussed in EMJ I and II and materials provided by international agency contributions).

(ii) Subject to agreement within the established research group, a questionnaire had been elaborated for research on the subject and the draft questionnaire was submitted to the EC for initial approval. In this respect, the expert (STE) identified the main indicators to be studied and prepared the questionnaire and materials to

be sent to the ENPI South partner countries in order to obtain the required information. That served as a basis to this Report and was validated by the experts of the participating countries after a first one-day plenary meeting. Three experts from each ENPI South partner country were invited to attend each meeting of this research group.

(iii) Organisation of a meeting of local experts in the thematic field of the Research Report from the ENPI South partner countries. The agenda for this meeting as well as the methodology, questionnaire and work schedule for the report were presented, discussed and agreed upon

(iv) Launch of the questionnaire and implementation of the agreed methodology, work schedule, etc. Completion of these questionnaires by those Beneficiary Countries that replied to this questionnaire.

(v) The external expert has also carried out a one-day technical visit to each participating Beneficiary country that accepted and jointly programmed the visit during the period foreseen to that end in order to follow-up on progress in replying to the questionnaire and provide clarification on any points raised to the questionnaire by the local experts; to seek clarification on replies received; to undertake self-study of legislation, procedures and/or institutions in the ENPI South partner country in question of relevance for the Research Report or to get a clear picture and a perfect understanding of the answers to and information delivered in each questionnaire, and, hence, of the specificities and peculiar features of each judicial and legal system.

Through these technical visits, the expert has moreover had the possibility to make an on-the-spot assessment of the concepts, figures and information provided in the questionnaires, which allowed to jointly resolve, alongside the persons in charge of the elaboration of the questionnaires, any doubts, queries, misunderstandings or clarifications that have arisen.

(vi) Compilation by the expert of questionnaires and other information, and analysis of the replies to the questionnaires and other information obtained during the technical visits, for the preparation of the Research Report.

(vii) Preparation of a first draft of the Research Report on “Overview of the current situation in the ENPI South region and comparative review of national experiences in the field of resolution of cross-border family conflicts”.

(viii) A pre-final phase consisted in the validation meeting with the experts from the participating Beneficiary countries in order to discuss and validate the content of the

draft report. Discussion and validation meeting of the results and final draft report with experts from the Beneficiary countries.

(ix) The final phase consisted in the elaboration and work on the final Report. In this regard, we took into consideration the contributions and suggestions received during the validation meeting and afterwards during the additional time given to the members of the Research group in order to make any written possible comments, suggestions, corrections or proposals from the participating experts who were involved in its elaboration. The main idea was to try to guarantee, whenever possible, the most faithful results obtained from the method applied, which was basically based on the participation of the experts from the different participating countries. After that, we finally proceeded to sending the Draft Report to the DG DEVCO- EuropeAid for prior approval so that it could be presented afterwards during the Second Regional Conference of the Project to all the stakeholders and Officials invited to the Conference in view of its wider dissemination.

(x) The final version of the Research Report has been prepared for publication in both hard and soft copy versions, made available on the publicly available part of the project website and disseminated to the relevant authorities and judicial training centres of the Beneficiary Countries as well as to relevant EU entities, international organisations, EU MS authorities and EJNs.

We would like to stress one of the most remarkable aspects of this work: the opportunity to have summarised information with a high informative and comparative value that allows us, in addition, to have a regional picture of the situation and of the most important themes tackled in this Report.

These results are not mere abstract ideas. They correspond to the level of information received and obtained by means of the questionnaires and during the meetings and the debates held with the participating ENPI South delegations during each meeting. They reflect what the delegations of the participating ENPI South countries considered as appropriate and useful information that cannot be totally exhaustive, but allows for an analysis based on the possibility to compare the valuable information presented in order to get a quick picture of the current situation in the region.

Thus, the strengths and weaknesses of the subject tackled, and its regional situation, are highlighted and, in some cases, they allow to see if the progress can be more complex and difficult or, on the contrary, light and swift.

These information and analysis have to be adapted to the regional context in which they occur. Some countries have already implemented, partially or totally, some of the advices or indications contained and others are on their way to achieve them. Regarding the concrete topic under consideration, the Report allows us to observe

some concrete achievements and to point to some needs and shortages in reference to what we can consider as a standard situation in the international framework between the EU and the Beneficiary countries of the Project.

We would like to thank the Directorate-General for Development and Co-operation - EuropeAid and, more specifically, its Unit F-4 and the section on Migration, Justice and Police, Regional Programmes Neighbourhood, European Commission, as well as its team, for their guidance, co-operation and trust put in this study.

Moreover, we would also like to express our gratitude for his expertise, cooperation, attitude, professionalism and valuable technical work to Mr Gianluca Parolin, Main short-term Expert, who drew up the basic questionnaire and carried out the on-the-spot technical visits as well as the analysis of the replies to the questionnaire which were the basis for this Research Report, with the assistance of the technical Team of the EuroMed Justice III Project and the valuable and key collaboration of the experts and representatives from the participating ENPI South countries that were implied in the elaboration of the Report, in coordination with their Ministries of Justice.

Finally, we would like to extend our warmest thanks to all the experts from the ENPI South Partner countries that have collaborated in the different meetings and provided the requested information. It goes without saying that without their valuable support, deep commitment and endless efforts, this Research Report would not have been possible.

Andrés Salcedo Velasco.
Team Leader of the Euromed Justice III Project.

José María Fernández Villalobos.
Course Manager of the Euromed Justice III Project.

Dania Samoul.
Co-ordinator of the Euromed Justice III Project.

ACKNOWLEDGMENTS

As the Short-Term Expert, I am delighted to present the outcome of the first overall survey of cross-border family conflict resolution in the ENPI South region, in the form of a research report. However, as I constantly repeated since the inception of the project and throughout its various stages, my role has been simply instrumental, in view of offering the most accurate representation of how various jurisdictions address the sensitive issue of family conflicts when a foreign element is involved. The fruits of this effort are therefore collective, and each person who made it possible should be fully acknowledged.

A first acknowledgment goes to the national teams of experts that filled in exceedingly lengthy questionnaires. The breadth and depth of questions required an extraordinary effort on the part of respondents. For the most part, these incredibly important issues had not been surveyed domestically (not to mention at the regional level), leaving the respondents without a readily available reference to resort to. For every question, respondents went to great lengths beyond any domestic expert's knowledge to find an appropriate answer. Respondents must be fully acknowledged for all the details, references, and explanations that are included in the report and which attest to the respondents' laudable individual efforts.

The role of National Focal Points (NFPs) in identifying the teams of expert respondents, in coordinating the various activities, and planning the technical visits has proved of paramount importance in securing the success of the project. The warm, non-protocolar welcome extended during the technical visits and the on-going assistance with the expert's questions have been exemplar. An uncommon flexibility in accommodating last-minute changes attests also to the NFPs' commitment to the report, and the high quality of the latter needs to be credited to this very commitment.

A host of judges, lawyers, court assistants, and experts offered--usually out of sheer free will and dedication to the cause--their valuable time and knowledge to answer the Expert's further questions, based on their precious firsthand experience of the issues addressed. State court and religious court personnel alike participated with enthusiasm and commitment to the survey. Their contribution conveniently complemented the dry questionnaires with their real-life experiences and helped the Expert gain a more profound understanding of how the systems work in their everyday routines.

Supervising, advising, helping and supporting the Expert throughout the project has been the task of an exceptionally dedicated group of individuals known as the Project Team. A rush-against-the-clock pacing has been the general impetus behind

a want-to-be encyclopaedic project within a framework of limited time and resources. The Project Team has always provided the Expert with heartfelt support and proved that no problem is unsolvable with a smile--transforming conference calls into occasions of brotherly bonding and problem-solving with relentless professionalism. Notwithstanding the almost impossible task of matching the Expert's and the national teams' packed agendas to organize the technical visits.

The sponsor at the Commission level has also been institutionally--and personally--present and responsive to the needs of the project beyond customary involvement. This became evident, in particular, when problems of unresponsive NFPs were endangering the fruitful participation of all the respondent jurisdictions to the final report.

The already complex comparative exercise encounters a further level of complexity in the variety of (legal) languages employed; translators and interpreters played a central role in allowing an exchange of ideas and information as smooth as one could possibly imagine.

A final acknowledgment goes to my personal assistant, without whose support and cross-reference checks, the report would not mirror as precisely the individual national teams' contributions.

Gianluca P. Parolin
Short-Term Expert

INTRODUCTION

It is the **FIRST TIME** that a Research Report offers an overview of the current situation in the ENPI South region as well as a comparative review of national experiences in the field of resolution of cross-border family conflicts. The background model of reference is that of The Hague conventions and the Malta process. Not because of hegemonic reasons, but rather because it provides a standard to test various definitions and regulations.

The **BREADTH OF THE RESEARCH QUESTIONS** and the **VARIETY OF RESPONSES** given to such questions in the various jurisdictions of the ENPI South region are truly remarkable. Not only had an assessment of such variations never been attempted on the regional level, but it is also rarely available domestically in the jurisdictions with multiple court systems and/or multiple applicable laws. The teams of respondents often had to go to great lengths beyond the available data to provide the detailed responses compiled in this report.

Cross-border family conflicts, however, feed and thrive exactly on such a multiplicity of responses, as **LITIGANTS TRY TO PROFIT** from differing legal systems and the diversity of regulations therein. Litigants tend to select a court that will apply a law possibly offering a more convenient solution, or that will pass a more favourable judgment.

The instinctive forum-shopping is fuelled by a **GENERAL MISTRUST BETWEEN JURISDICTIONS**: a general mistrust often based on a lack of knowledge of the system of jurisdictions and applicable laws that can interact in a cross-border family conflict. Such general mistrust can be dispelled—or confirmed—by more in-depth knowledge, which is the main purpose of the report.

The report attempts to offer a **DETAILED OVERVIEW** of the jurisdictions and regulations of family law matters in the ENPI South region when a foreign (namely: European) element is involved. Such a detailed overview will provide aid in identifying the ways in which to approach cross-border family conflicts, possibly defuse them and avoid the traditional recourse to diplomatic intervention.

* * *

The report opens with a survey on the distribution of competencies between religious and civil jurisdictions, in particular when a foreign element is involved—and the degree of relevance such an element of foreignness brings forth. In doing so, the report also considers the way in which cross-border family cases are allocated to and decided by the different institutions and organs in practice. **(Section A)**

Beyond the conventional system of jurisdictions, the report identifies the existence and operation of other dispute resolution bodies in the ENPI South countries (both generally and in the field of family conflict resolution in particular). **(Section B)**

The report then addresses, in detail, individual areas of family conflicts to identify the key issues - problems of definition or formal classification, give an overview of the current situation in the ENPI South region, and to establish the occurrence of regular clashes on specific points with the jurisdictions of selected EU MS. **(Sections C-G)**

Whereas a comparative review of national experiences in the field of resolution of cross-border family conflicts emerges throughout the report, the latter's last section looks in particular at specialised bodies that operate within individual jurisdictions. **(Section H)**

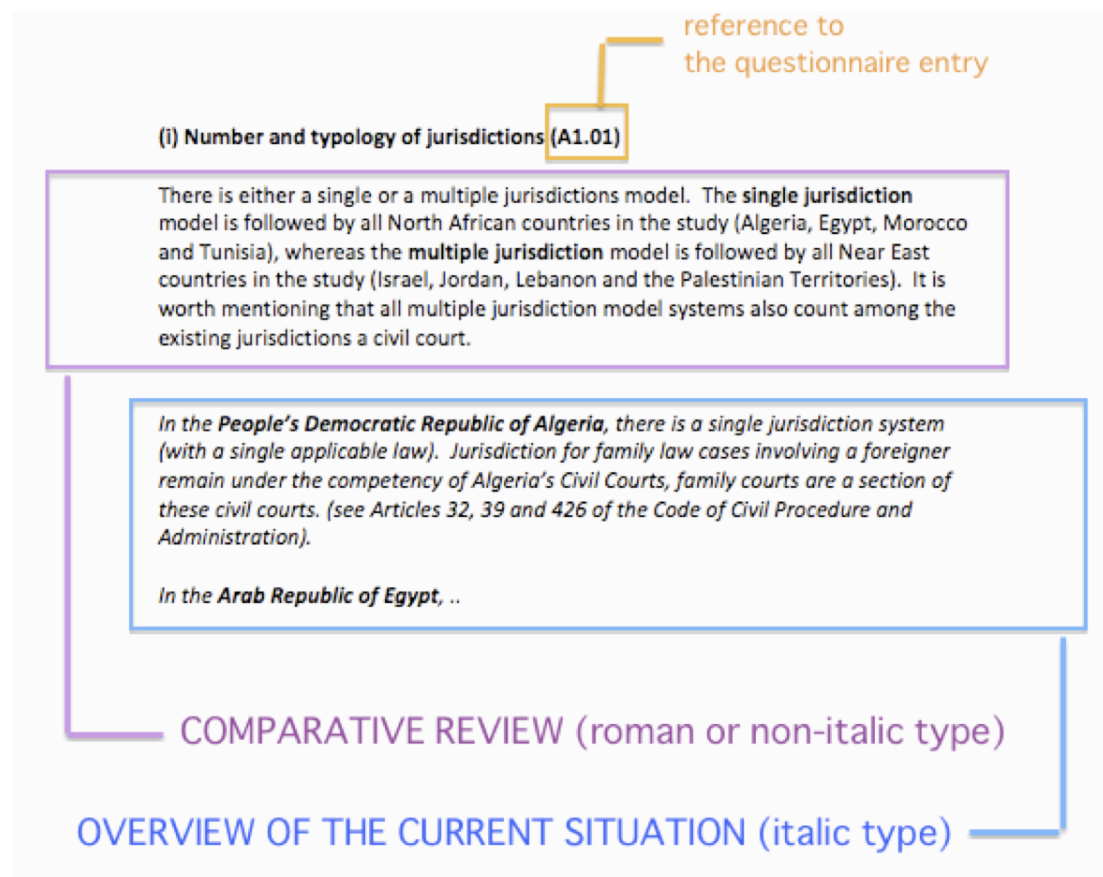
Drawing on the experience of the questionnaire and the technical visits, the report closes with a few comparative remarks on the areas that deserve further attention and those in which EU action can readily focus. **(Closing Remarks)**

Structure of the Report

The **STRUCTURE OF THE REPORT** encapsulates the unique objectives that it sets out to accomplish. As the title suggests, there are two thematic streams: (A) an OVERVIEW OF THE CURRENT SITUATION in the ENPI South region and (B) a COMPARATIVE REVIEW of national experiences in the field of resolution of cross-border family conflicts.

Each section is introduced by **TEXT IN THE ROMAN OR NON-ITALIC TYPE**, which carries the part on (B) COMPARATIVE REVIEW of national experiences in the field of resolution of cross-border family conflicts.

What follows is a **TEXT IN THE ITALIC TYPE**, which compiles a concise (A) OVERVIEW OF THE CURRENT SITUATION in the ENPI South region in the field of resolution of cross-border family conflicts. This part is entirely based on the responses by the national teams of experts to the questionnaire, and includes all the details provided by the national teams. The various blocs are consistently listed alphabetically, even when similar solutions are adopted by jurisdictions that are not listed in sequence.



Participating countries

The research report is based on the answers provided to the questionnaires by the national teams from:

the **People's Democratic Republic of Algeria**
the **Arab Republic of Egypt**
Israel
the **Kingdom of Jordan**
Lebanon
the **Kingdom of Morocco**
Palestine
the **Republic of Tunisia**

(Libya has not participated in the project, and the Syrian Arab Republic is formally part of the project even if there is a partial and temporary suspension of the EuroMed Justice III project in terms of Syrian participation)

OBJECTIVES

The Research Report, delivered under thematic component II, contains a comparative review of national experiences in the field of resolution of cross-border family conflicts.

The research is organized around the following axes:

Current situation in the ENPI South region. -- Comparative review of national experiences in the field of resolution of cross-border family conflicts. -- Identification of what are actually key issues and what are simply problems of definition or formal classification. -- Distribution of competences between religious and civil jurisdictions. -- Identification of other dispute resolution bodies in the ENPI South countries in general and in the field of family conflict resolution in particular. -- The way in which cross-border family cases are allocated to and decided by the different institutions and organs in practice. -- The occurrence of regular clashes on specific points with the jurisdictions of selected EU MS.

This report provides:

a) A detailed analysis of the situation in each of the Beneficiary Countries related to the key issues within the researched fields. In this respect the beneficiaries of this project are: the People's Democratic Republic of Algeria, the Arab Republic of Egypt, Israel, the Kingdom of Jordan, Lebanon, the Syrian Arab Republic, the Kingdom of Morocco, Libya, Palestine and the Republic of Tunisia. (Regarding the Syrian Arab Republic: formally it is part of the project even if there is a partial and temporary suspension of the EuroMed Justice III project in terms of Syrian participation).

b) Based on reform trends/experiences among the EU MS and/or the ENPI South partner countries – propose possible actions and/or approaches, which could be helpful to improve or speed up progress in the Beneficiary Countries.

c) The Research Report is thus of paramount importance to obtain a real and in-depth knowledge of the legal systems and enable in-depth discussions on the key issues within the researched fields.

CALENDAR

The format, structure and content of the questionnaire was discussed and approved in Barcelona in May 2012, then the finalised version was distributed to the NFPs whose teams compiled it over the summer. The technical visits began in September 2012 (Tunisia, Algeria), continued in December 2012 (Jordan, Lebanon, Israel, Palestine), and were completed in February 2013 (Morocco and Egypt). The final validation meeting was scheduled for March 2013.

REPORT

A. Civil and Religious Jurisdictions in Cross-Border Family Conflicts

When looking at the solution of cross-border family conflicts, the first element to be considered is (A1) who has **jurisdiction** over a family conflict with a foreign element and (A2) what the **applicable law** is.

In the ENPI South countries, there are three possible combinations of jurisdiction and applicable law in cross-border family conflicts.

The first model is the Maghreb system of a **single jurisdiction**, and a **single applicable law**. Here a civil court has general jurisdiction over family matters and applies in all cases a codified civil law. This, of course, does not mean that the codified civil law cannot be inspired by religious precepts, but it is one law applied to all cases, regardless of religious affiliation. This is the system followed in Algeria and Tunisia.

The second model is the Egyptian system of a **single jurisdiction**, and **multiple applicable laws** (religious). Here a civil court has general jurisdiction over family matters, but applies—in different cases—different religious (and/or foreign) laws. The applicable law is determined on the basis of a complex set of rules defined as the internal and international conflict of laws system. This is the system followed in Egypt. Morocco follows a similar, if slightly different system. In the Moroccan context, two different sections of the family court adjudicate on Jewish Law if the parties are Moroccan Jews or on the Family Code (*mudawwanat al-usrah*) if the parties are Moroccan non-Jews.

The third model is the Mashreq system of **multiple jurisdictions**, and **multiple applicable laws**. Here a complex architecture of civil and religious courts apply—in different cases—different religious (and/or foreign) laws. Both jurisdiction and applicable law are determined on the basis of a complex set of rules defined as the internal and international conflict of laws system. This is the system followed in Jordan, Israel, Lebanon, and Palestine.

A1. Jurisdiction

When considering jurisdiction in cross-border family conflicts, the report considers first (i) the number and typology of jurisdictions, and (ii) if the fact that one of the parties is a foreign is relevant, and if so how it is assessed, then looks at how the courts are structured and function, both (iii) civil, and (iv) religious authorities, and finally considers (v) how are conflicts of jurisdictions addressed. A closing sub-

section looks at (vi) how and on the basis of what law is the family in the conflict included.

(i) Number and typology of jurisdictions (A1.01)

There is either a single or a multiple jurisdictions model. The **single jurisdiction** model is followed by all North African countries in the study (Algeria, Egypt, Morocco [with the caveat of the separate sections of first instance courts for Jews and non-Jews] and Tunisia), whereas the **multiple jurisdiction** model is followed by all Near East countries in the study (Israel, Jordan, Lebanon and Palestine). It is worth mentioning that all multiple jurisdiction model systems also count among the existing jurisdictions a civil court.

*In the **People's Democratic Republic of Algeria**, there is a single jurisdiction system (with a single applicable law). Jurisdiction for family law cases involving a foreigner remain under the competency of Algeria's Civil Courts, family courts are a section of these civil courts. (see Articles 32, 39, 40(2) and 426 of the Code of Civil Procedure and Administration).*

*In the **Arab Republic of Egypt**, there is a single jurisdiction system, with multiple applicable laws based on religious affiliation. The Civil Court is the competent court with jurisdiction on family law whenever an Egyptian citizen is involved, or whenever the family's habitual residence is in Egypt (art. 12 Law 10/2004, and art. 10 Law 1/2000).*

*In **Israel**, there is a multiple jurisdiction system (with multiple applicable laws). The two systems of courts that have jurisdiction over cases involving a foreigner are the family civil courts and religious courts.*

*In the **Kingdom of Jordan**, there is a multiple jurisdiction system (with multiple religious, civil and foreign applicable laws). There are two Courts that have jurisdiction in cases of family law that involves a foreigner: Civil Courts and Religious Courts. If both parties are Muslim, the Sharia Courts are competent to adjudicate these cases. If one of the two parties is not a Muslim and both parties agree the case to be adjudicated in Sharia Courts, then Sharia Courts have jurisdiction. However, if one of the two parties disagrees to the competency of the Sharia court, the Civil Courts are competent to deal with the case in accordance with the laws of the Sharia Courts. (See Article 105 of the Constitution and article 2 of Sharia Procedural Law).*

Christian Denominational Councils (majalis al-tawa'if al-diniyya) , also known as Christian Courts (mahakim kanasiyya), have jurisdiction in all matters related to members of their community with the same latitude of Religious Courts (mahakim shar'iyya). Denominational Councils have jurisdiction if both parties belong to the same community or if they agree to submit their case to the council, provided no party to the controversy is Muslim. If the parties are members of a community that does not have a denominational council, Civil Courts (mahakim nizamiyya) have jurisdiction.

*In **Lebanon**, there is a multiple jurisdiction system (with multiple religious, civil and foreign applicable laws). There are two systems of courts that have jurisdiction in cases of family law that involve a foreigner: Civil Courts and Religious Courts. The fundamental rule being that jurisdiction and applicable law depend on the law that regulated the celebration of the marriage, jurisdiction in case of a marriage celebrated abroad depends on the type of regulation of marriage in the foreign legal system – secular or religious (see Decree no. 109 LR of 1935).*

*In the **Kingdom of Morocco**, there is a single jurisdiction system (with Moroccan Jewish Law applying to Jews and the Family Code (Mudawwanat al-usrah) applying to all other citizens). Art. 2 of the Family Code provides that the code applies to (1) all Moroccans, even if dual nationals, (2) all refugees, including stateless persons, (3) all the relations where one of the parties is a Moroccan citizen, and (4) all the relations between Moroccans when one of them is Muslim. Moroccan Jewish law applies to Moroccan Jews. The Kingdom's Court system has established a section of the family court in the Court of the First Instance (see article 4 of the Law Judicial Organization). There are two separate sections: a section for Moroccan Jews and the other for all other citizens.*

*In **Palestine**, there is a multiple jurisdiction system (with multiple religious, civil and foreign applicable laws). There are two systems of courts that have jurisdiction in cases of family law that involve a foreigner: Civil Courts and Religious Courts. There is a division in the laws of the courts, which varies between internal and cross-border family conflicts (see Personal Status Law of 1976 and the Family Byzantine Law).*

*In the **Republic of Tunisia**, there is a single jurisdiction system (with a single applicable law). The competent domestic jurisdiction on family law when a foreigner is involved are the Civil Courts (see Article 40 of the Code of Civil and Commercial Procedure and Article 2, Title II of the Code of Private International Law).*

(ii) Foreignness (A1.02)

In the determination of the relevance of one of the parties being a foreigner in a cross-border family conflict, there is no single model in the region. The general

trend, however, is to expand the jurisdiction of the domestic court, whether by invoking the best interest of the child (Israel), or the citizenship of one of the parties (all others, except in Tunisia where courts refuse jurisdiction if the citizen resides abroad or if the legal relation (*rapport de droit*) has a foreign character).

*In the **People's Democratic Republic of Algeria**, the foreignness of the foreign element is determined based upon the citizenship. If one of the parties is not of Algerian nationality, then they are considered to be foreign (see Article 41 of the Algerian Code of Civil Procedure (CPCA), and the Algerian Citizenship Law).*

*In the **Arab Republic of Egypt**, the foreignness of the foreign element is irrelevant for family law jurisdictions (if one of the litigants is an Egyptian citizen or if the family's habitual residence is in Egypt).*

*In **Israel**, the foreign element is based upon habitual residence abroad. Also, "foreignness" is irrelevant for family law jurisdiction in cases involving children (unless the immediate necessity of the child requires the intervention of Israeli courts).*

*In the **Kingdom of Jordan**, the foreignness of the foreign element is irrelevant for family law jurisdictions. The exception can be found in article 176 of the Personal Status Law, where the guardian (hadina) of an infant is prohibited from living outside of the Kingdom or from traveling outside if it (the infant) is of Jordanian nationality, except with the approval of the guardian and after the interests of the infant are verified. In the case where the infant is not Jordanian, this article is not applicable. (See Article 103 of the Constitution and Article 176 of Personal Status Law).*

If travel abroad is temporary and for a legitimate reason, and the guardian refuses to consent to it, the judge can authorise the travel after having ascertained the infant's interest, the timeframe, and the guarantees for the return (art. 177 of Personal Status Law).

*In **Lebanon**, the foreignness of the foreign element is based upon foreign citizenship for family law jurisdictions.*

*In the **Kingdom of Morocco**, the foreignness of the foreign element is based upon foreign citizenship and that the foreign party is not also a citizen of the Kingdom of Morocco (see Moroccan Code of Nationality).*

*In **Palestine**, the foreignness of the foreign element is based upon foreign citizenship for family law jurisdictions.*

*In the **Republic of Tunisia**, the foreignness of the foreign element is determined on residence abroad or the ‘foreign character’ of the legal relation (rapport de droit), when one of the main constituents of the legal relation has a connection to one or more foreign legal systems. The privilege of Tunisian citizenship is excluded since the promulgation of the Code of Private International Law. Tunisian courts maintain jurisdiction when the defendant resides in Tunisia (see Articles 2, 3 and 36 of the Code of Private International Law).*

(iii) The family court bench (A1.03-08)

This present subsection analyses the structure, jurisdiction, staffing and recourse to external experts for the courts having jurisdiction in cross-border family conflicts.

In single jurisdiction systems the family court is generally a **specialized section** of the general civil court. Also some multiple-jurisdiction systems may have a specialized section of the general civil court (Israel), but most do not (Jordan, Lebanon, Palestine).

Jurisdiction is here considered on **subject matters**. Not all systems include every subject matter in the jurisdiction of their family law courts. For instance, matters of *kafâlah* are not within the jurisdiction of Sharia Courts in Jordan. Moreover, in multiple jurisdiction systems (Israel, Jordan, Lebanon and Palestine), the subject matters adjudicated by the single court depend on their individual regulations.

Bench qualifications for adjudicating on cross-border family conflicts vary significantly within single and multiple jurisdiction systems. Civil court judges (both in single and multiple jurisdiction systems) are required state degrees and an official appointment by the State. Religious court judges (in multiple jurisdiction systems, of course) follow a very distinct track. Muslim courts tend to have more stringent requirements and judges need to be appointed by the State, whereas judges sitting on non-Muslim courts tend to have to conform to internal regulations for the appointment, but the appointment does not depend on any state authority.

As for **external experts**, all the systems allow for some assistance to the judge in matters other than law, but the expert does not participate in the issuing of the ruling.

*In the **People’s Democratic Republic of Algeria**, the family court is a specialized section of the civil courts, called Family Affairs Section of the Tribunal (Qism shu’un*

al-usra or Section des affaires familiales au tribunal). (Articles 32 and 423 of the CPCA) The family court is competent on the following: divorce, family maintenance obligations, parental responsibilities, custody, contact and kafâlah. Legal separation is often seen as contrary to public policy. The family court does not have jurisdiction over wrongful removal and or retention of the child as this is considered an offense under Algerian criminal law. (See Article 423 of the CPCA and Articles 326ff of the Penal Code).

Family courts in the People's Democratic Republic of Algeria are staffed and presided over by career judges. All judges, including those employed in the family affairs sections, are under continual training as provided for in artt. 13, 42, 43 and 44 of the Judiciary Act (Statut de la Magistrature).

Judges in the family court are not assisted by experts. However, in the course of an investigation, the judge may call a social worker or a medical expert and or use any qualified source for opinions with competent jurisdiction. (see Article 425 of CPCA). Experts do not participate in the formulation of judgments, however their opinions can be considered advisory (see Articles 5 and 125 of CPCA and Law 05-11 as related to judicial organization).

In the **Arab Republic of Egypt**, the family court is a specialized section of the civil courts (since 2004: Law 10/2004). The family court is competent on the following: divorce, family maintenance obligations, parental responsibilities, custody, contact (visitation rights are considered as contact) and wrongful removal or retention of the child.

Egyptian family courts are staffed by career judges. Family court judges are appointed based on their experience in family law; in addition, there are basic and continuing training sessions available to them. Judges in the family court are assisted by social and psychological experts. Experts do not participate in the issuing of the court ruling, however, they do write an advisory report to the Court, which is taken into consideration during the deliberation process.

In **Israel**, the family courts are a specialized section of the civil courts. Jurisdiction of the family courts in cases concerning cross-border family conflicts covers—among others—the following: legal separations, family maintenance obligations, parental responsibilities, custody, contact, adoption and wrongful removal and or retention of the child.

Israel's family courts are staffed by career judges. The judicial selection committee is assembled by representatives of the three authorities: legislative authority, executive

authority and judiciary. Also, representatives of the Israeli Bar Association select candidates. The Committee's decision to appoint a judge in all courts (except the Supreme Court), is passed by a simple majority of members present at the meeting of the committee.

Judges in the family courts are assisted by experts from the Social Service Units. The Social Service Units are under the Ministry of Social Welfare. The experts working within the units are civil servants. These experts do not participate in the issuing of court rulings. However, their position is primarily to assist the judges in their work with difficult families, in which case the social workers have become mediators for these difficult court cases.

In the **Kingdom of Jordan**, the family court is not a specialized section of the civil courts. The Sharia Courts are independent and they are competent to deal with family issues when the two parties are Muslims (Articles 103 and 105 of the Constitution). The family court is competent on the following: divorce, family maintenance obligations, parental responsibilities, custody, contact and wrongful removal or retention of the child. Legal separation has no equivalent within Islamic Sharia and Sharia courts. Nor do Islamic legal doctrine or Sharia courts consider cases of adoption or kafâlah. (See Personal Status Law no. 36/2010; articles 80 -202)

The same applies to (Christian) Denominational Councils (mahakim kanasiyya), which are independent and do not depend on Civil courts for their jurisdiction.

Family courts in the Kingdom of Jordan are staffed by confessional law experts. The Islamic Sharia is not spiritual religion; it is a spiritual doctrine and a system emancipated from it, so Islamic laws cannot be compared with other religious law because they are characterized by flexibility and the ability to address these developments. (See Article 3 of Law and Formation of Sharia Courts No. 19/1972 and its amendments) Family court members are only appointed after having already served as a judge in some capacity or another. Judges are only appointed after passing the Judicial contest, which stipulates that the judge will be appointed on a probationary term of three years, after which point the judicial council may confirm his appointment or restore him back to his clerical job or dismiss him from his job. Judges in the Sharia courts are required to hold certifications, with at least a Bachelor of Arts in Sharia jurisprudence or Islamic Fiqh and its foundations, and to have performed clerical jobs within the Sharia courts for three years. (See Article 3 of Law of Formation Sharia Courts no. 19/1972 and its amendments).

Shar'i judges are not clergy, but professional judges specialized in law and appointed by the Council of Religious Judiciary (majlis al-qada' al-shar'i), which is composed of Heads of Religious Appeals courts, the Courts' President, and the Inspectorate's Director. Non-Shar'i denominational judges, on the other hand, are clergymen whose appointment comes from the Council of Ministers based on the suggestion of the

Head of their community. There is no legislation regulating conditions of appointment, but the constitutional amendments of 2011 require that clear conditions be set.

Judges in the family court are assisted by experts in three areas: (1) technical experience; (2) estimation of maintenance and (3) estimation of the value of assets in cases of discord and conflict (separation) as arbitrators. (See Articles 78-90 of Sharia Procedures Code and Articles 126 and 128 of Personal Status Law) Only judges participate in the issuance of the court ruling, but the experts' opinions are referred to in the judgment. For example, when the judge rules for separation in cases of discord and conflict in accordance with the decision of arbitrators (experts). The judge may also rule as valid what the experts have estimated in maintenance and compensation suits of arbitrary divorce and the estimation of value of things, gold and furniture. (See Article 128 of Personal Status Law and Articles 84 – 86 of Sharia Procedural Law)

*In **Lebanon**, the family court is not a specialized section of the civil courts. The competency of the court in the context of cross-border family issues of conflict depends largely on the particular situation in question and on the type of marriage (civil or religious) contracted (see Art. 79 NCPCL – New Code of Lebanese Civil Procedure).*

Family courts in Lebanon are staffed by either career judges in the civil courts, or religious community leaders and/or judges in the religious courts. Judges in civil courts are selected, like all other state judges, through a public selection (concours de magistrature) and receive special training (at the école de la magistrature). Within the Islamic courts (including Druze courts), judges are appointed by the State. Ecclesiastical and Hebrew courts, the judges are appointed by a religious authority. Judges in the family courts can be assisted by experts, if the former so require. Experts do not participate in the issuance of the court ruling.

*In the **Kingdom of Morocco**, the court with jurisdiction on family matters is the Family Chamber in the Courts of First Instance (Section de la Famille au sein des tribunaux de première instance, see Judicial Organization Law). The Moroccan Family Code does not recognize legal separation nor does the court consider cases of adoption.*

Family Chambers in the Courts of First Instance in the Kingdom of Morocco are staffed by career judges. Judges in the family chamber are assisted by a secretariat. (see Law of the Judicial Organization) Family chamber members are selected from among the judges of the Court of First Instance with comparable skills regarding

family law and cases. These members are selected by the Plenary Assembly Court (composed by all the magistrates appointed to a certain court). Judges in the family chamber may resort to experts, who are selected from a chosen panel of experts approved by the Ministry of Justice. These experts do not participate in the issuance of the court ruling. However, the Court can seek the expert advice on technical issues without being strictly bound by it.

*In **Palestine**, the family court is not a specialized section of the civil courts. Legislation does not single out special provision for cross-border disputes (see Personal Status Law of 1976 of the Family Byzantine Law). The family court is not specialized (competent) in cross-border family disputes in the following: divorce, family maintenance obligations, parental responsibilities, custody, contact and wrongful removal or retention of the child. Legal separation has no equivalent within Islamic Sharia and Sharia courts. Just as adoption. (See Personal Status Law no. 36/2010; articles 80 -202)*

Family courts in Palestine are staffed by career judges. Judges specialized in Sharia law must hold a degree in law in order to be appointed to Sharia courts. As for judges within the Christian courts, they must be men of religion (clerics) and experts in religious law. Family court judges are appointed in accordance with the law and they need to meet the legal qualifications of regular judges.

*In the **Republic of Tunisia**, the family court is a specialized section of the civil courts. Within each court, there is a placeholder for Family and Child Affairs. (see Article 40 of the Code of Civil and Commercial Procedure, Article 32 of the Personal Status Code, Chapter II of the Code of Child Protection) The family court is competent in the following: divorce, family maintenance obligations, parental responsibilities, custody, contact and wrongful removal or retention of the child. It is the district court (juge cantonal) that rules on issues of adoption and kafâlah, in accordance with Law No. 58-27 of 4 March 1958 on Public Guardianship, Guardianship and Informal Adoption. (see the Code of Personal Status, the Code of Child Protection, and the Code of Private International Law)*

Family courts in the Republic of Tunisia are staffed by career judges. (see Article 40 of the Code of Civil and Commercial Procedure, Article 32 of the Personal Status Code, Chapter II of the Code of Child Protection) Family court members consist of a president, a second-level judge with at least ten years of experience, and two assessors. The President of the First Instance Court chooses the family judge among her vice-presidents, provided she is a second-level judge with at least ten years of experience. The functions of the district court are handled by a first-level judge with at least five years of experience. These judges are generally selected from those who specialize in the field of family law. They attend mandatory continuing education and optional training in matters of personal status, children's rights and international

private law. (see Article 40 of the Code of Civil and Commercial Procedure, Article 32 of the Personal Status Code, Chapter II of the Code of Child Protection)

Judges in the family court are assisted by experts. If necessary expertise is required, the judge of the family court appoints an expert who conducts its operations and prepares them a detailed written report with his opinion. The opinion of the expert is not binding upon the Court. The list of judicial experts is set according to each specialty by order of the Minister of Justice, it is addressed to the courts and provision of public registry of each court. The criteria for inclusion in the said specialties are strictly specified by law. The family court may assign a delegate to the protection of children, agents of social action to pursue investigations and the collection of data on the actual situation of child and determine their needs. (see Article 101 and the Code of Civil and Commercial Procedure, Articles 52-55 of the Code of Child Protection. Law No. 93-61 of 23 June 1993 on legal experts as amended by Act No. 2010-33 of 21 June 2010) These experts do not participate in the formulation of the decision of the judges. (see Articles 120 and 121 of the Code of Civil and Commercial Procedure)

(iv) Multiple jurisdictions (A1.09-12)

Multiple jurisdiction systems are such in the region because they include religious courts. In the case of cross-border family conflicts, one needs to consider how the individual systems regulate the relations between the foreignness of the foreign element and his/her religious affiliation. A complementary matter is to determine how the religious affiliation of the foreign element is determined, since the foreign legal system might not recognize a particular religious affiliation of its citizens. An approach that somehow tries to avoid these conflicts of jurisdictions is the Lebanese rule that jurisdiction and applicable law are determined on the basis of the intention of the parties as expressed in the law of celebration of marriage.

*In the **People's Democratic Republic of Algeria**, family law is limited to a single court system, with no additional courts covering religious affiliation. Familial affiliation of a foreigner is determined on the basis of an identity document. Foreignness is relevant to be determined only to establish the applicable law and not to identify the competent court. (see article 9 and following of the Civil Code)*

*In the **Arab Republic of Egypt**, there are no multiple family courts based upon religious affiliation: the family court is one and has jurisdiction over all cases irrespective of religious affiliation. Affiliation (for the determination of the applicable*

law) is determined through an identity document. The affiliation of a foreigner also made through an identity document.

In Israel, there are multiple family courts, which are based upon religious affiliations. Since the British Mandate was in effect prior to Israeli statehood, there are ten religious communities that are recognized and authorized to establish courts and adjudicate in accordance with their own religious laws. Religious courts have an exclusive jurisdiction over marriage and divorce matters, as well as parallel jurisdiction over matters directly related to the like, which includes: alimony, maintenance, guardianship, legitimation and the adoption of minors. These jurisdictions are defined in accordance with the King's Order in Council 1922. Several sections from the Order remain in place today, including the section that grants jurisdiction to religious courts.

When a foreigner is involved within these courts, the religious affiliation of the citizen creates the jurisdiction of the case to be judged, not necessarily the foreigner's religious affiliation. The religious courts have jurisdiction only in the instance that all of the parties belong to the same religious community to which the court itself belongs and if they are all Israeli citizens. Cases that involve a foreign party remain under the jurisdiction of the Family Civil Court. Affiliation is determined through the following: (1) an identity document, (2) evidence from non-state records (e.g. baptism certificate, etc.) and (3) a personal declaration. The affiliation of a foreigner – in order to identify jurisdiction – is determined through an identity document.

In the Kingdom of Jordan, there are multiple family courts that are based upon religious affiliation. These courts include Sharia Courts and other religious denomination councils. (See Articles 104 -110 of the Constitution and Article 3 of Non-Muslim Religious Denominations Council no. 2/1938) The requirement of establishing jurisdiction when a foreigner is involved is based upon religious affiliation. The Islamic courts are competent to deal with cases in which both parties are Muslims, or one of the parties is Muslim and on the basis that neither of them has an objection to the jurisdiction of the Islamic court. In the case that any of the parties objects – Muslim or not – the jurisdiction transfers to the civil courts and not to the Churches Council. In that case the civil courts rule in accordance with the Civil Status Law and not by any other law. If a case is filed in front of the Civil Courts (mahakim nizamiyya) because of difference of religion between the parties, the parties can request a written opinion from the judge of the sharia court, the president of the denominational council, or the head of the denomination (for denominations without a denominational council) on the law that would be applied to the case, if it had jurisdiction. The opinion becomes part of the case file and parties have the right to have a legal copy of it. The authority issuing the opinion needs to certify the completeness and authenticity of its opinion. Civil Courts then look at the opinions coming from both parties and decide on the basis of justice and impartiality (qawa'id al-'adl wa-l-insaf).

*In **Lebanon**, there are multiple courts that have jurisdiction on family law matters, both civil and religious courts (the latter being based on religious affiliation). Jurisdiction, when a foreigner is involved, is determined on the basis of the citizenship of the parties, the religious affiliation of the parties, and the mode of celebration of marriage. (see Article 79 of the Lebanese Code of Civil Procedure) Religious affiliation is determined through an official identity document or a personal declaration.*

*In the **Kingdom of Morocco**, there is only a single court with general jurisdiction; however, two different family law sections are created: one for Moroccan Jews and one for all other cases. (see art. 2 of the Family Code) All non-Moroccans—Jews included—would have to file their cases in the general section. Foreignness, therefore, is determined on the basis of a foreign citizenship.*

*In **Palestine**, there are multiple family courts that are based upon religious affiliation. Affiliation is then determined based upon citizenship and/or national identity. Religious affiliation is then identified through an identity document, which includes either a birth certificate or passport. The religious affiliation of a foreigner is also established by official identity papers.*

*In the **Republic of Tunisia**, there are no multiple family courts that are based upon religious affiliation.*

Historically, a decree issued following the enactment of the Code of Civil Procedure—and in line with its provisions—undermined the jurisdiction of Sharia courts in favour of courts based on state-enacted law. Tunisian Muslims remain subject to Islamic law, but are now no longer within the jurisdiction of Sharia courts, but rather civil courts. In accordance with the Decree of 25 September 1956, Sharia courts were formally abolished and their jurisdiction transferred to civil courts. (see Law by the decree 25.10.1956 OJ, p.1286) Rabbinical courts underwent a similar change; in accordance with the Act of 27 September 1957, jurisdiction was transferred to civil courts. (see Decree 3 August 1956, Decree 25 September 1956, Decree 25 October 1956 and Law 27 September 1957)

(v) Conflicts of jurisdictions (A1.13-18)

Conflicts of jurisdictions are considered both in terms of **general** and **territorial** jurisdictions.

Within single jurisdiction systems, specialized courts may claim or refuse jurisdiction over a cross-border family conflict case, just as courts administered on a geographical basis may claim or refuse jurisdiction over a specific case. The regulation differs significantly according to the system considered.

Within multiple jurisdiction systems, the odds of such positive or negative conflicts of jurisdictions increase significantly.

The **resolution of conflicts of jurisdictions** depends on conflict of jurisdiction rules that are not always codified, but function as the linchpin of the system. The possibility to **challenge** such determinations of jurisdiction is a key consideration, just as the determination of the **territorial jurisdiction** when a foreigner is involved.

*In the **People's Democratic Republic of Algeria**, in the case where positive conflicts of domestic jurisdiction occur, involving one or more courts that claim jurisdiction when a foreigner is involved, the request for judgment must be deferred to the Supreme Court. (see Articles 35, 398, 399 and 400 of the Algerian Code of Civil Procedure, CPCA) In cases where negative conflicts of jurisdiction arise, one or more courts may deny jurisdiction when a foreigner is involved, the same process is implemented in the determination of positive conflicts of domestic competencies. Regardless of positive or negative conflicts and the involvement of a foreign party, the only question is of law and not territorial jurisdiction.*

When resolving conflicts of domestic jurisdiction in cases where a foreigner is involved in the People's Democratic Republic of Algeria, the involvement of a foreign person is not relevant in determining territorial jurisdiction. However, the case can be designated according to the rules of conflicts of law as established by the Civil Code. (see Article 9 of CC)

The jurisdiction of a family court in cross-border family conflicts can be challenged in front of the same court as part of the defence. The procedure can also be challenged in the court of appeal. (see articles 49 and 34 CPCA).

The elements that identify the competent local court in these conflicts are determined by the primary purpose of the request: divorce, custody, visitation, etc. (see Article 426 of CPCA) The affiliation of a foreign element – child, parent, non-parental guardian – is based upon the citizenship of one of the spouses. If one spouse is Algerian, then only Algerian law is applicable. (see Article 11 of the Civil Code)

When resolving conflicts of domestic jurisdiction when a foreigner is involved in the Arab Republic of Egypt, the family judiciary applies the law of procedures of the Family Court of 2004. (Law 10/2004)

The jurisdiction of a family court in cross-border family conflicts can be challenged in the Court of Appeals. The element that identifies the competent local court in these conflicts is the law of procedures of the Family Court. The affiliation of a foreign element – child, parent, non-parental guardian – is based upon an identification card and is not relevant in the applicable law when involving the Egyptian party. However, if both parties are not Egyptian then their nationality may be an element determining the applicable law and the court jurisdiction will be decided accordingly.

*In **Israel**, Positive conflicts of domestic jurisdictions– where more than one court claims jurisdiction – are not possible when a foreigner is involved. Negative conflicts of domestic jurisdictions – where all courts deny jurisdiction – are not possible when a foreigner is involved. In the case of conflicts of domestic jurisdiction involving a foreigner, it is resolved by the Supreme Court according to the Private International Law Rules.*

Family court jurisdiction in cross-border family conflicts can be appealed within the District Courts and by leave to the Supreme Court of Israel. The element considered to identify the competent local court in cross-border family conflicts, providing there is more than one with jurisdiction, is citizenship. In all cases the Family Court is the competent court. The affiliation of a foreign element (child/parent/non-parental guardian) is determined through identity documents.

*In the **Kingdom of Jordan**, in the case where positive conflicts of domestic jurisdiction occur and where one or more courts claim jurisdiction when a foreigner is involved, the parties must make a request to the Minister of Justice to appoint a court to decide in the dispute over jurisdiction. The Minister then constitutes a special court and designates its president to consider to whom the jurisdiction belongs. The process varies depending on which courts are contesting jurisdiction. If the conflict is between the Sharia Court and the relevant Denomination Religious Council, the special court shall be formed from a Supreme Judge, a member of the Appeal Court and the president of the relevant Denominations Religious Council. If the conflict is between the Denomination Religious Council and a Civil Court, the special court shall be formed from two members of Appellate Civil Courts and the president of the relevant Denomination Religious Council. Lastly, if the conflict is between two Denomination Religious Councils, the special court may select from a member of Appeal Court and the presidents of the relevant Denomination Religious Councils. (See Article 16 of Non-Muslim Religious Denominations Councils no. 2/1938)*

In cases where negative conflicts of jurisdiction arise, where one or more courts deny jurisdiction when a foreigner is involved, the parties must take the same steps toward resolution as is done in the case of a positive conflict.

When resolving conflicts of domestic jurisdiction when a foreigner is involved in the Kingdom of Jordan, the family judiciary places no special jurisdiction on any foreign party. The family Sharia Courts have jurisdiction over the case regardless of nationality. However, within Civil Courts, there are attribution rules to resolve the conflicts of law under the Jordanian Civil Law. As for the Religious Denomination Councils, the conflict is based upon religion and not nationality and their verdicts may be appealed outside of Jordan. (See Article 15 of Non-Muslim Religious Denominations Councils no. 2/1938)

In the case of Christian denominations, appeals are brought in front of the denomination's Court of Appeals in Jordan whenever such a court exists. If a Christian denomination does not have a court of appeals within Jordan, appeals are brought before the competent court of appeal abroad (in Jerusalem or Damascus, for instance). Most of the Christian denominations, however, have a court of appeal in Jordan.

The jurisdiction of a family court in cross-border family conflicts can be challenged within the originating court that considers the case. The judicial control in the judgment will be to the higher court. However, the higher court will only decide on the jurisdiction, and not on the matter. (See Article 5 of Sharia Procedural Law) The higher court is the Shar'i Court of Appeals, and decides on positive and negative conflicts of jurisdiction only within the shar'i system (i.e., if the Shar'i Court of First Instance or the Shar'i Court of Appeals have jurisdiction in any given case). In the case of a positive or negative conflict of jurisdiction of courts belonging to different systems, the Minister of Justice establishes a special committee/court to determine jurisdiction.

The elements that identify the competent local court in these conflicts, provided there is more than one court with jurisdiction are religion and denomination. (See Articles 103, 105 and 108 of the Constitution) The affiliation of a foreign element – child, parent, non-parental guardian – is based upon self-publicity and is not relevant in the applicable law. However, the court jurisdiction will be appointed accordingly. In the case of a non-Muslim religious denominations, and differences between the two parties, the jurisdiction is with the Civil Court, which then decides the applicable law. (see Articles 9, 10 and 11 of the Non-Muslim Religious Denominations Councils Law no.2/1938)

*In **Lebanon**, in the case where positive conflicts of domestic jurisdiction occur, where one or more courts claim jurisdiction when a foreigner is involved, competency is determined by the Plenary Assembly of the Court of Cassation. (see Article 95 of Lebanese Civil Procedure Code)*

In cases where negative conflicts of jurisdiction arise, where one or more courts deny jurisdiction when a foreigner is involved, the parties must take the same steps towards resolution as done in the case of a positive conflict.

When resolving conflicts of domestic jurisdiction when a foreigner is involved in Lebanon, a general law of the state is implemented in the resolution process.

The jurisdiction of a family court in cross-border family conflicts can be challenged before the Family Court and before the Plenary Court of Cassation in unresolved matters.

The elements that identify the competent local court in these conflicts is based upon the mode of solemnization of marriage, nationality and the confession of the parties. (see Article 79 of the Lebanese Code of Civil Procedure and Article 14 Act of April 2, 1951) The affiliation of a foreign element – child, parent, non-parental guardian – is based upon nationality and is applicable in determining the applicable law.

*In the **Kingdom of Morocco**, positive conflicts of domestic jurisdiction, where one or more courts claim jurisdiction when a foreigner is involved, are not possible, since Moroccan law does not extend the competence to other courts as stipulated in the law. The courts of first instance have general jurisdiction. Whichever section is deemed competent does not raise conflicts of jurisdictions.*

In cases where negative conflicts of jurisdiction arise, where one or more courts deny jurisdiction when a foreigner is involved, are not possible for the same reasons as stipulated for positive conflicts of jurisdiction.

When resolving conflicts of domestic jurisdiction when a foreigner is involved in the Kingdom of Morocco, they are resolved according to the rules of Moroccan private international law. The jurisdiction of the family courts in cross-border family conflicts can be challenged within the Court of Appeals.

The territorially competent court will be identified resorting to either the general principal of the defendant's residence, or the location of the child, in cases involving children. The affiliation of a foreign element – child, parent, non-parental guardian – is based upon the identity document and is relevant in the establishment of the applicability of the law.

*In **Palestine**, in the case where positive conflicts of domestic jurisdiction occur, where one or more courts claim jurisdiction when a foreigner is involved, it is resolved through the application of private international law.*

In Palestine, there are cases where negative conflicts of jurisdiction arise, where one or more courts deny jurisdiction when a foreigner is involved. [Lack of reference on resolution process]

When resolving conflicts of domestic jurisdiction when a foreigner is involved in Palestine, a general law of the state is used to adjudicate the case.

The jurisdiction of a family court in cross-border family conflicts cannot be challenged within Palestine.

*In the **Republic of Tunisia**, in the case where positive conflicts of domestic jurisdiction occur and where one or more courts claim jurisdiction when a foreigner is involved, the Court of Cassation has the sole authority to resolve disputes whenever one of several courts have expressed the same degree of competency and have the force of res judicata. The Court of Cassation has its own procedure after that process. (see Article 198 of the Code of Civil and Commercial Procedure and Articles 3A10 Code of Private International Law)*

In cases where negative conflicts of jurisdiction arise, where one or more courts deny jurisdiction when a foreigner is involved, the same process must be followed and the Court of Cassation has the sole authority to resolve these disputes. (see Article 198 of the Code of Civil and Commercial Procedure)

When resolving conflicts of jurisdictions when a foreigner is involved, the family court applies domestic law. (see Article 198 of Code of Civil and Commercial Procedure and Articles 3-11 of the Code of Private International Law)

The jurisdiction of a family court in cross-border family conflicts can be challenged in three courts: (1) within the originating court that considers the case, (2) before the Court of Appeal when the judgment is rendered in the first instance, or (3) before the Court of Cassation when the decision is made final. The parties may, in any case, raise the incompetence of the court resulting from non-compliance with rules relating to the allocation of jurisdiction. The exception to territorial incompetence of jurisdiction must be raised prior to any substantive discussion within the Courts. (see Articles 14, 17, 41 and 42 of Code of Civil and Commercial Procedure and Article 10 of the Code of Private International Law)

The elements that identify the competent local court in these conflicts, are vested within the family court, there is no religious element since the religious courts (Sharia and Rabbinical) were abolished in 1957 and their jurisdiction devolved in the Tunisian courts. (see Decree 3 August 1956, Decree 25 September 1956, Decree 25 October 1956 and Law 27 September 1957) If there is a connection to one or more foreign legal system besides the Tunisian one, a family conflict is considered to be a cross-

border (or international) conflict. When a family conflict is cross-border, the judge will apply the conflict of laws rules of the Code of International Private Law. (see Articles 2 and 26 of the Code of International Private Law)

(vi) What defines family? (A1.19)

The determination of how the family is defined or determined--and according to what law--might prove to be a key element in identifying jurisdiction. In the region, the jurisdiction to which a cross-border family conflict is referred tends to apply its law to define the family. Problems arise when courts need to apply a foreign law, and that law might define the family in a way that conflicts with domestic public policy.

*In the **People's Democratic Republic of Algeria**, when establishing familial relations when there is a foreign element involved is adjudicated on the basis of domestic applicable law and on the basis of foreign law as long as it is not contrary to public policy. The conditionality is tethered on the exception that it does not violate public order and/or morality. For instance, family relations in the case of adoption (tabanni) are prohibited by law and the rules of Sharia law. (see Article 46 of the Family Code)*

*In the **Arab Republic of Egypt**, establishing familial relations when there is a foreign element involved is done on the basis of the domestic applicable law.*

*In **Israel**, determining family relations when there is a foreign element involved is done on the basis of foreign applicable law provided this law does not contradict public policy. Public policy in Israel specifies that there is no option of civil marriage, however civil marriage that has been celebrated/contracted in another state would be recognized in Israel in accordance to the International Private law Rules. Civil courts retain jurisdiction over mixed religious marriages.*

*In the **Kingdom of Jordan**, In establishing familial relations when there is a foreign element involved is done on the basis of domestic applicable law only when there is a difference in the Religious Denominations Councils. In the case where one of the parties is Muslim or both parties are Muslims, the Civil Status Law is the applicable law. In family courts, there is no consideration whether one of the parties is a foreigner; the consideration is based upon religion.*

*In **Lebanon**, in establishing familial relations when there is a foreign element involved the Lebanese conflict of laws rules apply. If the marriage was a religious marriage,*

the applicable law is the law of the mode of celebration (religious), and the jurisdiction is religious. If the marriage was a civil marriage (at present only available abroad), the applicable law is the law of the place of celebration (lex loci), and the jurisdiction is civil—foreign law is applied by civil courts, provided it does not conflict with Lebanese public policy.

*In the **Kingdom of Morocco**, familial relations are established on the basis of domestic applicable law when there is a foreign element involved.*

*In **Palestine**, familial relations are established on the basis of domestic applicable law and in accordance with the origination of the marriage contract when there is a foreign element involved.*

*In the **Republic of Tunisia**, familial relations are established on the basis of domestic applicable law and on the basis of foreign law when there is a foreign element involved, as long as it is not contrary to international public policy (ordre public international/al-nizam al-'amm al-duwali). When the legal relation has an international character, the judge will apply the rules on conflicts of law established by the code of private international law, determining the law applicable according to the international legal nature of the relation in question. If provisions of foreign law are deemed contrary to the fundamental choices of the Tunisian legal system, the judge may rely on the public policy exception, regardless of the nationality of the parties and the degree of the international character of the relation. In such a case, the court will then apply the provisions of Tunisian law. The judge can also apply a different foreign law, if the connection with the legal relation is strong and the application of said provisions is necessary, with regards to the intended purpose. The public law nature of the foreign law neither precludes its application nor its consideration. (see Articles 26, 36 and 38 of the Code of Private International Law)*

A2. Applicable Law

Conflicts of applicable law are possible in a single jurisdiction, such as single applicable law model systems in the Maghreb model, when a foreigner is involved, due to the possibility of applying the foreign law. Domestic regulations of conflicts of laws apply and regulate the solution in cross-border family conflicts in differing aspects.

In single jurisdiction/multiple applicable laws model systems (the Egypt model) are similar to multiple jurisdiction/multiple applicable laws model systems (the Mashreq model). Conflicts of applicable law are possible when a foreigner is involved either because of the possibility of applying a foreign law, or because of the multiplicity of the domestic applicable laws.

In cases of multiple applicable laws, the domestic regulations of conflict of laws either focus on the affiliation of the parties or on their intention (as expressed on the mode of celebration of marriage, for instance).

(i) Conflicts of applicable law (possibility, resolution, challenge) (A2.01-04)

Besides considering the possibility of positive or negative conflicts of applicable law, this section considers the way in which the individual system resolves such conflicts and the possible procedures to challenge such solutions. The combinations are quite varied.

*In the **People's Democratic Republic of Algeria**, positive conflicts of applicable domestic law are possible within cross-border family conflicts. They are regulated by article 9 of the Civil Code. Algerian law is deemed competent to determine the category under which the case falls, in order to identify the applicable law. When applying a foreign law, only its substantive provisions are considered, and not its conflict of laws provisions. However, if the foreign law considers Algerian law to be the applicable law, then the Algerian court applies Algerian law by virtue of the foreign conflict of laws provision. (see articles 9 -23 of the Civil Code)*

Negative conflicts of applicable domestic law are not possible within cross-border family conflicts.

A court's decision on the applicable law can be challenged only before the appellate court.

*In the **Arab Republic of Egypt**, positive conflicts of applicable domestic law are possible in cross-border family conflicts, and are resolved through a law of the state. The court's decision on the applicable law in cross-border family conflicts can be challenged in the Court of Appeals.*

*In **Israel**, positive conflicts of applicable domestic law are permitted in cross-border family conflicts. Negative conflicts of applicable domestic law are also permitted in cross-border family conflicts in Israel. Conflicts of applicable domestic law in cross-border family conflicts are resolved both through the Israeli law as well as International Private Law. The decisions of the court in these cases can be challenged through an appeals process, which is made through the corresponding District Court and by leave to the Supreme Court of Israel.*

*In the **Kingdom of Jordan**, positive conflicts of applicable domestic law are possible in cross-border family conflicts. Jurisdiction is established first on the following bases:*

(A) If shar'i courts have jurisdiction, they apply the Jordanian Personal Status Law. (B) If denominational councils have jurisdiction (B1) because both parties belong to the same denomination, they will apply the lex fori. If the parties belong to different denominations (B2) but agreed on the jurisdiction of a certain denominational council, the latter will apply its lex fori. (C) If Civil courts have jurisdiction because of difference of religion between the parties, the parties can request a written opinion from the judge of the shar'i court, the president of the denominational council, or the head of the denomination (for denominations without a denominational council) on the law that would be applied to the case, if it had jurisdiction. The opinion becomes then part of the case file and parties have the right to have a legalized copy of it. The authority issuing the opinion needs to certify the completeness and authenticity of its opinion. Civil courts then look at the opinions coming from both parties and decide on the basis of justice and impartiality (qawa'id al-'adl wa-l-insaf).

In the case of a difference in religion, it is resolved in the same manner as done with positive conflicts of domestic jurisdiction, where the two parties make a request to the Minister of Justice and the same steps required as based upon religious affiliations. The same applies in the case of negative conflicts of applicable domestic law in cross-border family conflicts. (see Article 16 of Non-Muslim Religious Denominations Councils Law no. 2/1938)

*In **Lebanon**, positive conflicts of applicable domestic law are possible within cross-border family conflicts. Contingent upon the rules of conflict, Lebanese law designates the competency and applicable laws. Negative conflicts of applicable domestic law in cross-border family conflicts are not possible. A court's decision of the applicability of the law in cross-border family conflicts can be challenged in the higher court as well as the Plenary Assembly of the Court of Cassation in some cases; for instance, if the court is not competent, or if there is a substantial violation of public policy.*

*In the **Kingdom of Morocco**, positive conflicts of applicable domestic law are not possible in cross-border family conflicts, because Moroccan Jewish Law applies only to Moroccan citizens. The same applies in the case of negative conflicts of applicable domestic law in cross-border family conflicts.*

A court's decision on the applicable law in a certain cross-border family conflict can be challenged before the judgment is delivered in front of the same court (the Court of the First Instance), and later can be challenged on appeal in front of the Court of Appeals.

*In **Palestine**, positive conflicts of applicable domestic law are possible within cross-border family conflicts. However, there is no existing case law on the situation and therefore there is no clear resolution established in legal practice. Negative conflicts of applicable domestic law in cross-border family conflicts are possible and are resolved in accordance with the business principles of private international law.*

*In the **Republic of Tunisia**, positive conflicts of applicable domestic law are not possible within cross-border family conflicts. When the legal relation has an international character, the judge will apply the conflict of laws rules of the Tunisian Code of Private International Law determining the applicable law; in the absence of explicit rules, the judge will determine the category under which the legal relation falls, and consequently identify the applicable law. In the presence of conflict rules, specific positive conflict laws are therefore not possible in the context of cross-border family conflicts. (see Article 26 of the Code of Private International Law) The same applies in the case of negative conflicts of applicable domestic law in cross-border family conflicts. (see Article 26 of the Code of Private International Law)*

In the Republic of Tunisia, conflicts of applicable domestic law in cross-border family conflicts are resolved on the basis of state laws. (see Article 26 of the Code of Private International Law) A court decision on the applicable law in cross-border family conflicts may be challenged before the originating court, the Court of Appeals when the judgment is rendered in the first instance or before the Court of Cassation when the decision is made final.

B. Alternative dispute resolution in cross-border family conflicts

All methods of alternative dispute resolution (ADR) of domestic family conflicts tend also to be available for the resolution of cross-border family conflicts. An exception to this general rule can be found in Lebanon, where mediation is made available on the basis of a bilateral agreement with France and therefore fully available only in cross-border family conflicts with Lebanese and French citizens involved.

In the context of ADR the variety of terms employed and the difference in the actual procedures and enforceability of the agreements reached through ADR methods render the mapping of the field extremely problematic and requires further, more detailed study.

B1. Mediation

Mediation, the chief ADR method, seems to be rather scarcely available in the region, both for domestic and cross-border family conflicts. Even where forms of mediation are available, conflict issues tend to go straight to the judge for determination, and mediators tend not to be able to finalize settlement agreements upon the parties' mutual consent.

(i) Availability and compulsory nature (B1.01-02)

The only available forms of mediation in the region seems to be in Israel, Jordan and Lebanon, the latter stemming from judges' own suggestions to the parties or on the basis of bilateral agreements stipulating it. Jordan has recently passed legislation to the effect of allowing parties to resort to alternative dispute resolution methods.

*In **Israel**, there are mediation procedures available in cross-border family conflicts. Parties that are already involved in a judicial proceeding do not need to attempt such mediation procedures.*

*In the **Kingdom of Jordan**, ADR in family law matters has been introduced with the 2013 Law on Conciliation (al-tawfiq wa-l-sulh). Conciliation (al-tawfiq wa-l-sulh) is a "flexible" system that allows parties to employ different methods, including mediation (wisata). The offices do not limit their operation to conciliation, but establish a form of mediation under official supervision. Persons involved do not need to be officials, and conciliators and mediators can be registered private entities, but under the supervision of officials (state employees).*

In Lebanon, there are mediation procedures available in cross-border family conflicts. However, there is no existing text on mediation. The procedures are implemented by the judges on an ad hoc basis or through the application of bilateral agreements. (see Franco-Lebanese Convention of 12 July 1999) Parties in a judicial proceeding need not attempt such mediation.

(ii) Mediation procedure (B1.03-07)

In Israel, confidentiality, impartiality and independence are guaranteed in mediation procedures. Mediators receive special training that requires them to complete a mediation course of 60 hours, where they learn the basics of mediation and the techniques used to facilitate mediation. Trained mediators are not required to adhere to a special code of conduct. During the mediation process, it is possible for the child to be heard if both parties agree, which is similar in all procedural decisions involving both parties. In Israel, NGOs are not involved in the establishment of a specialist mediation service for cross-border family conflicts.

In Lebanon, parties are assured confidentiality, impartiality and independence as a guarantee. There are existing mediation centres in Lebanon, including at the Université Saint-Joseph. As part of the mediation, mediators must receive special training in order to implement the procedures. They are also required to adhere to a special code of conduct. In the rare case where children are heard in these proceedings, the permissible age of the child is established based upon discerning opinions of the courts.

(iii) Mediation and the court (B1.08-10)

In Israel, there are no temporary contact orders available. In order to enforce a mediation agreement, the court must first approve the agreement and then it is elevated to the status of a court decision. Mediation agreements do not need to be transformed into court orders, the agreements will only attain the status of a court decision if they are first approved by the court. However, the decision to have the agreement approved is incumbent on the will of both parties.

In the Kingdom of Jordan, the mediation agreement needs to be confirmed by a court order (tasdiq).

*In **Lebanon**, there are temporary contact orders available in the mediation process. The procedure to enforce a mediation agreement is done through the court. Mediation agreements are required to be transformed into court orders.*

B2. Conciliation

Conciliation, not fully regarded as an ADR method, tends to be widely available in the region, both for domestic and cross-border family conflicts. A conciliation attempt is usually compulsory, even in courts applying religious law as in Jordan.

(i) Availability and compulsory nature (B2.01-02)

Even if conciliation tends to be widely available, there are significant degrees of variation in their regulations, spanning from precisely regulated codification to conciliation procedures initiated by judges in the absence of legislation regulating it. Few of these procedures are compulsory.

*In the **People's Democratic Republic of Algeria**, there are conciliation procedures available in cross-border family conflicts. The judge in the case conducts reconciliation attempts for actions relating to the dissolution of the marriage. (see Article 49 of the Family Code) Parties involved in such judicial proceedings should undertake the process of reconciliation as required. If one party is unable or unwilling to attend on the specified dates, the court may fix another date, or task to another judiciary to conduct the hearing as part of a commission. However, if one of the parties, although cited, fails to appear at the scheduled hearing and conciliation, it is not excused and the judge issues a report on the matter. (see Articles 439 and 441 of the Code of Civil Procedure and Administrative)*

*In the **Arab Republic of Egypt**, there are conciliation procedures available in cross-border family conflicts through the good intent committee; however, this is not obligatory prior to litigation as it stands as an independent track from litigation, in an attempt to avoid it. The parties involved in a judicial proceeding are required to attempt (twice) conciliation before filing a case in court (taswiya), and after the filing of the case, the judge attempts a further conciliation before proceeding.*

*In **Israel**, there are conciliation procedures available within the ordinary judicial procedures, as well, in cross-border family conflicts.*

*In the **Kingdom of Jordan**, there are conciliation procedures available in cross-border family conflicts. Legislation has just been introduced in 2013 establishing the Office of Conciliation (al-tawfiq wa-l-sulh; Law 28 February 2013). The parties or one of*

them can directly access the Office to try and solve the family conflict, or the court must refer a case to the Office before looking into it for an attempt to conciliation within 30 days. Conciliation has been approved in Islamic jurisprudence and applied in Sharia courts; parties in the judicial proceeding need to attempt the conciliation process. (see Article 38 of Sharia Procedural Law)

*In **Lebanon**, there are conciliation procedures available in cross-border family conflicts. However, there is no existing text on conciliation; the procedures are implemented by the judges on an ad hoc basis or through the application of bilateral agreements. (see Franco-Lebanese Convention of 12 July 1999) Parties to the proceedings are not required attempt the process of conciliation, unless the applicable foreign law requires such action.*

*In the **Kingdom of Morocco**, there are conciliation (sulh) procedures available in cross-border family conflicts. The procedure is available at the Central Administration of Morocco through a service of international cooperation. Parties to the proceedings should undertake the reconciliation process in response to their case.*

If a case for termination of marriage is filed in Morocco, the judge has the duty to arrange two attempts of conciliation (and the judge has a wide discretion in the identification of the conciliator: article 82 of the Family Code). In cases of consensual termination (either as talaq ittifaqi or shiqaq), the parties can draft their own conditions in print and the judge will read them to the parties in court, and—unless the conditions conflict with public policy or the interest of the child—will include them in the court statement.

*In **Palestine**, there are procedures for conciliation in cross-border family conflicts, but they are not compulsory.*

*In the **Republic of Tunisia**, there are procedures for conciliation in the context of cross-border family conflicts, regarding divorce, custody and visitation. The family court may, upon agreement of both parties to the conflict, recommend the assistance of a family conciliator. The family conciliator would be selected from among the managers within the structure of social promotion, to reconcile and to assist the parties in achieving a final settlement in their dispute, in order to preserve and ensure family cohesion.*

In the case of divorce, the judgment is pronounced only after the family court has made an effort in the conciliation process that was proven unsuccessful. In cases of custody issues where there is one or more minor child, the judgment of divorce will

be delivered following three conciliation hearings, each of which must occur not less than thirty days after the prior hearing.

Upon agreement of both parties to the conflict, the family court may be assisted by a family conciliator who has been appointed from among the managers within the structures of social promotion in order to reconcile and achieve a final settlement to their dispute in an effort to preserve family cohesion.

If there are disputes between the parties and one party complains about any grievance with the other party and is unable to examine the evidence and the judge is unable to determine the responsible party, the court shall then appoint two arbitrators to resolve the grievance. After analysing the situation, they must, to the best extent possible, reconcile the parties and in make an account of their findings to the judge

The list of family conciliators is determined by joint order of the Minister of Justice and the Minister of Social Affairs. In the instances of adoption and child support, the District Court attempts to reconcile the parties (see Article 32 of Personal Status Code Law no. 50/2010 on the establishment of the Ombudsman Institution in family conflicts of personal status, Article 25 of the Personal Status Code and Article 38 of the Code of Civil and Commercial Procedure).

Conciliation is always exercised under the supervision of the judge.

(ii) Conciliation procedure (B2.03-07)

Conciliators usually receive special training (variously regulated in domestic law), except in the case where the conciliator is the judge as in the case of Algeria.

*In the **People's Democratic Republic of Algeria**, confidentiality, impartiality and independence are guaranteed by the judge and the court. (see Article 49 of the Family Code) Conciliators do not receive specialized training per se, however, since the conciliator is the judge in this case it is implied that his training is in fact specialized. (see Article 49 of the Family Code)*

In these mediation and conciliation procedures, the child may be heard. In Algerian family law, there is no age limit prescribed. However if the process is relevant to a decision of custody, the judge may decide to waive the admittance of child to appear in the session concerning custody.

*In the **Arab Republic of Egypt**, confidentiality, impartiality and independence are guaranteed in the conciliation procedures:*

(A) The good intent committee requires that all experts have to be impartial; they examine the cases with confidentiality as stipulated by law. Conciliators receive special training in the form of legal, sociological and psychological tactics. Conciliators are not required to follow a special code of conduct. During hearings, the child may be heard at the discretion of the committee. (B) The judicial conciliation procedure (taswiya) follows a separate course.

*In **Israel**, it is the judge in civil courts that acts as conciliator.*

*In the **Kingdom of Jordan**, during the conciliation procedure, confidentiality, impartiality and independence are guaranteed. This is done through the Office of Conciliation (al-tawfiq wa-l-sulh), where the case is referred for a maximum of 30 days. The file returns to the court either for confirmation of the conciliation agreement (tasdiq) or for the regular judicial procedure in case of a lack of agreement. Conciliators receive special training and the members of the offices are required to have a legal background or be trained sociologists or psychologists. Conciliators will be required to follow a special code of conduct, which is still in the process of being drafted and is not yet enforceable.*

*In **Lebanon**, the conciliation procedure guarantees confidentiality, impartiality and independence. Conciliators are required to adhere to a special code of conduct. In the rare case where children are heard in these proceedings, the permissible age of the child is established based upon discerning opinions of the courts.*

*In the **Kingdom of Morocco**, confidentiality, impartiality and independence are guaranteed as part of mediation procedure, which is ensured because the institution is a legally empowered conciliate. Mediators do not receive special training, nor do they follow a special code of conduct. During the mediation procedure, children are heard.*

*In **Palestine**, the parties in the judicial proceedings are guaranteed confidentiality, impartiality, and independence in their conciliation procedure. Mediators receive specialized training in the fields of sociology and psychology. There is no special code of conduct that mediators are required to adhere to. In these mediation procedures, the child can be heard.*

*In the **Republic of Tunisia**, confidentiality, impartiality and independence are guaranteed in the mediation procedure. Conciliators receive special training in the legal, sociological and psychological disciplines. The judges and conciliators receive special training through continuing education cycles in collaboration with the Higher*

Institute of the Judiciary as well as national and international organizations. Conciliators are not required to adhere to a special code of conduct.

The mediation procedure permits that the child can be heard as part of the process. The Code of Child Protection guarantees children the right to freely express their opinions, which should then be taken into consideration in accordance with their age and maturity. In so much as is permitted, the child is given special opportunity to express their views and be heard in any judicial, social and educational measures concerning his or her situation.

The Chief of Child Protection assesses the actual existence of a difficult situation which may represent a threat to the child's health, physical or moral integrity in accordance with Article 20 of the Code of Child Protection. The Chief of Child Protection then has legal enforceable authority to summon the child and his or her parents to listen to their statements and answers concerning the report of their findings. The family court shall then hear the child's parents or the persons serving as guardians or custodians. Upon receiving and reviewing all comments of the representative of the Crown, they may then delegate the protection of the child (children), and, if necessary, the lawyer. The judge of the family court can then decide the pleadings of the case without the presence of the child, if considered in his or her best interest. (see Articles 10, 35 and 58 of the Code of Child Protection)

(iii) Conciliation and the court (B2.08-10)

Courts that have started conciliation procedures are usually able to use temporary orders to implement temporary conciliated agreements. Execution of any conciliation needs a court enforcement order.

*In the **People's Democratic Republic of Algeria**, there are temporary contact orders available. Based on a decision before the final decision is made, there may be emergency measure taken. (see Article 49(2) of the Family Code) The procedure to enforce a conciliation agreement is established by the enforcing judge, by the same procedures for the execution of the judgment. Conciliation agreements need to be transformed into court orders as the law provides that the minutes of the conciliation are enforceable. (see Article 443-3 of CPCA)*

*In the **Arab Republic of Egypt**, there are no temporary contact orders available. The procedure to enforce a conciliation agreement requires the parties to submit the agreement to the Conciliation Committee (taswiya). The conciliation agreements do not need to be transformed into court orders, as they are not immediately enforceable.*

*In the **Kingdom of Jordan**, there are temporary contact orders available with accelerated implementation decisions. (see Article 97 of Sharia Procedural Law) The procedure for enforcing a conciliation agreement requires that the conciliation has first been approved, in accordance with Article 38 of Sharia Procedural Law. As far as the procedures for other jurisdictions, it is still pending drafting and ratification. (See the amendments to the Execution Sharia Law given the agreement of the authenticity of executive bill) These conciliation agreements, in accordance with Sharia Law, are not required to be transformed into court orders—a confirmation order (tasdiq) is sufficient.*

*In **Lebanon**, there are temporary contact orders available. The process to enforce a conciliation agreement is facilitated through the court. These conciliation agreements need to be transformed into court orders.*

*In the **Kingdom of Morocco**, there are temporary contact orders available. Enforcing a conciliation agreement follows a pronouncement of the court, which ensures the execution of the agreement.*

*In **Palestine**, there are no temporary contact orders available. The mediation agreement has to be ratified by the court to become an enforceable instrument akin to a court judgement. During such a procedure, the agreement can be subject to an appeal by the parties on grounds of conflict with a judicial order.*

*In the **Republic of Tunisia**, there are temporary contact orders available in the mediation process. The procedure to enforce conciliation agreements requires that the judge must order his own motion on all urgent matters concerning the residence of the spouses, the custody and visitation matters. (see Article 32 of the Personal Status Code) All conciliation agreements are required to be transformed into court orders.*

B3. Other ADR procedures

In Islamic jurisprudence there is a procedure of appointing “arbitrators” from each of the side’s families. Some respondents to the questionnaire considered this provision as another form of ADR procedure. The differences between this form of arbitration and a mediation procedure seem to be mostly on the amount of freedom to consent to the suggested solution. The way this form of “arbitration” seems to be applied in the region, however, would make it look closer to a form of conciliation.

(i) Existence of other ADR procedures (B3.01)

*In the **People's Democratic Republic of Algeria**, there are other alternative dispute resolution (ADR) procedures available in cross-border family conflicts. A judge may appoint two arbitrators related to both spouses through familial ties. (see Article 446 of CPCA)*

*In **Israel**, there are other ADR procedures available. There is no arbitration per se in such cases, but there is an option to use mediation. It is possible to utilize any kind of dispute settlement proceeding as long as the parties give their consent. In shari'ah courts, judges appoint two arbitrators in line with the precepts of Islamic law.*

*In the **Kingdom of Jordan**, the alternative dispute resolution procedure available in cross-border family conflicts is arbitration. (see Articles 114 and 126 of the Personal Status Law)*

*In the **Republic of Tunisia**, there are other alternative dispute resolution procedures available in cross-border family conflicts. There are bilateral agreements that have established a joint committee advisory. (see Tunisian-French of 18 March 1982, Tunisian – Belgian of 27 April 1989 and Tunisian – Swedish of 16 September 1994)*

C. Divorce and legal separation in cross-border family conflicts

Divorce is one of the most diversely regulated issues in the broad area of family law. A host of different forms of divorce and pertinent regulations populate both civil and religious courts. This is a case where a common category--“divorce” (as a reference to a “typical” form of termination of marriage)--hides a multiplicity of categories and schemes that varies immensely in their actual legal consequences.

Legal separation, on the other hand, as a way to terminate only some of the mutual rights generated by marriage is associated with Christianity and rejected as being against an Islamically determined public policy. However, Christian religious courts in the region use the category.

Enforcement of a decision by a foreign court on divorce or legal separation in cross-border family conflicts might be barred in the region either by the breach of conflict of laws rules, or by the invoking public policy concerns.

(i) Jurisdiction (C.01)

Jurisdiction on divorce and legal separation in cross-border family conflicts depends on the structure of jurisdictions in the system.

In single jurisdiction systems (Algeria, Egypt, Morocco, Tunisia), it is civil courts who have jurisdiction on such cases.

In multiple jurisdiction systems (Israel, Jordan, Lebanon, Palestine), it is both civil courts and religious courts that have jurisdiction on such cases. Jurisdiction is determined either on the basis of the religious affiliation (Jordan, Palestinian Territories), or on the basis of the intention of the parties as presumed from the law of celebration of the marriage (Lebanon).

*In the **People’s Democratic Republic of Algeria**, the competent authority to rule on divorce and legal separation when a foreigner is involved is the Family Affairs section of the court ruling in the first and last resorts. The Algerian judiciary has always considered the cases surrounding legal separation to be contrary to public order and the rules of Sharia law. (see Article 423 of the CPCA)*

*In the **Arab Republic of Egypt**, the competent authority to rule on divorce and legal separation when a foreigner is involved is the Family Court.*

*In **Israel**, the competent authority to rule on divorce and legal separation when a foreigner is involved is based upon the religion of the parties involved in the conflict. If both sides belong to the same religion, then the relevant Religious Court will rule (i.e. the Rabbinical Court for a Jewish couple). If the parties belong to different religious groups, then the Family Court will rule.*

*In the **Kingdom of Jordan**, the competent authorities to rule on divorce and legal separation when a foreigner is involved are the Sharia Courts, Religious Denominations Councils and civil courts when there is a difference in religion or denomination. The Sharia Courts are competent to rule in divorce proceedings. (see Article 2 of Sharia Procedural Law)*

*In **Lebanon**, the competent authority to rule on divorce or legal separation when a foreigner is involved depends on the citizenship of the parties, the religious affiliation of the parties, and the mode of celebration of marriage. (see Law Article 79 NCPC and Article 14 Law of 2 April 1951)*

*In the **Kingdom of Morocco**, the competent authority to rule on divorce and legal separation when a foreigner is involved is the family section of the court. The family section of the court only recognises divorce and not legal separation.*

*In **Palestine**, the competent authorities to rule on divorce and legal separation when a foreigner is involved are the Sharia Islamic Courts for Muslims and the religious courts when Christians are involved. (see the Personal Status Law of 1976 and the Byzantine Family Law)*

*In the **Republic of Tunisia**, the competent authority to rule on divorce and legal separation when a foreigner is involved is the Tunisian Courts.*

(ii) Applicable Law (C.02)

Once jurisdiction on divorce and legal separation in cross-border family conflicts is established, the courts usually apply either foreign law or the lex fori, its own law (Algeria, Morocco, and Tunisia). However, civil courts in multiple jurisdictions system do not have a civil law to apply to cases of divorce and legal separation. On the basis of conflict of laws rules, they either apply a foreign law (Lebanon) or one of the religious laws (Jordan, Palestine). The only explicit case of a religious court applying a non-lex fori religious law is the case of a divorce or legal separation of a non-Muslim couple not belonging to the same religious denomination in Jordan; in such a case the sharia courts are competent and apply non-Muslim law (on the basis of the indications provided by the denominational authorities of the denominations to which the parties belong).

*In the **People's Democratic Republic of Algeria**, the applicable law on divorce and legal separation when a foreigner is involved is not reliant upon the nationality of the foreigner; as long as one of the spouses is of Algerian nationality then only Algerian law is applicable. (see Article 13 CPCA)*

*In the **Arab Republic of Egypt**, the applicable law on divorce and legal separation when a foreigner is involved is the court's national law. If there is an Egyptian party, then the Egyptian law shall be the applicable law.*

*In **Israel**, the applicable law on divorce and legal separation when a foreigner is involved is reliant upon whether or not both parties belong to the same religion or not, and it is a recognised religious community. If they belong to the same recognised religion, then the Religious Court has jurisdiction, and it will rule according to the applicable religious law. When the parties do not belong to a religious community or if the marriage is between two people of different religions, then the Civil Court will apply Article 5 of Israel's Jurisdiction Law Concerning the Dissolution of Marriage (Special Cases and International Jurisdiction) 5729-1969 with the following law being applicable in this order: (1) The domestic law of the couple's law shared domicile; (2) the domestic law of the couple's last shared domicile; (3) the domestic law of the couple's joint country of citizenship; (4) the domestic law of the place where the wedding took place – provided that the court does not apply an aforementioned law if two separate law systems apply to each spouse or if a divorce cannot be performed according to that law. If there is no applicable law as per paragraph (a), the court may apply the domestic law of one of the spouse's domicile, as it deems under the specific circumstances. In any case with both the party's consent, the court can dissolve the marriage according to both party's agreement. (see Article 5 of Israel's Jurisdiction Law Concerning Dissolution of Marriages (Special Cases and International Jurisdictions) 5729 -1969)*

*In the **Kingdom of Jordan**, the applicable law on divorce and legal separation when a foreigner is involved is the husband's confessional law. In Sharia Courts, the husband's law is the applicable law, whether in Sharia Courts or Civil courts. As for the Denominations Councils, in the instance that the married couple follows different denominations, their agreement has priority over the Denominations Councils, otherwise the Civil Courts are competent to hear the case. (see Article 10 of Non-Muslim Religious Denominations Councils, Law no. 2/1938) Jurisdiction is established first, such as:*

(A) If shar'i courts have jurisdiction, they apply the Jordanian Personal Status Law. (B) If denominational councils have jurisdiction (B1) because both parties belong to the same denomination, they will apply the lex fori. If the parties belong to different denominations (B2) but agreed on the jurisdiction of a certain denominational council, the latter will apply its lex fori. (C) If Civil courts have jurisdiction because of difference of religion between the parties, the parties can request a written opinion from the judge of the shar'i court, the president of the denominational council, or the head of the denomination (for denominations without a denominational council) on the law that would be applied to the case, if it had jurisdiction. The opinion becomes then part of the case file and parties have the right to have a legalized copy of it. The authority issuing the opinion needs to certify the completeness and authenticity of its opinion. Civil courts then look at the opinions coming from both parties and decide on the basis of justice and impartiality (qawa'id al-'adl wa-l-insaf).

In **Lebanon**, the applicable law on divorce and legal separation when a foreigner is involved depends on the citizenship of the parties, the religious affiliation of the parties, and the mode of celebration of marriage. (see Article 25 of Decree no. 60/1936 LR, later amended by Decree No. 146/1938 LR)

In the **Kingdom of Morocco**, the applicable law on divorce when a foreigner is involved is the court's national law. The Family Code applies to all relations where one of the parties is a Moroccan citizen. (see art. 2)

In **Palestine**, the applicable law on divorce and legal separation when a foreigner is involved is the law of the country where the marriage was concluded.

In the **Republic of Tunisia**, the applicable laws on divorce and legal separation when a foreigner is involved are as follows: the national law of husband, the national law of the wife, national law of the court and the law of the last common domicile of the spouses. Divorce and separation are governed by the common national law of the spouses that is in effect at the time of the commencement of the legal proceedings. In the absence of a common nationality, the applicable law is then the law of the last common domicile of the spouse, if any; otherwise the law of the forum is applicable.

Interim measures during the legal proceedings are governed by Tunisian domestic law. (see Article 49 of the Code of Private International Law)

(iii) Enforcing foreign judgments on divorce and legal separation (C.03)

Exceptions invoked to prevent enforcement of a foreign judgment on divorce or legal separation in a cross-border family conflict depend on the respect of (a) the domestic conflict of jurisdictions and laws rules, and (b) the religious nature of the marriage to be terminated.

A good example is Lebanon's refusal to recognize a ruling of a foreign state court terminating a religiously celebrated marriage.

*In the **People's Democratic Republic of Algeria**, the exceptions that can be invoked not to recognize a foreign judgment on divorce or legal separation are as follows: first, if the decision is in conflict with another decision already delivered by an Algerian court; second, if there is violation of the rules of jurisdiction; and third, if there is a violation of internal public policy and morals of society.*

*In the **Arab Republic of Egypt**, the exception that can be invoked not to recognise a foreign judgement on divorce or legal separation is based upon the rules regulating the execution of the foreign judgement mentioned by the Law of Civil and Commercial Procedure.*

*In **Israel**, the exceptions that can be invoked in order to not recognise a foreign judgement on divorce or legal separation are based upon religious affiliations. In Israel, there is no procedure for recognising divorce rulings from abroad, since it is a matter of personal status. Therefore, relying upon a foreign divorce decree for the purpose of remarriage or inheritance, for example, will be accepted, yet according to Israeli law, the person will not be able to remarry until the person obtains a divorce in accordance with the applicable religious law.*

*In the **Kingdom of Jordan**, the exception that can be invoked not to recognise a foreign judgement on divorce or legal separation depends on a number of procedural requirements and content-wise if it was beyond the jurisdiction of any Jordanian court for its lack of conformity with public policy and morals (al-nizam al-'am wa-l-adab al-'amma). There are different trends within the Jordanian Sharia Courts to consider the foreign judgement on divorce issued by a non-Muslim judge to consider it or not. That is based upon the interpretations of the Sharia Court of Appeal. As previously mentioned, Islamic law only considers divorce, not legal separation. Legislation is currently being considered to decide which trend to follow.*

*In **Lebanon**, the exceptions that can be invoked to not recognise a foreign judgement on divorce or legal separation are decided by a civil court in respect of a foreign marriage that has been concluded in a religious ceremony/contract.*

*In the **Kingdom of Morocco**, if the right of defence was respected and the court issuing the ruling had jurisdiction, the ruling will be (recognised, ta'dyil), and enforced. (see article 128 of the Family Code and articles 430 and 431 of the Code of*

Civil Procedure) Besides lack of jurisdiction and non-finality of the judgement, the exception that can be invoked not to recognise a foreign judgement in a divorce case is conflict with the public policy of Moroccan law. This happens in cases of legal separation, adoption, or religiously mixed marriage where the woman is Muslim.

*In **Palestine**, the exceptions that can be invoked not to recognise a foreign judgement in divorce or legal separation is when one of the parties is a foreigner.*

*In the **Republic of Tunisia**, the exceptions that can be invoked not to recognise a foreign judgement on divorce or legal separation are as follows: first, if the dispute falls within the exclusive jurisdiction of the Tunisian courts. Second, if the Tunisians courts have already ruled the judgement not open to appeal through regular channels on the same subject between the same parties for the same cause. Third, if the foreign judgement is contrary the public policy within the meaning of the Private International Tunisian Law or was made following a procedure that has failed to preserve the rights of the defence. Fourth, if the foreign judgement has been annulled, suspended or is unenforceable in accordance with the laws of the country where the ruling was made. Finally, if the country where the judgement or decision was made did not respect the rule of reciprocity. (see Article 11 of the Code of Private International Law)*

(iv) The construction of public policy (C.04)

Public policy, often invoked to prevent enforcement of a ruling of a foreign court on divorce or legal separation in cross-border family conflicts, tends to be associated with the violation of fundamental religious principles. However, public policy is geographically determined, and each system adopts a local and/or domestic interpretation of these religious principles. For instance, Tunisian courts oppose public policy to the enforcement of Saudi rulings involving the ability of the woman to divorce, or Egyptian rulings involving polygamous marriages.

Public policy is one of the most widely spread legal concepts globally, yet one of the least susceptible of definition. An in-depth analysis of case law in these divorce and legal separation cases in cross-border family conflicts would be needed for a proper assessment of the definition of public policy in a given system.

Moreover, public policy is also a temporally-sensitive concept that varies and evolves with the evolving sensibilities of judges on a certain issue.

*In the **People's Democratic Republic of Algeria**, public policy is construed for divorce or legal separation in cross-border family conflicts in the following manner: if the answers contained within the judgement are intrusive and counter to morality;*

second, if the judgement is detrimental to internal public order; and third, if the judgement is in violation of law of public order. For example, if the judge considers the legal separation to be contrary to public order.

*In the **Arab Republic of Egypt**, public policy is construed for divorce or legal separation in cross-border family conflicts through a set of rules that cannot be violated since they are based on Islamic laws – when a Muslim party is involved – or when the rules are in violation of the principles of fair trial and human rights.*

*In **Israel**, public policy is irrelevant to the subject of divorce or legal separation in cross-border family conflicts.*

*In the **Kingdom of Jordan**, public policy is construed for divorce or legal separation in cross-border family conflicts according to the general conception of Islamic law. General in the sense that it does not depend on any particular tradition (madhhab), nor any particular state codification. Any interpretation in accordance with the different traditions of Islamic law does not conflict with public policy, even if it conflicts with domestic interpretation of Islamic law. According to Islamic law, the husband can divorce the wife, the wife can divorce herself if she has so required in the marriage contract, she can petition the judge to divorce her, or both spouses can mutually agree to divorce. (see Articles 80-144 of Personal Status Law)*

*In **Lebanon**, public policy is construed for divorce or legal separation in cross-border family conflicts in respect of the exclusive jurisdiction of the religious courts when the marriage was religiously celebrated. It is also invoked to prevent the enforcement of foreign judgements that are too “liberal” (when, for instance, foreign state courts terminate a religious marriage). For example, on 24 February 1992, the Court of Appeals of Mount Lebanon refused to enforce a French judgement terminating a religious marriage celebrated in Lebanon by two spouses resident in France. The reasoning of the Court is that a foreign state jurisdiction cannot rule where even the domestic civil jurisdictions cannot. The same Court of Appeals of Mount Lebanon had previously ruled (Arrêt du 10 juin 1987, Rec. Hatem 1988, vol. 194, p.209) that full adoption of a Lebanese child in Belgium that severed the legal connection between the child and its biological parents was against the public policy of Lebanese Christian communities.*

*In the **Kingdom of Morocco**, public policy is construed for divorce in cross-border family conflict based upon the discretion, interpretation and determination of the court. Legal separation is considered to be in conflict with public policy.*

*In **Palestine**, public policy is construed for divorce or legal separation in cross-border family conflicts just as it is applied to domestic cases.*

*In the **Republic of Tunisia**, public policy is construed for divorce or legal separation in cross-border family conflicts in a number of manners. First, the judge may raise the exception of public policy only if the provision of the foreign law designated conflicts with the fundamental choices of the Tunisian legal system. Second, the judge may invoke the exception of public policy regardless of the nationality of the parties. The public policy exception is not dependent upon the level of the relationship between the Tunisian legal system and the litigation process. Third, foreign law is excluded in its provisions that are contrary to public policy under private international law in Tunisia. The court shall apply the provisions of the Tunisian law instead of the provisions of foreign law. Since the promulgation of the Code of Private International Law by way of law no. 97/1998, the privilege of citizenship is excluded. (see Article 36 of the Code of Private International Law, Judgement of the Court of the First Instance in Tunis no. 32779 of 11 July 2000 (unpublished): Saudi law provisions designated oppose fundamental choices of the Tunisian legal system insofar as it denies women the right to divorce and Judgment of the Court of the First Instance of Sousse No. 9672 of 24 November 2011 (Journal of Law 2002 Tunisian p.195): The provisions of Egyptian law designated oppose the fundamental choices of the Tunisian legal system insofar as he accepts polygamy)*

D. Parental responsibilities and measures for the protection of the child in cross-border family conflicts

The major conflict-generating area in family law is contention over parental responsibilities and other measures for the protection of the child, even in domestic conflicts. Parents tend to explore all the possibilities to get a better deal, and forum shopping scores high among such possibilities whenever an element of foreignness can be detected.

On the already complicated background of a family conflict, then, a whole new dimension of conflict of jurisdictions and applicable laws intervene, with a host of—often conflicting—court determinations on parental responsibilities and measures for the protection of the child.

These cross-border family conflicts display an unmatched ability to stir deep sentiments of antagonism and suspicion among legal systems, and court determinations—both North and South of the Mediterranean—seem often to be based on the fear of the “other,” rather than on factual considerations

D1. Parental Responsibilities

The subsection on parental responsibilities opens with considerations on issues of (i) definition, followed by an analysis of the (ii) competent jurisdiction and the (iii) relevant domestic applicable law regulations.

In order to ascertain when domestic courts claim jurisdiction on a cross-border family conflict over parental responsibilities and other measures for the protection of the child, the subsection then looks at the (iv) relevance of foreign and religious affiliation to determine the applicable law, the (v) degree of freedom of domestic courts in attributing parental responsibilities and other measures for the protection of the child, and (vi) how the concept of “best interest of the child” is invoked by domestic courts in cross-border family conflicts.

(i) Definition (D1.01-02)

The 1996 Hague Convention broadly defines parental responsibilities as “including parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in

relation to the person or the property of the child.” (art.1(2), 1996 Hague Convention)

Differences in approach are properly mirrored in the different terms used to refer to parental responsibility and the ensuing different definitions. A traditional religious distinction between *wilâyah* (authority) and *hadânah* (custody) seems to be used as a background reference by all systems. The individual systems, however, depart from the traditional religious solution when it comes to the automatic attribution of either *wilâyah* or *hadânah* on the basis of the gender of the parent, and the age and gender of the child. In order to capture such departures, and/or domestic religious diversity, systems adopt a variety of other expressions (as in the case of *wisâyah* (guardianship) or *hirâsah* (custody) in Lebanon).

*In the **People’s Democratic Republic of Algeria**, the term “parental responsibility,” which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or property of the child in accordance with Article 1(2) of the 1996 Hague Convention has an equivalent within the Algerian legal system. Parental responsibility is determined in accordance to the rule of legal representation (guardianship, testamentary guardianship, curatorship and kafâlah) under the provision of the Family Code. (see Article 81 and 87ff of the Family Code)*

*In the **Arab Republic of Egypt**, the term ‘parental responsibility’, which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child (article 1 (2), 1996 Hague Convention) has full equivalent in the Egyptian legal system. (see Child Law no. 12/1996)*

*In **Israel**, the term ‘parental responsibility’, which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians, or other legal representatives in relations to the person or property of the child (art 1(2), 1996 Hague Convention) has full equivalent. Although Israel is not signatory to the Convention and its legal system does not have an equivalent term to ‘parental responsibility’, there are related principles such as ‘parental authority’, ‘guardianship’, ‘presumption of infancy’, and ‘visitation rights’.*

*In the **Kingdom of Jordan**, the term ‘parental responsibility’, which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relations to the person or the property of the child (article 1 (2), 1996 Hague Convention) has no equivalent in the Jordanian legal system. Jordanian law, however, regulates in*

detail the interest of the child and its rights as well as parental responsibilities. (see articles 170, 176, 177, 181, 182 and 184 of the Personal Status Law)

*In **Lebanon**, the term 'parental responsibility', which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child (art.1(2), 1996 Hague Convention) can be found in Lebanese legislation. The notion of parental authority, particularly that of the father (the concept of custody and guardianship essentially "Wilaya" (Parental Permission), just as "Wissaya" (Guardianship), and "Hirasa" (Custody of children) are mentioned.*

*In the **Kingdom of Morocco**, the term 'parental responsibility', which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child (Article 1(2) of the 1996 Hague Convention) has a full equivalent within the Moroccan legal system.*

*In **Palestine**, the term 'parental responsibility', which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child (Article 1(2) of the 1996 Hague Convention) can be found in family laws and various religious laws are applicable to religious communities. (see Personal Status Law 1976 and the Family Byzantine Law) The legal rule governing family disputes can be found in the Personal Status law, the regulation of custody (hadanah) and contact rights (mushahadah) are found in the Byzantine family law.*

*In the **Republic of Tunisia**, the term 'parental responsibility', which includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child (Article 1(2) of the 1996 Hague Convention) has a full equivalent within the Tunisian legal system. The term 'parental responsibility' includes parental authority under Tunisian law or any analogous relationship of authority determining the rights, powers and obligations of parents, guardians or other legal representatives in relation to the person or property of the child.*

Parental responsibility shall include: a) the attribution, exercise, termination or restriction of parental responsibility and the delegation thereto; b) the right of custody, including rights relating to the care of the person of the child, in particular the right to determine the place of residence and the right of access, including the

right to take the child for a limited period in a place other than the child's habitual residence; c) guardianship, curatorship and analogous institutions; d) the designation and functions of any person or body to deal with the person or property of the child, to represent or assist; e) placing the child in a foster family or in an institution or its legal collection by kafâlah or an analogous institution; f) the supervision by a public authority of the care of a child by any person having charge of the child; g) the administration, conservation or disposal of the child's property. (see Articles 8, 10, 13, 15, 16 and 17 of the Code of Obligations and Contracts, Articles 43, 46-49, 54, 56 and 154 in the Code of Personal Status, Decree of 18 July 1957 on the organization of the appointment of guardians and the control of their administration and management accounts. Law no. 58-24 of 4 March 1958 on the public guardianship, guardianship and informal adoption, Law no. 98-75 of 28 October 1998 on the allocation of a surname or abandoned children of unknown parentage and Law no. 47 of 21 November 1967 relating to foster care).

(ii) Jurisdiction (D1.03)

In regulating jurisdiction on cross-border family conflicts on parental responsibilities there are two approaches in the region. The first approach focuses on the child and attributes jurisdiction to the court of the child's habitual residence (Algeria), while the second approach focuses on the family and parental responsibilities over the child are seen as an effect of the marriage (Jordan, Lebanon).

*In the **People's Democratic Republic of Algeria**, the competent jurisdictions on parental responsibilities in cross-border family conflicts are that of the place of exercise of guardianship. (see Articles 426-429 of CPCA)*

*In the **Arab Republic of Egypt**, the competent jurisdictions on parental responsibilities in cross-border family conflicts are the domestic courts.*

*In **Israel**, the competent jurisdiction of parental responsibilities in cross-border family conflicts is the civil family court.*

*In the **Kingdom of Jordan**, the competent jurisdictions on parental responsibilities in cross-border family conflicts are the Sharia Courts for Muslims and denominational councils for non-Muslims. (see Personal Status Law, Chapter 7 on Legal Capacity, Custodianship and Guardianship)*

*In **Lebanon**, the competent jurisdiction on parental responsibilities in cross-border family conflicts is based upon religion and the type of marriage, be it civil or religious. Parental responsibilities are considered an effect of marriage, and therefore stemming from the law of celebration of marriage.*

*In the **Kingdom of Morocco**, the competent jurisdiction on parental responsibilities in cross-border family conflicts is the family section of the Court of the First Instance.*

*In the **Republic of Tunisia**, the civil courts of First Instance, Appeal and the Court of Cassation, are competent jurisdictions on parental responsibilities in cross-border family conflicts. (see Articles 39-42 of the Code of Civil and Commercial Procedure and Law no. 58-27 of 4 March 1958 on Public Guardianship, Guardianship and Informal Adoption)*

(iii) Domestic regulations (D1.04-05)

The present subsection aims to give an overview of the existing domestic regulations on parental responsibilities (in particular of their attribution, exercise, termination, limitation, and delegation), in order to assess divergences in the regulations beyond differences in the definitions.

*In the **People's Democratic Republic of Algeria**, the regulations on parental responsibilities in cross-border family conflicts are found in the Algerian Family Law. The Code of Civil and Administrative Proceedings also contains provisions governing certain procedural aspects of guardianship over the person and property of the minor. (see Article 453 of the CPCA)*

Parental responsibilities in cross-border family conflicts are defined and regulated in domestic law in the categories of attribution, exercise, termination or withdrawal of guardianship and restriction. In the case of attribution, the father is the rightful guardian of minor children. Upon his death, the mother becomes the trustee. In the case of divorce, the judge grants guardianship through a decision that dictates which parent is granted custody. In the case of termination or withdrawal of guardianship, a decision shall be made by the family court at the request of a parent or representative of the Crown and or by any interested person. Restriction follows the same procedure as termination or withdrawal of guardianship. The national law of the protected person – the child – shall apply to the conditions of guardianship. (see article 81 and Family Code and 15 of CPCA)

*In the **Arab Republic of Egypt**, the regulations on parental responsibilities in cross-border family conflicts can be found in the family laws and Child Act. Parental responsibilities in cross-border family conflicts are defined and regulated in domestic law through attribution, exercise, termination, restriction and delegation.*

*In **Israel**, regulations on parental responsibilities in cross-border family conflicts are not found in domestic law as such, but rather under the heading of “guardianship” (wilaya); parental responsibilities are not mentioned in Israeli family law, although there is plenty of existing case law and court rulings from Family Court judgements. Israel’s Legal Capacity and Guardianship Law of 1962 also applies to cross-border family conflicts, where the law determines the ‘best interests of the child’ as a principle and the law’s second chapter deals with parent-child relationships. (see Israel Legal Capacity and Guardianship Law of 1962, articles 76 – 80)*

*In the **Kingdom of Jordan**, the regulations on parental responsibilities in cross-border family conflicts can be found, for Muslims, in the Personal Status Law (Art. 223-224 of Law 36/2010), and for non-Muslims partly in the Civil Code, and partly in the denominational laws.*

*In **Lebanon**, the regulation that govern parental responsibilities in cross-border family conflicts can be found (1) in the various confessional laws applicable as enacted by the state and among the Muslim communities and (2) in the various confessional laws applicable as enacted by the religious communities. The ways in which parental responsibilities in cross-border family conflicts are defined and regulated vary, depending on the applicable law(s).*

*In the **Kingdom of Morocco**, the regulations on parental responsibilities in cross-border family conflicts can be found in the family legal code section of the civil code. Parental responsibilities in these conflicts are defined and regulated by the Family Code. (see the Family Code)*

*In **Palestine**, the regulations of parental responsibilities can be found in the 1976 Personal Status Law and the Byzantine Family Law; however, there are no special provisions on cross-border family conflicts.*

*In the **Republic of Tunisia**, the regulations on parental responsibilities in cross-border family conflicts can be found in the family legal code section of the civil code. Since the law of 27 September 1957, all Tunisians are subject to a single law and became amenable to the same courts, the courts of common law. Parental responsibility is attributed to the father, who is the guardian of the minor child. In the case of death or incapacity of the father, the mother is the legal guardian. If both parents died without appointing a guardian, the judge can appoint one. Guardianship is exercised by the father, then the mother, and then the testamentary guardian. Guardianship cannot be terminated without a court order based on legitimate reasons. Guardianship can also be withdrawn. The judge may entrust the responsibilities of guardianship to the mother who has custody of the child if the guardian is unable to fulfil his duties, acts abusively in its exercise, fails to properly fulfil the obligations of*

his duty, leaves his home and becomes homeless, or for any other reason detrimental to the interest of the child. (see Articles 67 and 154 of the Code of Personal Status)

(iv) Multiple applicable laws (D1.06-07)

The three forms of affiliation that are considered when deciding on the applicable law on parental responsibilities in cross-border family conflicts are (a) domestic citizenship of one of the parties (or the child), (b) religious affiliation, and (c) mode of celebration of the marriage. In the case of single applicable law systems (Algeria, Morocco and Tunisia), the option is only between the *lex fori* and the foreign law.

*In the **People's Democratic Republic of Algeria**, in cross-border family conflicts, the regulation is uniform with the exception of the application of the national law of the protected child in accordance with Article 15 of the Civil Code.*

In order to determine the applicable law when a foreign element is involved, the affiliation of the child is considered. (see Article 15 of the Civil Code)

*In the **Arab Republic of Egypt**, in cross-border family conflicts, the regulation is uniform and is not dependent on religious affiliation. The affiliation considered to determine the applicable law when there is a foreign element is prescribed by the Family Courts Act.*

*In **Israel**, regulation is uniform. When determining the applicable law when there is a foreign element involved, it is the child's habitual residence that serves as the deciding factor.*

*In the **Kingdom of Jordan**, in cross-border family conflicts, the regulation is not uniform and depends on religious affiliation. The affiliation of the Jordanian citizen is considered to determine the applicable law when there is a foreign element involved. The applicable law is the Personal Status Law if both parties are Muslims or one of them is non-Muslim, regardless of his nationality. Determination of jurisdiction always precedes and affects determination of the applicable law.*

*In **Lebanon**, in cross-border family conflicts, the regulation varies depending upon the applicable law. The applicable law is determined on the basis of the citizenship of the parties, the religious affiliation of the parties, and the mode of celebration of marriage.*

*In the **Kingdom of Morocco**, cross-border family conflicts, the regulation is uniform and it is the affiliation of the citizen that is considered the determining factor that identifies the applicable law when there is a foreign element involved.*

*In **Palestine**, cross-border family conflicts, the regulation is uniform and it is the affiliation of the residence of the child that is considered the determining factor that identifies the applicable law when there is a foreign element involved.*

*In the **Republic of Tunisia**, cross-border family conflicts, the regulation is uniform and irrespective of religious affiliation. The element considered to establish the applicable law is the habitual residence of the child.*

Personal status is regulated by the law of the country of citizenship. If the person is a dual or multiple citizen, the judge determines the effective citizenship, but if the person is also a Tunisian citizen Tunisian law applies.

Parental responsibility (tutelle) is regulated by the law of the country of citizenship of the child. However, interim or urgent measures can be ordered on the basis of Tunisian law if the child is or the assets are within Tunisian territory. (see Articles 39-41 of the Code of Private International Law)

(v) The courts (D1.08-09)

Broadly speaking, the **degree of freedom** that courts enjoy in attributing parental responsibilities depends on the kind of applicable law. Religious laws tend to be more specific and leave a lesser degree of freedom to court determination (religious laws of Israel, Jordan, Lebanon, and Palestinian Territories), whereas civil laws allow wider freedoms to courts (Algeria, Morocco, Tunisia, and civil law of Israel).

Even in cases of limited freedom of court determination, courts **specify the terms** on which parental responsibilities are attributed to the parents.

*In the **People's Democratic Republic of Algeria**, the courts maintain a wide degree of freedom in attributing parental responsibilities when a foreigner is involved because the child is the sole interest of the judge. (see Article 64 of the Family Code) Algerian Courts specify the terms and conditions of parental responsibilities when a foreigner is involved.*

*In the **Arab Republic of Egypt**, the degree of freedom of courts in attributing parental responsibilities when a foreigner is involved is limited because the degree of freedoms of the courts is limited by specific obligations of parents, regardless of their nationality. The courts do not specify terms and conditions of parental responsibilities*

when a foreigner is involved. There are pre-existing obligations for parents, regardless of their nationality.

*In **Israel**, the degree of the freedom of the courts in attributing parental responsibilities is wide and is done according to the best interests of the child. In order to assess the best interests, the Court will usually request a report from social services in order to make the best assessment. Courts can specify terms and conditions of parental responsibility when a foreigner is involved, there is no differentiation made.*

*In the **Kingdom of Jordan**, the degree of freedom of courts in attributing parental responsibilities when a foreigner is involved is wide because the actions of guardians and the custodians are subjected to court control. The guardian and the custodian shall not take action regarding the child unless they have the approval of the court and this approval is based on a real study and assessment of the effects of this decision on the child. Jordanian courts do not specify the terms and conditions of parental responsibilities when a foreigner is involved. There is no consideration to the foreignness, but rather to the religion.*

*In **Lebanon**, the degree of freedom of the courts in attributing parental responsibilities when a foreigner is involved varies according to the applicable law, either religious or foreign—applied by either religious or civil courts. The courts specify the terms and conditions of parental responsibilities when a foreigner is involved.*

*In the **Kingdom of Morocco**, the degree of freedom of courts in attributing responsibilities when a foreigner is involved is wide and takes the best interests of the child into consideration. Moroccan courts specify the terms and conditions of parental responsibilities when a foreigner is involved.*

*In **Palestine**, the degree of freedom of courts in attributing responsibilities when a foreigner is involved is limited. The law does not differentiate between the foreign parents; it is based upon the judge's decision and the location and type of the marriage that determines the applicable laws. Palestinian courts specify the terms and conditions of parental responsibilities when a foreigner is involved. The court shall apply the conditions that will maintain the educational, moral and religious integrity for the child.*

*In the **Republic of Tunisia**, the degree of freedom of courts in attributing responsibilities when a foreigner is involved is wide. Tunisian courts specify the terms and conditions of parental responsibilities when a foreigner is involved.*

(vi) The child (D1.10-12)

The **best interest of the child** tends to be formally recognized in the legislation of a few systems (Algeria, Morocco and Tunisia), while it is considered to be taken into account by the applicable religious laws themselves elsewhere (Jordan, Lebanon, Palestine).

Just as the concept of public policy, the concept of the best interest of child is one that defies any attempt of definition and has a geographically and temporally determined application.

Court hearings of the child (and other forms of having the voice of the child heard in the judicial proceedings) seem to be generally left to the discretion of the judge, across the region.

*In the **People's Democratic Republic of Algeria**, the best interest of the child for the purposes of determining and defining parental responsibilities is guaranteed by the broad jurisdiction and wide control instruments given to the judge (who can act on its own initiative, or at the request of the public prosecutor (ministère public) or any person acting in the interest of the child). In any action, the court takes the best interests of the child into account. (see Article 81 of the Family Code, Article 453 of CPCA) The best interests of the child for the purposes of assessing parental responsibilities in cross-border family conflicts is determined through the same measures enacted in determining and defining said responsibilities. Through the process, the child may be involved in the hearings unless the judge excludes the child's attendance. In accordance with Algerian law, there is no age limit as prescribed by law (see Article 454(2) of CPCA).*

*In the **Arab Republic of Egypt**, the best interests of the child for parental responsibilities purposes are assessed according to the child and family laws. The child has agency in cross-border family conflicts beginning at the age of 15.*

*In **Israel**, the best interests of the child for parental responsibilities purposes is defined and regulated in domestic law by way of court precedent. Currently, the best interest of the child is not defined by the law, but the Ministry of Justice is in the process of drafting legislation what would address this issue. When determining the best interests of the child, the Court will typically request a report of the family from social services. In addition, the court may also use other evaluations made by psychologists and family law experts, even if they are acquired from the other country involved. Typically a child involved in a cross-border family conflict is not*

heard by the court, however, in some cases if the child is old enough and their testimony is believed necessary or helpful, it may be allowed.

*In the **Kingdom of Jordan**, the best interest of the child for parental responsibilities purposes is not mentioned as such, but Jordanian legislation obliges courts to consider the interest of the child. The law differentiates between custodianship (hadana) and grants it to the mother while guardianship remains tethered to the father. The national laws achieve the best interest of the child by keeping him or her among his parents for as long as possible. The best interest of the child for parental responsibilities purposes is assessed based on the presumption that the child remains in the custody of his parents. Assessment does not alter the legal and Sharia provisions, which obliges that the child must stay in Jordan and make the efforts to remain within the national borders, to identify if any obligation arises from that. In accordance with Jordanian law, if there is a child involved in the cross-border family conflict, he or she is not heard as part of the proceedings. The law requires the hearing of the child if the child is above 15 years of age. Its choice and preference on where to reside need to be taken into consideration, as well as any other special requirement for the financial assistance provided by the father.*

*In **Lebanon**, when determining the best interest of the child for parental responsibilities purposes there is no specific legal definition that meets the term ‘best interests of the child.’ Based upon religious jurisprudence – Sharia, Greek Law, Orthodox Law, etc. – the determination is made in regard of the care of the child, depending on their age and gender, the latter of which with some exception. During the proceedings, the hearing of the child is rarely prescribed by law in the religious courts and in the case that the child is heard, there is no specific age—it is based on the discretion of the judge. As for civil jurisdictions, it depends on the foreign applicable law.*

*In the **Kingdom of Morocco**, the best interest of the child for parental responsibilities purposes is defined and regulated at the domestic level in conformity with the international standards recognised and outlined in the International Convention on the Rights of the Child of 1989, wherein the best interest of the child is taken into consideration in all cases. (see Article 186 of the Family Code) The best interest of the child for parental responsibilities is assessed and determined by listening to the child, soliciting his opinion and ensuring the preservation of his or her standard of living. During the custody proceedings, the child is permitted to be involved in the sessions. (see Article 186 of the Family Code)*

*In **Palestine**, the best interest of the child for parental responsibilities purposes is defined and regulated at the domestic level in accordance with the level of perceived*

danger and risk as well as the health, education and moral interests of the child. During the custody proceedings, the child is permitted to be involved in the sessions based on the discretion of the judge and if their involvement proves beneficial and favourable to the child. Boys are heard at the age of nine and girls at the age of eleven.

*In the **Republic of Tunisia**, the best interest of the child for parental responsibilities purposes is defined and regulated at the domestic level. In order to determine the parental responsibilities as a right, the benefit of various preventative measures in social, educational, health and other provisions and procedures that aim to protect from any form of violence or injury, or physical harm, psychological, sexual abuse and or abandonment or negligence that cause the abuse or exploitation of the child. The best interest of the child for parental responsibilities is assessed and determined in respect of the child and their welfare as determined by the courts, administrative authorities, public institutions or private social welfare. Consideration must be taken with specific care being given to the emotional and moral needs of the child, which includes his age, health, family and various factors of the situation. (see Article 67 of the Personal Status Code and Article 4 of the Code for the Protection of the Child) During the custody proceedings, the child is permitted to be involved in the sessions. The Code for the Protection of the Child guarantees children the right to express their opinions, which will be taken into account in accordance with their age and level of maturity. To this end, a child will be given the special opportunity to express their views and be heard in all judicial, social and educational manners concerning his situation. (see Article 10 of the Code for the Protection of the Child)*

D2. Custody

Just as the subsection on parental responsibilities, the subsection on custody opens with considerations on issues of (i) definition, followed by an analysis of the (ii) competent jurisdiction and the (iii) relevant domestic applicable law regulations.

In order to ascertain when domestic courts claim jurisdiction on a cross-border family conflict over custody, the subsection then looks at the (iv) relevance of foreign and religious affiliation to determine the applicable law, the (v) degree of freedom of domestic courts in attributing custody, and (vi) how the concept of “best interest of the child” is invoked by domestic courts in cross-border family conflicts.

(i) Definition (D2.01-02)

The 1996 Hague Convention broadly defines custody as “including rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence, as well as rights of access including the right to take a child

for a limited period of time to a place other than the child's habitual residence." (art.3(1)(b), 1996 Hague Convention)

On the terminological differences, see the overview in the previous subsection on parental responsibilities.

In this subsection, the breadth of the domestic definition of custody is considered.

*In the **People's Democratic Republic of Algeria**, the term "custody", which includes rights relating to the care of the person of the child and in, particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence (in accordance with article 391) of the 1996 Hague Convention) has full equivalency in national legislation. The Algerian judiciary has always recognized the right to take a child for a limited period in a place other than the child's habitual residence, and, although the Family Code does not provide an answer on this point and especially when the recipient parent's visitation remains far from the habitual residence of the child (art. 69 of the Family Code on the domicile of the custodian parent). Custody is defined in Algerian law as consisting of maintenance, education, upbringing in the father's religion, guarantee of the child's physical and moral health (le droit de garde (hadana) consiste en l'entretien, la scolarisation et d'éducation de l'enfant dans la religion de son père ainsi qu'en la sauvegarde de sa santé physique et morale. Le titulaire de ce droit doit être apte à en assurer la charge, art. 62 of the Family Code).*

*In the **Arab Republic of Egypt**, the term 'custody', which includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, is defined and regulated by the family laws and the Child Act.*

*In **Israel**, the term 'custody,' which includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence has a full equivalent under Israeli law. The legal guardianship, which includes decision regarding health, education, etc., remains the right of both parents, whereas custody is bestowed to one of them.*

*In the **Kingdom of Jordan**, the term 'custody' does not include all the rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence (article*

3(1)(b), 1996 Hague Convention). As for (a) rights relating to the care of the person of the child: they are assigned to the mother with the father's participation in "discipline and guidance." As for (b) the right to determine the child's place of residence: after the place of residence has been determined in the kingdom, it is not allowed to change his place of residence except with the consent of the father. As for (c) rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence: the law admits the rights of visitation and allows travel with the child out of Jordan for a limited period of time after providing the required guaranties to return the child back to Jordan after completion of the purpose of the visit. (see Articles (170, 176, 177, 181, 182, 184) of the Personal Status Law)

In **Lebanon**, the term 'custody,' which includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence (art.3(1)(b), 1996 Hague Convention)—has its legal equivalent in the Lebanese legal system. *Hirasa and hadana*, which refers to the mother's care for young children in Sharia law, can be seen as equivalents.

In the **Kingdom of Morocco**, the term 'custody,' which includes the rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence has its equivalent in the domestic legal system. (see the Provisions of the Family Code)

In **Palestine**, the term 'custody,' which includes the rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence has its equivalent in the domestic legal system under family law and various religious laws, depending on the sect.

In the **Republic of Tunisia**, the term 'custody,' which includes the rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence has its equivalent in the domestic legal system.

(ii) Jurisdiction (D2.03)

There is a clear parallel between the regulation of jurisdiction on cross-border family conflicts on parental responsibilities and on custody. Here as well, there are two

approaches in the region. The first approach focuses on the child and attributes jurisdiction to the court of the child's habitual residence (Algeria), while the second approach focuses on the family and custody of the child is seen a mere effect of the marriage (Jordan, Lebanon).

*In the **People's Democratic Republic of Algeria**, the competent jurisdiction on custody and visitation in cross-border family conflicts is the place where custody is exercised. If the guardian keeps the residence in the foreign country, then the same court is competent and the judge may maintain the custody or deprive custody based upon what is in the best interests of the child.*

*In the **Arab Republic of Egypt**, the competent jurisdictions on custody in cross-border family conflicts are the Egyptian courts.*

*In **Israel**, the competent jurisdiction on custody in cross-border family conflicts is found within the Civil Family Court.*

*In the **Kingdom of Jordan**, the competent jurisdictions on custody in cross-border family conflicts are the Sharia Courts, Denomination Councils and Civil Courts. (see Chapter 3 of the Personal Status Law)*

*In **Lebanon**, the competent jurisdiction on custody in cross-border family conflicts depends on the citizenship of the parties, the religious affiliation of the parties, and the mode of celebration of marriage.*

*In the **Kingdom of Morocco**, the competent jurisdiction on custody in cross-border family conflicts is the Family Section of the Court of the First Instance.*

*In **Palestine**, the competent jurisdiction on custody in cross-border family conflicts is the Family Section of the Court of the First Instance.*

*In the **Republic of Tunisia**, the competent jurisdiction on custody in cross-border family conflicts is the Family Section of the Court of the First Instance, Court of Appeal and the Court of Cassation.*

(iii) Domestic regulations (D2.04-05)

The present subsection aims to give an overview of the existing domestic regulations on custody (in particular on (a) the rights relating to the care of the person of the

child, (b) the right to determine the child's place of residence, and (c) the rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence), in order to assess divergences in the regulations beyond differences in the definitions.

*In the **People's Democratic Republic of Algeria**, the regulations on custody in cross-border family conflicts can be found in the family legal code of the state. (see Article 62 of Family Code) Custody, which includes the rights relating to the care of the person of the child, when a foreigner is involved is defined and regulated in Algeria based upon the parent who holds custody of the child. The cost of care and the physical maintenance remains the responsibility of the father regardless of the existence of the foreign element in the dispute. (see Articles 75 and 78 of Family Code)*

*In the **Arab Republic of Egypt**, the regulations on custody in cross-border family conflicts can be found in the family legal code. Custody, which includes rights relating to the care of the person of the child, is defined and regulated in domestic law when a foreigner is involved, is regulated in accordance with child and family laws. (see Family Law no. 10/2004)*

*In **Israel**, regulations on custody in cross-border family conflicts cannot be found in domestic law, since there are no regulations, only case law. Custody is not defined or regulated in domestic law when a foreigner is involved.*

*In the **Kingdom of Jordan**, the regulations on custody in cross-border family conflicts can be found in the family legal code. (see Articles 170-178 of the Personal Status Law) Custody, which includes rights relating to the care of the person of the child, is defined and regulated in domestic law when a foreigner is involved is the same as it is for Jordanian parents, without exclusivity. The custodian (hadina) is prevented from moving or traveling with the child outside of Jordan for the purposes of residence if the child is of Jordanian nationality, except with the previous approval of the guardian and that the best interest of the child is being met. (see Article 176 of the Personal Status Law)*

*In **Lebanon**, regulations on custody in cross-border family conflicts can be found in two modes. First, it can be found in various confessional laws as applicable by the state in Muslim communities. Second, regulations are also found in various confessional laws as applicable by religious communities. Custody, which includes rights relating to the care of the person of the child, is not definable by one national law, since it varies based on religious affiliation.*

*In the **Kingdom of Morocco**, the regulations on custody in cross-border family conflicts can be found in the Family Code (Mudawwanat al-usra). Custody, which*

includes the rights relating to the care of the person of the child are defined and regulated in domestic law in the regulations of the law on obligations of the parties.

*In **Palestine**, the regulations on custody in cross-border family conflicts can be found in the family legal code section of the civil code. Custody, which includes the rights relating to the care of the person of the child are defined and regulated in domestic contract. The law of Palestine provides the mother with the right to custody, followed by the maternal grandmother, the paternal grandmother, the aunt and then the father.*

*In the **Republic of Tunisia**, the regulations on custody in cross-border family conflicts can be found in the Code of Personal Status. (see from Article 54 on) In Tunisian law, custody (*garde*) includes the rights relating to the care of the person of the child.*

(iv) Multiple applicable laws (D2.06-07)

The three forms of affiliation that are considered when deciding on the applicable law on custody in cross-border family conflicts are (a) domestic citizenship of one of the parties (or the child), (b) religious affiliation, and (c) mode of celebration of the marriage. In the case of single applicable law systems (Algeria, Morocco and Tunisia), the option is only between the *lex fori* and the foreign law.

*In the **People's Democratic Republic of Algeria**, there is no regulation uniform based upon religious affiliation. The father's affiliation is the determining factor that decides the applicability of the law. (see Article 12 of the Civil Code)*

*In the **Arab Republic of Egypt**, regulation is uniform and does not depend on religious affiliation. The affiliation of the citizen – that is involved in the conflict - is considered to determine the applicable law. When one of the parties to the custody dispute is an Egyptian citizen, the applicable law is the Egyptian Family Law.*

*In **Israel**, regulation is uniform since religious affiliation is irrelevant. When determining the applicable law, it is the child's habitual residence that determines the law.*

*In the **Kingdom of Jordan**, the affiliation of the citizen – that is involved in the conflict - is considered to determine the applicable law.*

*In **Lebanon**, there is no uniform regulation based upon religious affiliation. The mode of celebration of marriage will determine the applicable law for any child born within wedlock. For a child born out of wedlock, the child's national and religious affiliations will be considered.*

*In the **Kingdom of Morocco**, the regulation is uniform for all, except Moroccan Jews, who are applied Moroccan Jewish Law.*

*In **Palestine**, the regulation is uniform; however, there is a law for Muslims and a law for all the Christian denominations.*

*In the **Republic of Tunisia**, the regulation is uniform and does not depend on religious affiliation. Custody (garde) is regulated either by the law applied to the dissolution of marriage, by the law of the country of citizenship of the child, or that of the country of the child's habitual residence. The judge will apply the most favourable law to the child. (see Article 50 of the Code of Private International Law)*

(v) The courts (D2.08-16)

Broadly speaking, the **degree of freedom** that courts enjoy in attributing custody depends on the kind of applicable law. Religious laws tend to be more specific and leave a lesser degree of freedom to court determination (religious laws of Israel, Jordan, Lebanon, and Palestine), whereas civil laws allow wider freedoms to courts (Algeria, Morocco, Tunisia, and the civil law in Israel).

Even in cases of limited freedom of court determination, courts **specify the terms** on which custody is attributed to the parents.

*In the **People's Democratic Republic of Algeria**, the rights of custody arise by operation of the law. These rights are attributed to the mother up until the age of 10 for the male children and up until the age of marriage for the female children. The judge may extend the period of detention for the male child until the age of 16 if the child so desires and if the recipient mother has not remarried. (see Article 65 of the Family Code) The rights of custody arise by reason of a judicial decision and are attributed to the mother up until the age of 10 for the male children and up until the age of marriage for the female children.*

The degree of freedom of the courts in regulating custody and recognizing contact rights in cross-border family conflicts is wide. Courts are the only deciding bodies in matters concerning custody and visitation. In deciding, the judges maintain that the best interests of the child remain the goal.

When deciding on cross-border family conflicts, judges are aware of the value of modern means of communication –email, Internet calls, instant message, photo-sharing websites, etc. – in preserving contact between non-custodial parents and children who are separated by great distances. Judges in most cases are prepared to stipulate their use when a foreigner is involved. While Algerian law has no established case law on the modern uses of communications tools, it does not preclude or prevent the judge from introducing and providing the means of modern methods of communication and contact.

Custody can be attributed to a non-parent in a cross-border family conflict, depending on the determined best interests of the child. (see Article 64 of the Family Code and 460-2 CPCA) The attribution of the rights of custody can be modified through court order. The case in which custody can be terminated when a foreigner is involved is if and when the foreigner presents a threat to the best interests of the child.

There are no procedures in place to promote parental agreement on custody in cross-border family conflicts. In attempting conciliation, the judge may consider the arrangements that the spouses have agreed upon, on the condition that this arrangement does not affect the interests of the child. Through the custodial negotiation process, fairness is guaranteed by the judges' primary concern that places the highest priority on the best interests of the child and the willingness of both parents.

*In the **Arab Republic of Egypt**, rights of custody arise by operation of the law and are attributed to the mother until the child is 15 years of age. The rights of custody arise by reason of a judicial decision in the case of a conflict are attributed to the mother until the child is 15 years of age. The degree of freedom of courts in regulating custody and recognising contact rights in cross-border family conflicts is generally limited. This limitation is put in place in order to maintain the best interests of the child. The reports submitted by the psychological and sociological experts may assist the court in determining such interests.*

When deciding on cross-border family conflicts, judges do not recognize the value of modern means of communication –email, Internet calls, instant message, photo-sharing websites, etc. – in preserving contact between non-custodial parents and children who are separated by great distances. Judges in most cases are not prepared to stipulate their use when a foreigner is involved.

Custody can be attributed to a non-parent in cross-border family conflicts when there is an order of judicial authority and by written agreement. There are no cases where

custody can be terminated when a foreigner is involved because nationality does not affect custody rights. There are established procedures in place to promote parental agreement on custody in cross-border family conflicts, which is typically done through the mediation process. This procedure guarantees fairness in the negotiation process because it is handled by an official representative.

*In **Israel**, rights of custody arise by operation of the law. These rights of custody are attributed until the age of six, unless the mother is incapable of raising the child. The rights of custody arise by reason of a judicial order. The degree of freedom of the courts in regulating custody and recognising contact rights is wide. When deciding on cross-border family conflicts, judges are fully aware of the value of modern means of communication, which includes email, Internet calls, instant messaging, photo-sharing websites, etc., in preserving contact between non-custodial parents and children who are separated by great distances. In rare cases custody may be attributed to a non-parent in cross-border family conflicts. This is only the case if both parents are incapable of raising the child properly or if it is proven to be in the best interest of the child. Attribution of the rights of custody can be modified by order of a judicial authority and by written agreement that has been approved by the court. There procedures in place to promote parental agreement on custody in cross-border family conflicts through mediation and conciliation. These procedures ensure fairness in the negotiation process because the mediator can be assigned by the court and there is a special conciliation unit with the Family Court that is staffed by social workers.*

*In the **Kingdom of Jordan**, rights of custody arise by operation of the law and are attributed in the case where there is no conflict. (see Article 173 of the Personal Status Law) The rights of custody arise by reason of a judicial decision in the case of a conflict. (see Article 173 of the Personal Status Law) The degree of freedom of courts in regulating custody and recognising contact rights in cross-border family conflicts is generally wide, in particular in recognition of the contact rights. (see Articles 181-183 of the Personal Status Law)*

When deciding on cross-border family conflicts, judges are aware of the value of modern means of communication –email, Internet calls, instant message, photo-sharing websites, etc. – in preserving contact between non-custodial parents and children who are separated by great distances. Judges in most cases are prepared to stipulate their use when a foreigner is involved. Jordanian law stipulates a direct legal text to organize means of communication. (see Article 181, paragraph (a) of the Personal Status Law)

Custody can be attributed to a non-parent in cross-border family conflicts when the mother does not meet the conditions of custody and in the case when the mother contravenes the visiting provisions, then temporarily this attribution will be given to the maternal grandmother or the paternal grandmother. (see Article 170, 173, 183

paragraph (a) of the Personal Status Law) The attribution of the rights of custody can be modified through the order of the judicial authority since visitation rights are based upon a legal decision. (see Article 182 of the Personal Status Law)

The cases in which custody may be terminated when a foreigner is involved are not reliant upon special conditions to terminate the custody of a foreign mother, but in general, even as applicable to a Jordanian mother, the custody may be terminated in the following cases: first, if the mother breaches the conditions required in the eligibility for custody; second, if the child exceeds the age of seven and his mother is non-Muslim; and third, if the child is Jordanian and the custodian travels with him outside of Jordan without the approval of his father. (see Articles 172 and 175 of the Personal Status Law)

*In **Lebanon**, the rights of custody arise by operation of the law and they are attributed to the mother, permanently up to an age varying according to the applicable law, and to the father, permanently, from an age varying according to the applicable law. In the case of rights of custody there are a large variety of regulations as based on the applicable law (religious or foreign). The rights of custody arise by reason of a judicial decision. The degree of freedom of the courts in regulating custody and recognising contact rights in cross-border conflicts is dependent upon the applicable laws. However, there is less freedom of courts in regulating custody and recognising contact rights among Muslim communities.*

When deciding on cross-border family conflicts, judges are aware of the value of modern means of communication, which includes email, internet calls, instant messaging, photo-sharing websites, etc., in preserving contact between non-custodial parents and children who are separated by great distances. Judges in Lebanon are willing to prescribe such methods when a foreigner is involved, but have not had to do so in past 10 – 15 years.

Custody is not attributed to a non-parent in cross-border family conflicts. The attribution of rights of custody can be modified and is done through a court order. The cases in which custody is terminated do not depend on the existence of a foreign element. There are established procedures to promote parental agreement on custody in cross-border family conflicts through mediation and conciliation as well as through informal procedures and under bilateral agreements, such as the Franco-Lebanese Agreement of 12 July 1999. In order to ensure fairness, there must be an agreement made between the parties that have been approved by the court.

*In the **Kingdom of Morocco**, the rights of custody arise by operation of the law and are attributed to the mother permanently until the age of 15, after which the*

decision is left to the child. However, the best interests of the child in the consideration of custody is taken into account expressly and as a paramount principle (articles 163-186 of the Family Code, but article 186 in particular). The rights of custody arise by reason of judicial decision and are attributed to the determined party following a court issue that has been issued in accordance with the Family Code. The degree of freedom of courts in regulating custody and recognising contact rights is grand, but the court shall consider the best interests of the child's custody. When deciding on cross-border family conflicts, judges are aware of the value of modern means of communication, which includes emails, internet calls, instant messaging, photo-sharing websites, etc., in preserving contact between non-custodial parents and children who are separated by great distances. Judges are prepared to stipulate their use when foreigners are involved. There is nothing that limits the power of judges to take into account these elements and to use their discretion in advising their use.

In cases of cross-border family disputes, custody can be attributed to a non-parent. The cases in which custody is terminated when a foreigner is involved can be evoked when the situations comply with the conditions laid down in Article 173 of the Family Code. There are procedures in place to promote parental agreement on custody in cross-border family conflicts and it is done the conciliation process. The conciliation process guarantees fairness in the negotiation through a valid agreement, where the court takes the best interests of the child into consideration.

*In **Palestine**, the applicable law on custody rights is that of the country where the contract was concluded, or the various confessional laws. The laws in Palestine give the right of custody to the mother followed by the maternal grandmother, the paternal grandmother, the maternal aunt then the father. The various confessional (domestic) applicable laws have different provisions on custody. Such provisions vary, but are uniform for Muslims and uniform for Christians. The rights of custody arise by reason of law and are attributed to the mother or father permanently until ages 9 for males and ages 11 for girls, where the child then has the right to choose his or her preference. (see Personal Status Law 1976) The degree of freedom of courts in regulating custody and recognising contact rights is limited. (see Personal Status Law of 1976) When deciding on cross-border family conflicts, judges are aware of the value of modern means of communication, which includes emails, internet calls, instant messaging, photo-sharing websites, etc., in preserving contact between non-custodial parents and children who are separated by great distances. Judges are prepared to stipulate their use when foreigners are involved.*

In cases of cross-border family disputes, custody can be attributed to a non-parent at the judge's discretion, unless the person legally entitled to custody objects. The attribution of rights of custody can be modified through a written order; parents may agree otherwise as long as in accordance with the laws of guardianship. There are procedures in place to promote parental agreement on custody in cross-border family

conflicts and it is done the mediation and conciliation processes. There are no guarantees of fairness in the negotiation process, but social influence and obligation come into consideration.

*In the **Republic of Tunisia**, the rights of custody arise by operation of the law or by judicial decision. During marriage, custody is exercised conjointly by the parents. In the case of dissolution of marriage by death, the custody is exercised by the surviving parent. If the marriage is dissolved by divorce, then custody is awarded to one of the parties or to a third party. The judge decides to whom custody is attributed, depending on the best interests of the child. (see Articles 57 and 67 of the Personal Status Code) In the latter case, the degree of freedom of courts in regulating custody and recognising contact rights is fairly wide.*

When deciding on cross-border family conflicts, judges are aware of the value of modern means of communication, which includes emails, internet calls, instant messaging, photo-sharing websites, etc., in preserving contact between non-custodial parents and children who are separated by great distances. Judges are prepared to stipulate their use when foreigners are involved.

In cases of cross-border family disputes, custody can be attributed to a non-parent. The attribution of rights of custody may be modified through the issuance of a court order. (see Article 67 of the Personal Status Code and Article 4 of the Code for the Protection of the Child) The cases in which custody is terminated when a foreigner is involved are not subject to specific provisions. The privilege of citizenship is excluded since the promulgation of the Code of Private International Law in 1998. (see article 50 of the Code of Private international Law) There are procedures in place to promote parental agreement on custody in cross-border family conflicts and it is done the through the mediation and conciliation processes. The mediation and conciliation processes guarantees fairness in the negotiation as such proceedings are conducted exclusively under the supervision of the judge. (see Articles 25 and 32 of the Code of Personal Status)

(vi) The child (D2.17-20)

Just as for the **best interest of the child** in matters of parental responsibilities, the best interest of the child in matters of custody tends to defy any attempt of definition and has a geographically and temporally determined application.

The concept tends to be formally recognized in the legislation of a few systems (Algeria, Morocco and Tunisia), while it is considered to be taken into account by the

applicable religious laws themselves elsewhere (Jordan, Lebanon, Palestinian Territories).

Just as in parental responsibility cases, in custody cases **court hearings of the child** (and other forms of having the voice of the child heard in the judicial proceedings) seem to be generally left to the discretion of the individual judge, across the region.

*In the **People's Democratic Republic of Algeria**, the best interest of the child for custody purposes is defined and regulated by first ensuring that the best interest of the child is met by the presumptive guardian by ensuring that they are able to provide the proper care of the child under the conditions as laid down in Article 62 of the Family Code. (see Article 62 of the Family Code) The best interests of the child for the purposes of custody are assessed by ensuring that the proper monitoring of education (good education is based on the concept of the religion of the father) as well as the physical and moral preservation and maintenance of the child. (see Article 62 of the Family Code) During the custodial proceedings the child is heard, however, the judge may waive the child from being heard unless age or condition of the child does not allow it.*

The right to determine the child's place of residence is regulated when a foreigner is involved only if the holder of custody wants to live abroad, and in such case, the custodial parent must approach the judge and request that he or she be allowed to exercise custody abroad. (see Article 69 of the Family Code)

*In the **Arab Republic of Egypt**, the 'best interest of the child' for custody purposes defined and regulated in domestic law is related to the status of the mother, in accordance with the family laws and Child Act. The child is heard during the proceedings at the age of 15.*

The right to determining the child's place of residence when a foreigner is involved is not the factor considered. The child's place of residence is linked to the place of the custodial parent.

*In **Israel**, the best interests of the child are defined and regulated in domestic law through Israel case law; however, there is a proposed bill that might change the legislation on the matter. The best interests of the child for custody purposes is assessed based upon the court's decision as a result of the reports of the social workers or psychologists involved in the case. The child may be heard based on the discretion and decision of the judge. The right to determine the child's place of residence is regulated based on the child's habitual place of residence and the parental capabilities of the parents.*

*In the **Kingdom of Jordan**, the ‘best interest of the child’ for custody purposes is not expressly defined nor regulated in domestic law. It is assessed without reference to a legislative text to the extent that the custody does not monopolise the child and that the non-custodial father has no impediments to practice his visitation rights with the child. The child is heard during the proceedings and at the age of 15 is allowed to choose his custodian. (see Article 173 of the Personal Status Law)*

The right to determining the child’s place of residence when a foreigner is involved is not the factor considered. There is no effect on the right of custodianship when one of the parents travels with the child within Jordan and the custodian (hadina) is prevented from residing or traveling with the child who holds the Jordanian nationality outside of the Kingdom except with the prior approval of the father. (see Articles 175 – 176 of the Personal Status Law)

*In **Lebanon**, the best interest of the child is not defined and regulated by national civil law. However, religious laws determine the care for the child on the basis of the age and gender of the child, with some exception. In assessing the best interests of the child for custody purposes, the gauge relies upon the conventional parameters of wellness, emotional stability of the child, etc. In rare cases, the child is heard during the custody proceedings, the applicable age being determined at the judge’s discretion. The right to determine the place of residence of the child is not regulated by any specific provision for foreigners.*

*In the **Kingdom of Morocco**, the best interests of the child for custody purposes is defined and regulated in domestic law through the application of Article 186 of Family Code. The best interests of the child are assessed through the court’s wide discretion, which is done in accordance with court findings. Children are permitted to be heard during this process of the case and the age is usually decided at the discretion of the court at whichever age is deemed appropriate. The right to determine the child’s place of residence is regulated depending on the residence of the custodial parent.*

*In **Palestine**, the best interests of the child for custody purposes is defined and regulated in domestic law through the applicable law and judicial control and assessment of the custodial parent’s behaviour and established living conditions. The best interests of the child are assessed through the court’s wide discretion, which is done in accordance with court findings. Children are permitted to be heard during this process of the case and the age is designated at nine for boys and eleven for girls. There is no established process used in identifying the right to determine the child’s place of residence.*

*In the **Republic of Tunisia**, the best interests of the child for purposes of parental responsibility are defined and regulated at the domestic level. In order to determine the parental responsibilities as a right, the benefit of various preventative measures in social, educational, health and other provisions and procedures that aim to protect from any form of violence or injury, or physical harm, psychological, sexual abuse and/or abandonment or negligence that cause the abuse or exploitation of the child. The best interests of the child for parental responsibilities are assessed and determined in respect of the child and their welfare as determined by the courts, administrative authorities, public institutions or private social welfare. Consideration must be taken with specific care being given to the emotional and moral needs of the child, which includes his age, health, family and various factors of the situation. (see Article 67 of the Personal Status Code and Article 4 of the Code for the Protection of the Child) During the custody proceedings, the child is permitted to be involved in the sessions. The Code for the Protection of the Child guarantees children the right to express their opinions, which will be taken into account in accordance with their age and level of maturity. To this end, a child will be given the special opportunity to express their views and be heard in all judicial, social and educational manners concerning his situation. (see Article 10 of the Code for the Protection of the Child) The right to determine the child's place of residence is regulated depending on the residence of the custodial parent. (see Article 50 of the Code of Private International Law)*

(vii) The non-custodial parent (D2.21-24)

The right to maintain contact with the child is generally recognized to the non-custodial parent, even in cross-border family conflicts. However, if the non-custodial parent is a foreigner, there are a number of additional restrictions to the ones limiting the right to maintain contact of the non-custodial parent who is a citizen.

*In the **People's Democratic Republic of Algeria**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts. The rights of contact of a non-custodial parent are recognized in custodial decisions when a foreigner is involved. The presiding judge in the proceedings regulates the rights of contact for the non-custodial parent. The non-custodial parent can benefit from the judge's decision to grant the opportunity to take the child home during the school holidays. Legal restrictions can be placed on contact with the non-custodial parent when a foreigner is involved, contact rights can be restricted or suspended according to the degree and severity of the threat to the interests of the child. Resorting to the principle of proportionality, in deciding on restriction or suspension courts also weigh in actual risks. The right to take a child for a limited period of time to a place other than the child's habitual residence is recognized when a foreigner is involved. This right is subject to the following*

requirements: the removal must not present any threat to the child's education and in particular their moral stability; and the child must not be exposed to significant risks to their health and or life.

*In the **Arab Republic of Egypt**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts. Rights of contact of a non-custodial parent are recognised in custodial decisions when a foreigner is involved; the rights of visitation are regulated according to Egyptian family law. Additionally, the good office committee may play a pivotal and integral role in convincing the custodial parent in Egypt to facilitate such contact with the foreign parent. Legal restrictions cannot be placed on contact with the non-custodial parent when a foreigner is involved. The right to take a child for a limited period of time to a place other than the child's habitual residence is not recognized when a foreigner is involved.*

*In **Israel**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts. The rights of contact of a non-custodial parent are recognised in custodial decisions when a foreigner is involved and it is the same verdict that decides on both custody and the rights of contact of the non-custodial parent. Legal restricts cannot be placed on contact with the non-custodial parent when a foreigner is involved.*

*In the **Kingdom of Jordan**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts. (see Articles 181 and 184 of the Personal Status Law) Rights of contact of a non-custodial parent are recognised in custodial decisions when a foreigner is involved; there is no difference between a parent who is a national or foreigner. Legal restrictions can be placed on contact with the non-custodial parent when a foreigner is involved; however, it is not possible to suspend the right of visitation. The imposition that can be made is the restriction that would prevent the child to travel. (see Article 181 of the Personal Status Law) The right to take a child for a limited period of time to a place other than the child's habitual residence is recognised when a foreigner is involved. As previously indicated, there is no difference between the foreigner and the local parent (guardian) and he has the right to visit and to take the child with him as a companion. (see Article 181 of the Personal Status Law)*

*In **Lebanon**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts; this includes the visitation and accommodation rights. The non-custodial parent's rights are recognised in custodial decisions when a foreign is involved. They are regulated. Legal restrictions can be imposed on these contacts with the non-custodial parent*

when a foreigner is involved and only the judge can set the restrictions. The right to take a child for a limited period of time to a place other than the child's habitual residence is recognised, but the recognition is dependent upon the decision of the judge and not a form of legislation.

*In the **Kingdom of Morocco**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts. The rights of contact of a non-custodial parent are recognised in custodial decisions when a foreigner is involved. Legal restrictions can be placed on contact with the non-custodial parent when a foreigner is involved. According to the principle of proportionality to the risk or danger, the rights can be suspended all together.*

*In **Palestine**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts as long as the conditions are compatible with the custodial parent or the court order. The rights of contact of a non-custodial parent are recognised in custodial decisions when a foreigner is involved and there is no differentiation between foreign and domestic orders and they are regulated in accordance with the law. Legal restrictions cannot be placed on contact with the non-custodial parent when a foreigner is involved only because of foreignness. According to the principle of proportionality to the risk or danger, the rights can be suspended all together. The right to take a child for a limited period of time to a place other than the child's habitual residence being recognised when a foreigner is involved is based on the discretion of the judge and issues of compatibility.*

*In the **Republic of Tunisia**, the non-custodial parent has the right to maintain personal relations and direct contact with the child in cross-border family conflicts. The father or mother cannot be prevented from exercising his or her right of access and control over the child in the custody of the spouse. Travel expenses of the child shall be borne by the parent requesting to exercise their right of visitation. (see Article 66 of the Personal Status Code) The rights of contact of a non-custodial parent are recognised in custodial decisions when a foreigner is involved. Legal restrictions can be placed on contact with the non-custodial parent when a foreigner is involved. According to the principle of proportionality to the risk or danger, the rights can be suspended when there is a risk to the child. The right to take a child for a limited period of time to a place other than the child's habitual residence being recognised when a foreigner is involved is recognised under Tunisian law. The foreign parent is allowed to take the child for a limited period of time in a place other than the child's home; however, the non-custodial parent remains responsible for all expenses associated with this travel. (see Article 66 of the Personal Status Code)*

(viii) Parental agreements (D2.25)

Rights of custody can usually be stipulated in a parental agreement. However, when recognition and enforcement are required, the domestic court assesses the compatibility of the agreement with public policy. Chances of a custody agreement breaching general principles of domestic law (civil or religious) are slim.

*In the **People's Democratic Republic of Algeria**, the rights of custody cannot arise by reason of an agreement having legal effect under Algerian law. The agreement may be contrary to the interests of the child and for this reason; the judge remains the sole authority on who decides who is given the right to care.*

*In the **Arab Republic of Egypt**, the rights of custody can arise by reason of an agreement having legal effect under the laws of Egypt.*

*In **Israel**, the rights of custody can arise by reason of an agreement that has legal effect under the law of that State.*

*In the **Kingdom of Jordan**, the rights of custody can arise by reason of an agreement having legal effect under the laws of Jordan. If the two parties to the case agree, the state will recognise their agreement.*

*In **Lebanon**, the rights of custody can arise by reason of an agreement, which then has legal effect under the law.*

*In the **Kingdom of Morocco**, rights of custody can arise by reason of an agreement, which has legal effect under Moroccan law on the condition that it is not contrary to public order.*

*In the **Republic of Tunisia**, rights of custody cannot arise by reason of an agreement, which has legal effect under Tunisian law on the condition that it is not contrary to public order or the best interest of the child.*

D3. Non-Parental Care of the Child (and Its Property)

Non-parental care of the child tends to be more readily available in systems with a single applicable law (civil; Algeria, Morocco and Tunisia), rather than elsewhere, where religious considerations heavily influence the approach towards non-parental care, in particular when parents are still alive.

(i) Domestic regulations (D3.01-05)

The present subsection aims to give an overview of the existing domestic regulations on non-parental care of the child (in particular on (a) how are **guardianship**, **curatorship** and **analogous institutions** regulated, (b) how is the person or body having charge of the child's person or property, representing or assisting the child **determined/designated** in cross-border family conflicts, and who determines the functions of such a person/body, (c) **what cases** is the placement of the child in a foster family or in institutional care decided, (d) when do the provision of care by **kafâlah** or an analogous institution apply, and (e) if and how the **supervision by a public authority** of the care of a child (by any person having charge of the child) is regulated), in order to assess divergences in the regulations beyond differences in the definitions.

*In the **People's Democratic Republic of Algeria**, guardianship, curatorship and analogous institutions are regulated when a foreigner is involved through the law of the protected persons, which in this case is the minor. Algerian law is applied to emergency measure if the child is in Algeria when these measures are taken or if they relate to its property located in Algeria. (see Article 15 of the Civil Code)*

The person or body having charge of the child's person or property, representing or assisting the child determined and/or designated in these conflicts is through the management of various institutions of child protection and the role of the guardian are regulated by the law of the Family Code and remains under the auspices and control of the judge. (see Article 81 of the Family Code and Article 453 of the CPCA)

In the case that the placement of the child in a foster family or in a form of institutional care is warranted, the judge must first consider that the presence of the child with both parents exposes him or her to significant risks to both their physical and mental health. If none of the persons specified in Article 64 of the Family Code – members of the family – accept custody of the child, it may be decided to temporarily entrust the child to a trusted non-family member or place the child in a specialized institution. In these instances a juvenile judge will be involved in the process. (see Ordinance 72-03 relating to the protection of the child and adolescent)

The provisions of care by kafâlah or an analogous institution are the legal voluntary commitment to take responsibility for the maintenance, education and protection of a minor child in the same way as would a father his son, he is granted by a judge or notary with the consent of the child when he has a father and a mother (foster child may be known or unknown parentage), and the copyright holder of legal collection (kafil) should be a Muslim, sane, honest, able to support the child received (makfoul) and able to protect it. The adoption of the child is prohibited by law and the sharia, and cannot be recognized by the Algerian judge in the case of application of foreign

law in accordance with Article 13 (1) of the Civil Code (according to nationality adopter and the adopted child).

Supervision by a public authority of the care of the child – by any person having charge of the child – is regulated in cross-border family conflicts by the presiding judge. The judge may personally refer the monitoring of the care of the child or be seized by the public prosecution or any other interested person. (see article 465 of CPCA)

*In the **Arab Republic of Egypt**, guardianship and curatorship are regulated by law no. 10/2004. The same law determines when the person that will have charge of the child's person or property, will represent or assist the child in cross-border family conflicts as well. The instances where the child is placed in a foster family or institutional care in cross-border family conflicts is when the proceedings are on-going, the child is not released to either party until a judgement has been made. Supervision by a public authority of the care of the child is regulated by the Family Court.*

*In **Israel**, guardianship, curatorship and analogous institutions are regulated in the same manner as when a citizen is involved. When determining or designating the person or body having charge of the child's person or property, it is necessary for the court to assign the legal guardian, who will then consult with the social worker assigned to the case. Placement of the child in a foster family or in institutional care is only done when neither of the parents is capable to raise the child. Supervision by a public authority of the care of child is not regulated in cross-border family conflicts; the same laws and procedures apply as those for "regular" family conflicts.*

*In the **Kingdom of Jordan**, guardianship, curatorship and analogous institutions are not regulated in any different manner than that of a national of Jordan; the regulating law is the Personal Status Law (see Chapter Seven: Legal Capacity (al-ahliyya), Guardianship (al-wilaya), Curatorship (al-wisaya) of Personal Status Law). There is no placement of the child with a foster family or in institutional care as long as the parents are alive, except in two cases regulated by the law: (1) if the mother or the father no longer fulfil the requirements of custody or (2) if there has been a clear aggression against the child and neglect of its rights. When the parents are deceased, the children are placed with either the maternal or paternal grandmothers. The custodianship will then be assigned to whichever one of the relatives has greater more legal capacity. (see Article 170 of Personal Status Law)*

The provision of care by kafâlah or an analogous institution apply in cross-border family conflicts does not apply in Jordan, except in very limited circumstances for the benefit of the child and for a limited period.

*In **Lebanon**, guardianship, curatorship and analogous institutions are diversely regulated depending upon religious affiliations and the type of marriage, which then determines the applicable methods. Determining the person or agency that will represent and assist the person or property of the child depends as well on the religion and type of marriage of the parents.*

Domestic regulations pertaining to the non-parental care of the child involved in cross-border family conflict dictates that the circumstances requiring the child to be placed with a foster family or in an institution is that there is a serious threat to the safety to the child. Decisions relating to the protection of minors (himayat al-ahdass) remain under the competent jurisdiction of the civil courts. The provisions of care by kafâlah or an analogous institution apply in cross-border family conflicts when the child is Muslim. Supervision by a public authority of the care of a child, by any person having charge of the child is regulated in the same manner as internal conflicts.

*In the **Kingdom of Morocco**, guardianship curatorship and analogous institutions are regulated by the family code. The court is responsible for designating the person or body having charge of the child's person or property, which represents and or assists the child determined within the conflict. The cases in which the child is placed in foster care or in institutional care are decided in case of danger to the child when in the company of a parent. The provisions of care by kafâlah or an analogous institution apply in cross-border family conflicts when the child is abandoned. (see law 15-01 related to kafâlah) Supervision by a public authority of the care of a child by any person having charge of the child is regulated by the state through the public prosecution (ministère public).*

*In **Palestine**, guardianship curatorship and analogous institutions are regulated by Sharia law. The Sharia courts maintain jurisdiction over the child and his money. The guardian or custodian in control cannot dispose or utilise the money of the child without the consent of the judge. The court is delegated to represent the interest of the father unless the court otherwise allows the mother and or other guardianship (personal Status Law 1976). The court decides who is the most suitable for the task of administering the persons or property of the child. There are no cases in which the child is placed in foster care or in institutional care, provided the child has parents of surviving family according to the line of responsibility. The only instance where a child is placed in the case of a foster family or under institutional care is in the case of the total loss of his family and assets. Supervision by a public authority of the care of a child is not mandated, but the Sharia court has a general mandate to do so.*

*In the **Republic of Tunisia**, guardianship, curatorship, and analogous institutions are regulated by the law of the country of citizenship of the child. However, interim or urgent measures can be ordered on the basis of Tunisian law if the child is or the assets are on Tunisian territory. Tunisian law considers the conditions set by the law of the country of citizenship of both the adopting and the adopted parties, but the effects of adoption are regulated by the law of the country of citizenship of the adopting party. If the adopting party are citizens of different countries, the law of the country of the conjugal residence will apply. Non-parental official authority (tutelle officieuse) follows the same rules of adoption. (see Articles 41 and 53 of the Code of Private International Law)*

The court is responsible for designating the person or body having charge of the child's person or property, which represents and or assists the child determined within the conflict. The child is placed in foster care or in institutional care when the child has no family, the child has been abandoned or the child's family is in temporary or permanent inability to provide education and care. These children are entrusted to foster families designated by the Ministries of Social Affairs, Youth and Children. These families will have a custody agreement with their legal guardians, if any. The Ministries empower these families and institutions to take charge of the welfare of the child. In situations where a child's health, physical or moral integrity is threatened, then Child Protection may offer temporary placement of the child with a family or any other delegate organisation, social or education institution considered appropriate (either public or private) and if necessary the child may be placed in a hospital in accordance with the rules of force. The Chief of Child Protection may temporarily take in cases of vagrancy and neglect, during which time emergency measures are enacted to place the child in a residential rehabilitation in a nursing home, hospital, a foster home, or an organisation or social or educational institution in accordance with the appropriate regulation. The Chief of Child Protection shall take such measures only as a result of an urgent judicial order. (see Law no. 47/1967 relating to foster care and Articles 30, 43, 45, 59 and 66 of the Code of the Protection of the Child)

The provisions of care by kafâlah or an analogous institution apply in cross-border family conflicts when the child is at risk, at this point the child is placed in a foster home, during which time they are responsible for the education of the child for an agreed amount of time. After this time, the family may approach the Ministry and petition for unofficial guardianship or possibly even adoption in accordance with Law no. 58-27/1958 on Public Guardianship, Guardianship and Informal Adoption. (see Law no. 47/1967) Supervision by a public authority of the care of a child, by any person having charge of the child is regulated by the state. Children in these situations are subject to periodic inspections by Child Protection Services, which is

under the jurisdiction of the Ministries of Social Affairs, Youth and Children. (see Law no. 47/1967 relating to foster care)

D4. Child's Property

The modest aim of this short subsection is to identify where in domestic law regulations regarding the child's property can be found in cases of cross-border family conflicts.

(i) Domestic regulations (D4.01)

In all the jurisdictions considered, regulations on the child's property can be found in the same sources (civil or religious) that regulate parental responsibilities and custody.

*In the **People's Democratic Republic of Algeria**, the administration, conservation or disposal of the child's property is regulated through the law of the Family Code. The guardian shall be responsible for the management of the estate of his ward in the best of his or her interest. The guardian must seek judicial authorization for the following acts in regard to the property of the child: selling, sharing, mortgage, property and transaction; sale of property of particular importance; commitment of minor capital loan, loan participation or action; rental of immovable property of the minor for a period exceeding three years or above age. (see Article 88 of the Family Code)*

*In the **Arab Republic of Egypt**, the administration, conservation or disposal of the child's property is regulated in accordance with the Family Laws and Child Act.*

*In **Israel**, there is no specific regulation for issues of child property in cases of cross-border family conflicts.*

*In the **Kingdom of Jordan**, the administration, conservation or disposal of the child's property is regulated in the local conflicts through the Personal Status Law.*

*In **Lebanon**, the administrative, conservation and or disposal of the child's property is regulated depending upon religious affiliations and the type of marriage, which then determines the applicable methods for monitoring the property of the child.*

*In the **Kingdom of Morocco**, the administration, conservation or disposal of the child's property is regulated by the family code.*

*In **Palestine**, the Sharia court regulates the administration, conservation or disposal of the child's property, except as authorised by the guardian for the periodic disbursement of funds.*

*In the **Republic of Tunisia**, the administration, conservation or disposal of the child's property is entrusted to the guardian, who must exercise its powers under the control and advice of the judge.*

D5. Enforcement of Foreign Judgments

Enforcement of foreign judgments requires (i) identification of the applicable conflict of jurisdictions regulations, (ii) an analysis of the necessary procedures, (iii) possible exceptions to the enforcement (including public policy), and (iv) the effects of bilateral agreements.

(i) Conflict of Jurisdictions Regulations (D5.01)

In all the systems considered, enforcement of foreign judgments on the family matters considered in this section D follows the general domestic rules on conflicts of jurisdictions, and need therefore to be endorsed by a domestic court.

*In the **People's Democratic Republic of Algeria**, the applicable conflict of laws regulations to enforce a foreign judgment on parental responsibilities and custody in cross-border family conflicts require a previous recognition decision (exequatur) by Algerian courts. (see Article 605 of CPCA)*

*In the **Arab Republic of Egypt**, the applicable conflicts of laws regulations to recognise a foreign judgement on parental responsibilities and custody in cross-border family conflicts can be found in articles 296 – 301 of the law of Civil and Commercial Procedures, which regulate the execution of foreign judgements.*

*In **Israel**, the applicable conflict of laws regulations to recognise a foreign judgement on parental responsibilities and custody is the Foreign Judgements Enforcement Law of 1958, which regulation the issues in addition to international treaties, which were incorporated into Israeli law.*

*In the **Kingdom of Jordan**, there are no applicable conflicts of laws regulations to recognise a foreign judgement on parental responsibilities and custody in cross-*

border family conflicts in the Sharia Courts' legislation and all of the foreign decisions are subjected to the provisions of the local law when they need to be exequatur.

*In **Lebanon**, the applicable conflict of laws regulations to recognise a foreign judgement on parental responsibilities and custody in cross-border family conflicts asserts that the exequatur response provides conditions, which are based on the jurisdiction of the foreign court and the rights of the defence in compliance with international public policy in Lebanon. (see Article 1009-1024 HFF, including section 1014)*

*In the **Kingdom of Morocco**, the applicable conflict of laws regulations recognise a foreign judgement on parental responsibilities and custody in cross-border family conflicts is based on the family code and the code of civil procedure.*

*In **Palestine**, the applicable conflict of laws regulations recognise a foreign judgement on parental responsibilities and custody in cross-border family conflicts depend on the law regulating the parents' marriage. If the marriage was celebrated/contracted abroad, the applicable law would be that of the country where the contract was made. If a court order was rendered by a court in the country where the contract was made, it will be enforced in Palestine, provided (a) it does not conflict with public policy, (b) is issued by a competent court and (c) is referred to the competent court in Palestine to obtain a recognition decision (exequatur).*

*In the **Republic of Tunisia**, the applicable conflict of laws regulations to recognise a foreign judgement on parental responsibilities and custody in cross-border family conflicts are based on the Code of Private International Law. Enforcement is not given to foreign judgement in a number of instances. First, if the dispute falls with the exclusive jurisdiction of the Tunisian courts. Second, if Tunisian courts have already issued an enforceable ruling on the same subject between the same parties on the same case. Third, if the foreign judgement is contrary to the public and Tunisian law. Fourth, if the foreign judgement has been cancelled, suspended or decisions made in accordance with the legislation of the originating country or is not yet enforceable in the originating country. Fifth, if the state, foreign judgement or decision was not done in respect to the rule of reciprocity. (see Article 11 of the Code of Private International Law)*

(ii) Procedure (D5.02-04)

With the exception of Morocco, there are no expedited procedures available to enforce a foreign judgment on the family matters considered in this section D. In both the expedited and the ordinary procedures for enforcement, domestic courts verify compliance of conflict of jurisdictions regulations, and absence of exceptions or conformity with domestic public policy.

*In the **People's Democratic Republic of Algeria**, an expedited procedure is not available for the recognition of a foreign judgment under the Code of Civil and Administrative Procedure. The lack of accelerated procedure in the law is without prejudice to those laid down in international conventions and agreements. Once recognized, foreign decision on parental responsibilities and custody will be enforced by the same procedures and will have the same enforcement as decisions of Algerian courts. In Algeria, there are no forms of direct judicial enforcement.*

*In the **Arab Republic of Egypt**, there is no expedited procedure available for the recognition of a foreign judgment on parental responsibilities and custody in cross-border family conflicts. Once the foreign decision on parental responsibilities and custody is recognized it will be enforced by the administrative body. There are no forms of direct judicial enforcement.*

*In **Israel**, there is an expedited procedure available for the recognition of a foreign judgement on parental responsibilities and custody. If the request is submitted under the Hague Convention Law (Return of Abducted Child) 5751 -1991, there is an expedited procedure. If the request is submitted under the general law, one can request to receive urgent relief, in the appropriate circumstances. Once recognised, foreign decisions on parental responsibilities and custody are enforced in the same manner as regular court decisions, either through the Enforcement and Collection Authority or the court could issue an Order of Contempt of Court. There are no forms of direct judicial enforcement.*

*In the **Kingdom of Jordan**, there is no expedited procedure available for the recognition of a foreign judgement on parental responsibilities and custody in cross-border family conflicts. Once the foreign decision on parental responsibilities and custody is recognised it will be enforced in the same manner as national decisions are. This does not allow the mother to take the child holding Jordanian citizenship outside of Jordan for permanent residency, but it may allow the father to take the child out of the country (see Article 177, paragraph b of the Personal Status Law) with the obligation of returning to Jordan for at least limited period of times to be spent with the child's mother. There are no forms of direct judicial enforcement.*

*In **Lebanon**, there is no expedited procedure for the recognition of a foreign judgement in matters of parental responsibility and custody disputes in cross-border family disputes. Once foreign decisions on parental responsibilities and custody have been recognised, they are performed through the Executive Board – within civil*

jurisdictions – and then use the power of the “force publique”. There are then direct forms of judicial enforcement.

*In the **Kingdom of Morocco**, an expedited procedure is available for the recognition of a foreign judgement of parental responsibilities and custody in cross-border family conflicts in accordance with the provisions of the Code of Civil procedure. Once recognised, foreign decisions on parental responsibilities and custody are enforced under the same conditions as Moroccan court decisions. There are no forms of direct judicial enforcement.*

*In **Palestine**, an expedited procedure is not available for the recognition of a foreign judgement of parental responsibilities and custody in cross-border family conflicts. Once recognised, foreign decisions on parental responsibilities and custody are enforced under the same conditions as domestic court decisions. There are no forms of direct judicial enforcement.*

*In the **Republic of Tunisia**, an expedited procedure is not available for the recognition of a foreign judgement of parental responsibilities and custody in cross-border family conflicts. There are no forms of direct judicial enforcement. In respect of enforcement, the non-recognition or declaration of enforceability of foreign judgement and decisions are brought before the Court of the First Instance of the place of the domicile of the party against whom the foreign judgement is invoked. If residency is not established in Tunisia, the case is brought before the Court of the First Instance in Tunis. (see Article 16 of the Code of Private International Law)*

(iii) Exceptions and Public Policy (D5.05-07)

The most critical part in the examination of a foreign judgement for domestic enforcement is the lack of exceptions and its compliance with domestic public policy. The definition of the content of both exceptions and public policy is left to courts and varies significantly from area to area (even within the same system) and across time. Moreover, in the identification of public policy religious considerations tend to resurface even in systems that have adopted a single (civil) applicable law (i.e., Algeria, Morocco and Tunisia).

*In the **People’s Democratic Republic of Algeria**, the exceptions that can be invoked not to recognise a foreign judgment on parental responsibilities are in the cases of same sex marriage and adoptive parents. Both relationships are contrary to public order and morality of Algerian society. Public policy is construed in the following ways: first, if the issue violates morality in Algerian law; second, if there a contradiction to Algerian law and third if the judgment contradicts the decision*

already rendered by the Algeria courts in which the defendant has plead. The Algerian courts cannot oppose a veto to remove a child from within its jurisdiction.

*In the **Arab Republic of Egypt**, the exception that can be invoked not to recognise a foreign judgement on parental responsibility and custody is when said judgement is in violation of Egyptian public policy. In Egypt, public policy is construed as a set of rules that cannot be violated since they are based on Islamic laws – when a Muslim is involved – or such rules that violate the principles of fair trial and human rights. The court cannot oppose a veto to the removal of the child from its jurisdiction unless a travel ban has been implemented by a judge.*

*In **Israel**, the exceptions that can be invoked not to recognise a foreign judgement on parental responsibility and custody is based on public policy, the best interests of the child, the wishes of the child (depending on his or her age) and other exceptions listed in the Foreign Judgements Enforcement Law of 1958, such as the lack of reciprocity in enforcement of foreign judgements, an on-going case in Israel, etc. There is no official public policy in relation to cross-border family conflicts, only case law on the issue. The general approach is to utilise public policy in a restrictive manner. The court can oppose a veto to the removal of the child from its jurisdiction.*

*In the **Kingdom of Jordan**, the exceptions that can be invoked not to recognise a foreign judgement on parental responsibility and custody is based upon religious affiliation, adoptive parenthood, if the judgement details that the child remains with his mother outside of Jordan and if the person who is given custody fails to meet the condition of custodianship. Otherwise, the judgement will be considered to be in accordance with the provisions stipulated in the law. The court cannot oppose a veto to the removal of the child from its jurisdiction unless by request of a custodian. (see Article 181 of the Personal Status Law)*

*In **Lebanon**, the exceptions that can be invoked not to recognise a foreign judgement on parental responsibilities and custody are in the cases of the lack of corresponding foreign court and if the foreign judgement violates Lebanese public policy. (see Article 1014 of the Lebanese Code of Civil Procedure) The concept of public policy in Lebanon is based on the exequatur's ability to refuse decisions and or judgements if considered too liberal. Courts do not (cannot) veto the removal of the child from its jurisdiction because rulings on such enforceability cannot modify the contents and decisions of a foreign judgement.*

*In the **Kingdom of Morocco**, the exceptions that can be invoked not to recognise a foreign judgement on parental responsibilities and custody are: same-sex parents, adoptive parents and anything decided to be contrary to public order. Public policy is*

construed in family conflicts based on interpretation, which is entrusted to the discretion of the judge. The court can oppose a veto to remove the child from its jurisdiction based on the reservation of the best interests of the child. A significant turn in the jurisprudence and case law of Moroccan courts disregards objections to the relevance of any religious affiliation of the parties in the case of custody or visiting rights.

*In **Palestine**, an exception that can be invoked not to recognise a foreign judgement on parental responsibilities and custody is the domestic citizenship of one of the parties. Public policy is construed in family conflicts based on its domestic law. However, practical implementation of foreign judgements throughout Palestine remains difficult because of lack of control over its territory. The judiciary applies the laws of the place of celebration of the marriage, for which there are no clear policies or case law. Interpretation of public policy is within the discretionary powers of the judge. The court can oppose a veto to remove the child from its jurisdiction based on the reservation of the best interests of the child and because the court holds the general mandate in making the final decision.*

*In the **Republic of Tunisia**, the exceptions that can be invoked not to recognise a foreign judgement on parental responsibilities and custody are: same-sex parents, as this exception is contrary to the public policy within the meaning of Tunisian Private International Law. (see Article 11 of the Code of Private International Law) Public policy may be raised by the judge when the provisions of the foreign law are in opposition to the fundamental rights of the Tunisian legal system. The public policy exception is raised regardless of the nationality of the litigants. The public policy exception is not dependent upon the intensity of the relationship between the Tunisian legal system and the litigants. (see Article 36 of the Code of Private International Law) The Chairman of the Trial Court may prohibit the removal of the child from its jurisdiction when it runs the risk of irregular movement.*

(iv) Bilateral Agreements (D5.08)

Enforcement of foreign judgments can be extremely simplified by the provisions of bilateral agreements. The present subsections consider bilateral agreements signed on family matters considered in section D.

*In the **People's Democratic Republic of Algeria**, there has been a bilateral agreement signed on the enforcement of foreign judgments in matters of parental responsibility and custody with France. In relation to children of mixed couples of Algerian-French nationalities, there is a signed agreement in Algiers on 2 June 1988 ratified by Decree 88-144 of 26 July 1988.*

*In the **Arab Republic of Egypt**, there are currently signed bilateral agreements on enforcement of foreign judgement on parental responsibility and custody with a number of countries.*

*In **Israel**, there are no signed bilateral agreements on enforcement of foreign judgements on parental responsibility and custody.*

*In the **Kingdom of Jordan**, there are currently no signed bilateral agreements on enforcement of foreign judgement on parental responsibility and custody.*

*In **Lebanon**, there are bilateral agreements on the enforcement of foreign judgements on parental responsibilities and custody with France, Canada and Australia (when spouses hold different citizenships). These agreements, however, only provide for a conciliation effort to avoid the deadlock of conflicting judicial decisions; they do not affect the enforcement procedure (which, most likely, will be blocked by religious courts).*

*In the **Kingdom of Morocco**, there have been a number of bilateral agreements signed on foreign judgements on parental responsibility and custody with the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Kuwait, France and Spain and there are protocols of cooperation with The Netherlands and Belgium.*

*In **Palestine**, there are no existing bilateral agreements since Palestine has not yet achieved full statehood.*

*In the **Republic of Tunisia**, there have been a number of bilateral agreements signed on foreign judgements on parental responsibility and custody with several African, Arab and European states.*

D6. Rights of Contact

Just as the subsection on parental responsibilities and custody, the subsection on rights of contact opens with considerations on issues of (i) definition, but heavily focuses on (ii) the procedures to exercise the right of contact, and finally considers (iii) the impact of bilateral agreements on the exercise of such rights.

(i) Definition (D6.01)

The present subsection intends to ascertain whether in the domestic applicable law(s) rights of contact would include also: (a) the right to take a child for a limited period of time to a place other than the child's habitual residence, and (b) contacts at a distance; contacts that a parent is authorised to maintain with his or her child by correspondence, telephone or telefax.

Differences in approach are properly mirrored in the different terms used to refer to rights of contact in the domestic applicable law(s).

*In the **People's Democratic Republic of Algeria**, the rights of contact are recognized in domestic law. The right allows for the parent to take a child for a limited period in a place other than the child's habitual residence. Remote contact is when a parent is allowed to keep in contact with their child via mail, phone or other means. Although the legislation does not regulate or detail the modalities of the right of contact, but the judge still accepts several conditions for the exercise of this right, following that the interest of the child and parent are primary.*

*In the **Arab Republic of Egypt**, the rights of contact are not recognised in domestic laws.*

*In **Israel**, the rights of contact are recognised in domestic law and this includes the right to take the child for a limited period of time to a place other than the child's habitual residence as well as contacts at a distances; contacts that a parent is authorised to maintain with his or her child by correspondence, telephone or telefax. They are defined and regulated in accordance with Article 15 of the Legal Capacity & Guardianship Law of 1962, which states that a parent has the responsibility to take care of his child, together with the right to have contact with the child.*

*In the **Kingdom of Jordan**, the rights of contact are recognised in domestic laws. They are defined as (1) the right to take a child for a limited period of time to a place other than the child's habitual residence; and (2) contact at distance where the parent is authorised to maintain with his or her child by correspondence, telephone or other approved means. (see Articles (181) and (178) of Personal Status law)*

*In **Lebanon**, the rights and regulations of contact are recognised and defined and regulated in specific terms. Recognition indicates that the right to take the child for a limited period to a place other than the child's habitual residence and that remote contact with a parent is allowed, via mail, phone or other modes of communication.*

*In the **Kingdom of Morocco**, the rights of contact are recognised in domestic laws are defined and regulated, which includes the right to take a child for a limited period of time to a place other than the child's habitual residence and contacts at a distance where the parent is authorised to maintain with his or her child via correspondence.*

*In **Palestine**, further rights of contact are not recognised in domestic laws.*

*In the **Republic of Tunisia**, the rights of contact are recognised in domestic laws and are defined and regulated, which includes the right to take a child for a limited period of time to a place other than the child's habitual residence and contacts at a distance where the parent is authorised to maintain with his or her child via correspondence. The father cannot take the child away from the mother's place of residence without her consent as long as she retains custody, unless the interest of the child requires otherwise. Neither the father nor the mother can prevent the non-custodial parent from exercising his or her right of contact and control. Travel costs for the non-custodial parent who requests to exercise the right of contact at his/her domicile will be borne by the latter. (see articles 62 and 66 of the Personal Status Code)*

(ii) Exercising the Right of Contact (D6.02-25)

In the jurisdictions considered, exercising the right of contact can require (a) a special (judicial) procedure, (b) a full foreign judgment enforcement procedure (with possible exceptions and cases of domestic public policy violations), (c) the inclusion of further conditions or modification of existing ones.

Whatever the procedure may be, this subsection explores the availability of advice and assistance in establishing the procedure, just as financial aid (in the case of court fees). Swiftiness of the procedure and the availability of temporary orders are issues of central concern, just as the possibility of obtaining the enforcement order in advance.

At the enforcement stage, this subsection looked into the possible requirements by local authorities to exercise the rights of contact, the availability of a legal environment making both parents feel comfortable with the other parent exercising the right of contact, just as the existence of inter-state administrative cooperation in the enforcement and lack of obstacles in the exercising of that right (for example, denial of entry visas).

*In the **People's Democratic Republic of Algeria**, there are special judicial procedures for those seeking to establish or exercise cross-border rights of contact. Based upon the Algerian-French Agreement of 21 June 1988 separated spouses guarantee the effective exercise of rights of access and internal borders. Any decisions made by the*

courts and rulings on child custody awards visitation rights to the other parent. (see Part 6 of the Convention Algerian-French 21 June 1988)

The applicable conflict laws of regulations in recognizing a foreign contact order are found with the provisions and rules of conflict of laws in the space of the Civil Code. Provisions of the Civil Code apply only when it is not otherwise provided by an international convention in force in Algeria. (see Article 9 of the Civil Code) Only the Algerian courts are the competent authority to recognize foreign judgments. (see Article 607 of CPCA) The exceptions that can be invoked not to recognise a foreign contact order are in the case of same-sex parents and adoptive parents. In Algeria, both relationships are viewed as contrary to public order and the morality of Algerian society. The concept of public policy in cross-border family conflicts is construed in relation to: (a) the risk of public disorder, (b) conflict with good morals of Algerian society, and (c) a previous decision of an Algerian court.

The domestic court does not add additional requirements during the recognition procedure of a foreign contact order. Algerian courts do not have jurisdiction to modify foreign judgments. However, the court can determine whether or not the judgment is enforceable or not.

There is legal assistance available in instituting legal procedures, where parties may benefit from legal assistance while abroad if their resources are insufficient to assert their rights in court. (see Law 09-02 amending and supplementing Ordinance No. 71-57 relating to legal aid) The lack of financial means is not a barrier, since the foreign party can benefit from legal aid and legal advice. (see Law 09-02 amending and supplementing Ordinance No. 71-57 relating to legal aid)

During the legal process in cross-border family conflicts, issues as related to contact may be raised at any time. While the process is not swift per se, there are emergency measures or protective measures that can be implemented in accordance with the conditions stipulated by law. Recognition of a foreign contact order can be obtained in advance, in order to obtain advance recognition of a contact or custody decision in any country to which the child will travel whether in the context of relocation, or for the purpose of visiting the non-custodial parent or for other purposes. The order can be obtained through preliminary and emergency measures and are limited in time and distance. (see Article 57 of the Family Code) The order is still obtainable in the instance that it is provisional or temporary. However, it cannot be obtained if the child is not yet present in the territory of the requested state. Mirror judgements are not available.

There are coercive measures available to assist the foreign contact order, the same restraints provided by law to enforce a national decision (requisitioning of public force, the penalty). A return order is available even after the enforcement of a contact order. In execution of a bilateral agreement, a competent prosecutor requires

the use of public force to ensure the return of the child. (see Article 11 of the Convention of the Algeria-French bilateral agreement 2 June 1988) When enforcing a foreign order, the requesting parent or custodial parent is required to provide details of his or her itinerary and contact details to the authorities. Legislation does not list any particular requirement, but if authorities have any suspicion, they may require any measures that guarantee the non-diversion of the child. Professionals are involved in the execution of a foreign judgment and they must undergo special training as bailiffs. In the Algerian process of cross-border family conflicts, there are no available ranges of measures that create a legal environment in which both parents feel a sense of security that the agreed upon contact arrangements will not be abused. Also, there are no available forms of direct judicial enforcement available to the parties. However, there is an administrative cooperation between member states in the implementation of decisions on parental responsibility and custody disputes in cross-border family cases. The Ministries of Justice are designated as central authorities responsible for administrative cooperation between states in the field of cross-border disputes in family matters through bilateral agreements. (see Algerian-French Convention of 21 June 1988) Parents who have foreign contact can possibly be denied a visa to Algeria, which remains an issue of sovereignty of each state (to solve this problem we must think of alternative methods).

*In the **Arab Republic of Egypt**, there are no special judicial procedures for those seeking to establish or exercise cross-border rights of contact. There are no special judicial procedures for those seeking to establish or exercise cross-border rights of contact. The applicable conflict of laws regulations to recognise a foreign contact order are not found in Egyptian law, because the rights of contact are not recognised. There is no form of concentrated jurisdiction for recognition of foreign judgements. There are no exceptions that can be invoked not to recognise a foreign contact order, since they are not recognised in accordance with Egyptian law.*

Public policy is broadly construed in cross-family border conflicts. The domestic courts cannot add additional requirements during the recognition procedure of a foreign contact order. Domestic courts do not consider altering the conditions of the foreign contact order with regards to the relocation of the child.

Advice and information on the recognition process is not available. The Egyptian legal system provides assistance in instituting procedures solely through the involvement of the Central Authority. If there is a lack of financial means, it does not present a barrier to a resolution, the foreigner may benefit from the active involvement of the Central Authority. The law then stipulates that issues related to contact may be raised at any time during the procedure. The procedure is not generalised as swift in nature, but dependent on a case by case basis. Obtaining

recognition of a foreign contact order cannot be obtained in advance. The advanced order cannot be obtained if it is interim or temporary. Nor can the order be obtained if the child is not yet present on the territory of the requested state. Also, there are no mirror judgments available, nor are there coercive measures available to assist the foreign contact order, or return orders.

In Israel, the rights of contact are recognised in domestic law and this includes the right to take the child for a limited period of time to a place other than the child's habitual residence as well as contacts at a distance; contacts that a parent is authorised to maintain with his or her child by correspondence, telephone or telefax. They are defined and regulated in accordance with Article 15 of the Legal Capacity & Guardianship Law of 1962, which states that a parent has the responsibility to take care of his child, together with the right to have contact with the child.

There are no special judicial procedures for those seeking to establish or exercise cross-border rights of contact. The applicable conflict of laws regulations to recognise a foreign contact order can be found in the Foreign Judgement Enforcement Law of 1958. There is no concentrated jurisdiction for recognition of foreign judgements. The exceptions that may be invoked not to recognise a foreign contact order is based on public policy, the best interests of the child, the wishes of the child (depending on his age) and other exceptions listed in the Foreign Judgements Enforcement Law of 1958, such as the lack of reciprocity in enforcement of foreign judgements, an on-going case in Israel, etc. There is no official public policy in relation to cross-border family conflicts, only case law on the issue. The domestic court cannot add additional requirements during the recognition procedure of a foreign contact order. However, depending upon the authority of the court and the exceptions, the court can add additional requirement to the foreign order. The only circumstances in which the domestic courts consider altering the conditions the foreign contact order follows the leading principle surrounding the 'best interests of the child', and that dictates any altering of the foreign contact order.

Appropriate advice and information on the recognition process is available. Some people are eligible to receive legal aid from the state, and they receive this information from their legal counsel that represents them in the Legal Aid Department. There is assistance in instituting procedures available, in the form of legal assistance. Lack of financial means is not a barrier since the foreign party can benefit from free legal aid and advice. Citizens of the states who are members of the Convention on International Access to Justice (1980) are eligible to receive free legal aid in Israel.

Issues of contact can be raised at any time. In accordance with article 8 of the Foreign Judgements Enforcement Law of 1958, it is permissible. The procedure is swift, however, there is no definition in the Israeli legislation that signifies how long the procedure should take, but Israeli Courts give precedence to urgent cases.

Recognition of a foreign contact order cannot be obtained in advance. However, recognition can still be obtained if the order is interim or temporary in nature. According to Article 8 of Israel's Foreign Judgments Enforcement Laws, "The court may, if it considers that the circumstances of the case justify it doing so, enforce a foreign provisional judgment or interim order in a matter of maintenance even though such judgment or order may still be appealable, so long as the other conditions imposed by this Law are fulfilled in respect thereof."

The order may also be obtain if the child is not yet present on the territory of the requested state. This remains subject to the general principle that is practiced in Israeli law, which indicates that a verdict shall not be given unless it is one that can be enforced. Israel typically does not make mirror judgments available. There are coercive measures available to assist the foreign contact order. According to Israel's Execution Law – if the law applies in the case's circumstances (i.e. if the child is physically in Israel) or through Israel's Contempt of Court Ordinance. In rare cases, criminal proceedings may be taken when the case is considered to be a breach of a legal order. There are return orders available after enforcement of a contact order has been issued. When enforcing a contact order, authorities to not strictly define requirements, they are determined based upon the facts of the case. Usually, either a financial guarantee or the depositing of a passport is required. There are no professionals involved in the enforcement of the recognized foreign court order, not unless the court has given a specific set of instructions. A flexible range of measures, which creates a legal environment in which both parents feel a sense of security that contact arrangements will not be abused are available. The courts have a wide discretion to give a variety of orders, apply enforcement rules and in extreme cases, bring forth criminal charges. There are no existing forms of direct judicial enforcement nor is there and inter-state administrative cooperation in the enforcement of decisions on parental responsibilities and custody in cross-border family conflicts. In certain cases, parents with foreign contact orders may be denied entry visas into the state of Israel if other considerations are applied, such as national security, which may prevail.

*In the **Kingdom of Jordan**, there are special judicial procedures for those seeking to establish or exercise cross-border rights of contact. A lawsuit must be brought before the court in order to bind the custodian to these rights in order to hold the non-custodial parent to account for failure to implement the right of contact. (see Article 181 of the Personal Status Law) The applicable conflict of laws regulations to recognise a foreign contact order can be found in the Personal Status Law. There is no form of concentrated jurisdiction for recognition of foreign judgements. The*

exceptions that can be invoked not to recognise a foreign contact order are same-sex parents and adoptive parenthood, for which there is no precedent in Jordanian law.

The domestic courts can add additional requirements during the recognition procedure of a foreign contact order. Although there are no precedents established, it can be hypothetically posited that the judgement could be unjust, causing the second party to appeal, and leading to the imposition of additional requirements. Domestic courts could consider altering the conditions of the foreign contact order with regards to the relocation of the child if the decision dictates that the child could stay with the party making the request inside the Kingdom. However, if the contact order is outside of Jordan, then there is a need for a travel permission other than the contact order, it is hypothetically posited that there is a deficiency in providing guarantees. (see article 177 of the Personal Status Law)

Advice and information on the recognition process is not available, since recognition is not the perfect expression of the right, one is exequatur of the judgment. Since the case is of the nature where both parties are struggling to reach a resolution, consequently, the judge will not make a decision before receiving all appropriate and necessary information. The Jordanian legal system does not provide assistance in instituting procedures. However, if there is a lack of financial means, it does not present a barrier to a resolution. The law then stipulates that issues related to contact may be raised at any time during the procedure. The procedure is swift, but an urgency request may be required in order to further expedite the process. (see Article 79 of Sharia Procedural Law) Obtaining recognition of a foreign contact order cannot be obtained in advance. However, the mother may obtain a judgement when the child lives with his father outside of Jordan to return him once per year, at least, for visitation and contact. She also has the right to visit the child in the country to which he has relocated. This decision may not include recognition of a foreign order, but a process has been established to obtain an advanced order. (see Articles 77, paragraph b and 181 of the Personal Status Law) The advanced order cannot be obtained if the foreign judgment is interim or temporary only, as the enforcement procedure applies only to final judgments. The order cannot be obtained if the child is not yet present on the territory of the requested state. Also, there are no mirror judgements available, nor are there coercive measures available to assist the foreign contact order (unless it has received full recognition (exequatur)). However, it is possible to obtain a return order after the enforcement of a contact order. (see Article 177, paragraph (a) of the Personal Status Law).

When enforcing a foreign contact order, the authorities require the parent to report regularly to the police or some other authority during the period of contact, a deposit of a monetary bond or surety, as well as supervision of contact by a professional or a family member. Finally, the swearing of a religious oath may be required based on the case and the assessment of the Court. There are no professionals involved in the enforcement of the recognized foreign court order. Jordanian law has established a

flexible range of measures that create a legal environment in which both parents feel a sense of security in which contact arrangements will not be abused. In an effort to ensure security, both parties are subject to sanctions if in violation of contact rights. (see Article 183 of Personal Status Law) Also, there are local judgments that can be directly enforced. No inter-state administrative cooperation that enforces the decisions on parental responsibilities and custody in cross-border family conflicts exists in Jordan. Currently, there is no legal precedence where parents with foreign contact orders have been denied visas.

*In **Lebanon**, there are no special judicial procedures for those wishing to establish and or exercise cross-border rights of contact. The applicable laws of conflict of laws regulations to recognise a foreign contact order holds that there are no specific provisions and the laws of conflict are general in accordance with the enforcement of the foreign judgement. The civil court, more specifically the President of the Court of Appeal is the competent authority with the jurisdiction for the recognition of foreign judgements. In Lebanon, the exceptions that can be invoked not to recognise a foreign judgement on parental responsibilities and custody are in the cases of the lack of corresponding foreign court and if the foreign judgement violates Lebanese public policy. (see Article 1014 of the Lebanese Code of Civil Procedure) Public policy in Lebanon based on the exequatur's ability to refuse decisions and or judgements if considered too liberal. The circumstances in which the national courts consider a modification of the foreign judgement in contact proceedings is done outside the exequatur procedure and in the context of a new procedure that amend the conditions relating to the residence of the child.*

Within the Lebanese courts there is advice and appropriate information readily available on the recognition process. Legal assistance is available to assist in the initiation of legal proceedings. Lack of financial resources is not an obstacle for the foreign party, there is legal aid and legal advice available.

Issues related to contact can be raised at any time during the proceedings. The procedure time varies depending upon the level of difficulty of the case. Recognition of a foreign contact order cannot be obtained in advance, whether in order to obtain advance recognition of a contact or a custody decision in any country to which the child will travel, whether in the context of relocation, or for the purpose of visiting the non-custodial parent or for other purposes. A foreign contact order may be obtained if it is only provisional or temporary. Also, the foreign contact order may be obtained even if the child is not yet present on the territory of the requested State. There are coercive measures available to assist the foreign contact order through the use of the public force (ISP) for the execution of the decision. When enforcing a foreign contact order, the requirements of the authorities varies depending upon the decision of the

court. There are no flexible ranges of measures which create a legal environment in which both parents feel a sense of security that contact arrangements will not be abused. There are however, existing forms of direct judicial enforcement. Inter-state administrative cooperation in the enforcement of decisions on parental responsibilities and custody exist only where there are pre-established bilateral agreements on the issue. In principle, parents with foreign contact are not denied entry visas.

In the **Kingdom of Morocco**, there are no special judicial procedures for those seeking to establish or exercise cross-border rights of contact. The applicable conflict of laws regulations to recognise a foreign contact order can be found in the National Law of the Child. The courts are empowered to recognise the foreign judgements. The exceptions that may be invoked not to recognise a foreign contact order are based on same-sex parents, adoptive parents and anything that is considered to be contrary to public policy. Public policy in Morocco is construed based upon the interpretation and discretion of the judge. The Moroccan courts are authorised to add additional requirements during the recognition procedure of a foreign court order in the case of: physical abuse by the parent, physical abuse by the parent to the other parent and as previously stated, the court takes the best interest of the child when making such requirements. The circumstances under which the domestic courts consider altering the conditions of the foreign contact order are in cases of violation of public policy or if the foreign conditions are contrary or not in the best interests of the child.

In the custody proceedings, there is advice and information available on the recognition process. The Kingdom of Morocco also provides the following assistance when instituting the procedures available: legal assistance, courtroom assistance, translation, involvement of the Central Authority and simplified procedures. Lack of financial means are not a barrier, the foreigner can benefit from free legal aid and advice, pro bono representation and simplified procedures. During the custody proceedings, issues of contact may be raised at any time and the procedure is quick. In the case of a foreign contact order, recognition can be obtained in advanced. The order cannot be obtained however, if it is interim or temporary in nature. The order can still be obtained if the child is not yet present on the territory of the requested state, but the court must assess the situation. There are no mirror judgements available in the proceedings.

Coercive measures are available to assist the foreign contact order on the same conditions of execution as the national contact orders. Return orders are available even after the enforcement of a contact order. When enforcing a foreign contact order, there are no requirements to provide guarantees. There are no professionals involved in the enforcement of a recognised foreign court order. There is no range of flexible measures that create a legal environment in which both parents feel a sense of security that contact arrangements will not be abused. Nor are there forms of direct judicial enforcement. Inter-state administrative cooperation in the

enforcement of decisions on parental responsibilities and custody in cross-border family conflicts are found within the bilateral agreements and multilateral agreements of Morocco. Parents with foreign contact orders are not denied entry visas to the Kingdom of Morocco.

*In **Palestine**, the applicable conflict of laws regulations to recognise a foreign contact order can be found in the Personal Status Law of 1976. There is no court empowered to recognise the foreign judgements. The exception that may be invoked not to recognise a foreign contact order is based on the national citizenship of one of the parties. There is no clear public policy, therefore, only the letter of the law and origin of the marriage contract are applicable. The Palestinian courts are authorised to add additional requirements during the recognition procedure of a foreign court order in case of physical abuse by the parent. The circumstances under which the domestic courts consider altering the conditions of the foreign contact order are in cases of violation of public policy or if the foreign conditions are contrary or not in the best interests of the child.*

In the custody proceedings, there is advice and information available on the recognition process. Palestine also provides assistance when instituting the procedures for simplified procedures. Lack of financial means is a barrier. During the custody proceedings, issues of contact may be raised at any time, however, the procedure is swift. In the case of a foreign contact order, recognition may not be obtained in advance. Nor can the order cannot be obtained if it is interim or temporary in nature. Neither can the order be obtained if the child is not yet present on the territory of the requested state. There are no mirror judgements available in the proceedings.

Coercive measures are available to assist the foreign contact order on the same conditions of execution as the national contact orders. Return orders are available even after the enforcement of a contact order as long as the case and order are proven valid. When enforcing a foreign contact order, there are no formal legislative requirements to provide guarantees, but guarantees can be required by the court. There are no professionals involved in the enforcement of the recognised foreign court order. There is a range of flexible measures that create a legal environment in which both parents feel a sense of security that contact arrangements will not be abused. (see Shar'i Procedural Law) Within Palestine there is inter-state administrative cooperation in the enforcement of decisions on parental responsibilities and custody in cross-border family conflicts. It cannot be verified if parents with foreign contact orders are denied entry visas to Palestine as Palestine does not have control of its borders.

*In the **Republic of Tunisia**, there are special judicial procedures for those seeking to establish or exercise cross-border rights of contact, there is a joint commission for those seeking to establish or exercise their right. (see Bilateral Agreements) The applicable conflict of laws regulations to recognise a foreign judgement on parental responsibilities and custody in cross-border family conflicts are based on the Code of Private International Law. Enforcement is not given to foreign judgements in a number of instances. First, if the dispute falls with the exclusive jurisdiction of the courts of Tunisia. Second, if the Tunisian courts have already been found to not be liable through regular channels on the same subject between the same parties for the same cause. Third, if the foreign judgement is contrary to the public and Tunisian law. Fourth, if the foreign judgement has been cancelled, suspended or decisions made in accordance with the legislation of the originating country or is not yet enforceable in the originating country. Fifth, if the state, foreign judgement or decision was not done in respect of the rule of reciprocity. (see Article 11 of the Code of Private International Law) The competent authority is the judiciary; however, there is no form of concentrated jurisdiction for the recognition of foreign judgements.*

The exceptions that can be invoked not to recognise a foreign judgement on parental responsibilities and custody are: same-sex parents, as this exception is contrary to the public policy within the meaning of Tunisian Private International Law. (see Article 11 of the Code of Private International Law) Public policy may be raised by the judge when the provisions of the foreign law are in opposition to the fundamental rights of the Tunisian legal system. The public policy exception is raised regardless of the nationality of the litigants. The public policy exception is not dependent upon the intensity of the relationship between the Tunisian legal system and the litigants. (see Article 36 of the Code of Private International Law) The Chairman of the Trial Court may prohibit the removal of the child from its jurisdiction when the child is at risk of irregular movement. The domestic court cannot add additional requirements during the recognition procedure of a foreign contact order. There are no circumstances in which the domestic courts would consider altering the conditions of a foreign contact order.

In the custody proceedings, there is advice and information available on the recognition process. Advice is given through the consultation of the controlling judge (juge aiguilleur), the Ministry of Justice website (<http://www/e-justice.tn>), civil procedure textbooks, and at the Central Authority at the Ministry. The Republic of Tunisia also provides the following assistance when instituting the procedures available: legal assistance, courtroom assistance, translation, involvement of the Central Authority and simplified procedures. Lack of financial means are not a barrier, the foreigner can benefit from free legal aid and advice, pro bono representation and simplified procedures. During the custody proceedings, issues of contact may be raised at any time and the procedure is quick. In the case of a foreign contact order, recognition cannot be obtained in advance. Nor can the order be obtained if it is interim or temporary in nature. The order cannot be obtained if the

child is not yet present on the territory of the requested state. There are no mirror judgements available in the proceedings.

Coercive measures are available to assist the foreign contact order on the same conditions of enforcement as the national contact orders. Law no. 62-22/1962 established the offence of non-representation of children (wrongful retention). Under this single-article law, when custody of a minor has been decided by court order – temporary or permanent – the father, mother or anyone else who will (1) retain the minor from those who have the right of custody over the child, or (2) remove or cause the removal of the child--even without fraud or violence--from those who have custody rights or from where the latter have placed the child, shall be punished by imprisonment of three months to a year and a fine of 24 to 240 dinars or any one of these two penalties. (see Law no 62-22 of 24 May 1962 on establishing an offence to non-representation of children) Return orders are not available even after the enforcement of a contact order. Professionals are involved in the enforcement of the recognised foreign court order under the section of child protection within the Ministry of the Interior and must undergo special training. There are ranges of flexible measures that create a legal environment in which both parents feel a sense of security that contact arrangements will not be abused.

(iii) Bilateral Agreements (D6.26)

Exercise of rights of contact can be extremely simplified by the provisions of bilateral agreements. The present subsection considers the bilateral agreements relevant for the exercise of such rights.

*In the **People's Democratic Republic of Algeria**, a bilateral agreement on the enforcement of foreign contact orders has been signed with France. (see Algerian-French Convention of 21 June 1988)*

*In the **Arab Republic of Egypt**, there are no existing bilateral agreements of enforcement of foreign contact orders.*

*In **Israel**, there are no signed bilateral agreements on enforcement of foreign contact orders.*

*In the **Kingdom of Jordan**, there are no existing bilateral agreements of enforcement of foreign contact orders.*

*In **Lebanon**, there are no specific signed bilateral agreements that exist on the enforcement of foreign contact orders.*

*In the **Kingdom of Morocco**, there are signed bilateral agreements on enforcement of foreign contact orders in matters of personal status with the Arab Republic of Egypt, the Kingdom of Bahrain, the Kingdom of Kuwait, the Arab Republic of Syria, France and Spain.*

*In **Palestine**, there are no signed bilateral agreements on enforcement of foreign contact orders in matters of personal status since Palestine is not yet considered a state.*

*In the **Republic of Tunisia**, there are several signed bilateral agreements on enforcement of foreign contact orders.*

D7. International Obligations

The present subsection considers the international obligations that states have assumed on matters discussed in the present section D (parental responsibilities, custody, non-parental care, child's property, enforcement of foreign judgments, and rights of contact) and opens with a general section on the status of international agreements in domestic law. It later surveys the status of signatures and ratifications on the 1989 UN Convention on the Rights of the Child, and the 1996 Hague Convention, besides the necessity of implementing legislation and other international bilateral agreements

(i) Status of International Agreements in Domestic Law (D7.01)

Most of the jurisdictions considered follow a monist approach and recognize to the international agreements a status above the one of domestic law.

*In the **People's Democratic Republic of Algeria**, international conventions signed and ratified by the President of the Republic, and in accordance with the constitution, are above legislated law. (see Article 132 of the Constitution of the People's Democratic Republic of Algeria 1996)*

*In the **Arab Republic of Egypt**, international conventions signed and ratified are part of domestic law.*

*In **Israel**, international conventions are not binding in Israeli law, unless they have been expressly adopted as laws by Israel's parliament, the Knesset. (see CrimA*

131/67 Kamiar v. The State of Israel (judgment rendered 9 June 1968), *Piskey Din* 22(2) 85, 112)

*In **Lebanon**, the statuses of international conventions signed and ratified by the State have a direct value in the hierarchy of legal norms and are superior to ordinary domestic law. (see Article 2 of the Code of Civil Procedure)*

*In the **Kingdom of Morocco**, international conventions that have been signed and ratified by the state are applied by the courts. The constitutional amendments of 2011 confirmed this earlier position, developed by the courts, and included it in the Constitution's preamble ("within the framework of the Constitution and the laws of the Kingdom, and its immutable national identity").*

*In **Palestine**, international conventions cannot be signed, since Palestine's statehood has not yet been universally recognised.*

*In the **Republic of Tunisia**, duly signed, approved (by Parliament, at present the constitutional convention) and ratified international agreements enjoy a higher status than ordinary legislation. (Constitutional Declaration (loi constituante) nr. 6 of 16 December 2011 on the provisional organisation of powers)*

(ii) 1989 UN Convention on the Rights of the Child (D7.02)

*In the **People's Democratic Republic of Algeria**, the 1989 UN Convention of the Rights of the Child has been signed and ratified with reservation on four provisions. The Convention was ratified with interpretive statements in accordance with Presidential Decree No. 92-461 of 19 December 1992. (see Presidential Decree No. 92-461 of 19 December 1992 on the ratification with interpretative declarations to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations 20 November 1989)*

*In the **Arab Republic of Egypt**, the 1989 UN Convention on the Rights of the Child has been signed without reservations.*

*In **Israel**, the 1989 UN Convention on the Rights of the Child has been signed without reservations on 3 July 1990 and ratified on 3 October 1991.*

*In the **Kingdom of Jordan**, the 1989 UN Convention on the Rights of the Child has been signed expressing reservation on articles 14, 20 and 21 of the Convention, which*

grant the child the right to freedom of choice of religion and concern the question of adoption, since they are at variance with the precepts of the tolerant Islamic Shariah.

*In **Lebanon**, the 1989 UN Convention on the Rights of the Child has been signed without reservations.*

*In the **Kingdom of Morocco**, the 1989 UN Convention on the Rights of the Child has been signed and ratified without reservations by Royal Decree in 1997.*

*In **Palestine**, the 1989 UN Convention on the Rights of the Child has not been signed since Palestine's statehood has not yet been universally recognised.*

*In the **Republic of Tunisia**, the 1989 UN Convention on the Rights of the Child has been signed and ratified with reservations. Tunisia has ratified the UN Convention of 1989 on the Rights of the Child in accordance with Act no. 91-92 of 29 November 1991. Law no. 2008-36 (9 June 2008) approved the withdrawal of the declaration no. 1 and reserves no.1 and no.3 of the government of the Republic of Tunisia on the UN Convention of the Rights of the Child. (see Law. No. 2008-36 of 9 June 2008)*

(iii) 1996 Hague Convention (D7.03)

*In the **People's Democratic Republic of Algeria**, the Hague Convention of 1996 (Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children) has not been signed.*

*In the **Arab Republic of Egypt**, there has been no signature of the 1996 Hague Convention (Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children).*

*In **Israel**, the 1996 Hague Convention (Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children) has not been signed.*

*In the **Kingdom of Jordan**, there has been no signature of the 1996 Hague Convention (Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children).*

*In **Lebanon**, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children has not been signed.*

*In the **Kingdom of Morocco**, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and the Cooperation in Respect of Parental Responsibility and Measure for the Protection of the Children was signed and ratified by Royal Decree on 22 January 2003.*

*In **Palestine**, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and the Cooperation in Respect of Parental Responsibility and Measure for the Protection of the Children has not been signed since Palestine's statehood has not yet been universally recognised.*

*In the **Republic of Tunisia**, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and the Cooperation in Respect of Parental Responsibility and Measure for the Protection of the Children has not been signed.*

(iv) Implementing Legislation (D7.04)

*In the **People's Democratic Republic of Algeria**, the Hague Convention of 1996 (Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children) has not been signed.*

*In **Israel**, it will be necessary to implement legislation on the matters of the international conventions.*

*In **Lebanon**, implementing legislation in respect of the 1996 Hague Convention is not applicable.*

*In the **Kingdom of Morocco**, it was not necessary to implement legislation on the matters of the international conventions.*

*In **Palestine**, it was not necessary to implement legislation of the international conventions since Palestine's statehood has not yet been universally recognised.*

(v) Bilateral Agreements (D7.05)

*In the **People's Democratic Republic of Algeria**, a bilateral agreement on matters arising from international conventions has been signed with France. (see Algerian-France Convention of 21 June 1988)*

*In the **Arab Republic of Egypt**, there are no currently signed bilateral agreements on matters relevant to the abovementioned international conventions.*

*In **Israel**, there are no signed bilateral agreements on matters relevant to the abovementioned international conventions.*

*In the **Kingdom of Jordan**, there are currently no signed bilateral agreements on matters relevant to the abovementioned international conventions.*

*In the **Kingdom of Morocco**, there are signed bilateral agreements on matters relevant to the abovementioned international conventions.*

*In **Palestine**, there are no signed bilateral agreements on matters relevant to the abovementioned international conventions since Palestine's statehood has not yet been universally recognised.*

*In the **Republic of Tunisia**, there are signed bilateral agreements on matters relevant to the abovementioned international conventions with Belgium, France, Norway and Sweden.*

E. Wrongful Removal or Retention of the Child in Cross-Border Family Conflicts

Wrongful removal or retention of the child raises issues relevant both for the reestablishment of the previous situation and reconsideration of custody and contact rights, and for the system's interest in seeing its orders correctly and fully implemented—at times also with a further punishment for the specific disvalue of the action. In cross-border family conflicts, the presence of a foreign element might slightly change the equation.

A few jurisdictions have introduced specific legislation dealing with wrongful removal or retention of the child, recognizing the various profiles of specificity of the issue. The same jurisdictions seem to be more prone to signing international conventions or bilateral agreements. There seems to be a pattern in recognizing the importance and specificity of wrongful removal or retention on one hand, and the adoption of ad-hoc legislation and signing of international agreements on the other. This pattern cuts across systems with single or multiple jurisdictions as well as single or multiple applicable laws.

(i) Wrongful Character (E.01)

The general principle that an act in breach of custody or contact rights is wrongful is present in all jurisdictions (but the father's removal or retention is not regarded as wrongful in the Kingdom of Jordan). However, not all the jurisdictions consider wrongful a removal or retention as formulated in both paragraphs of art. 3 (1) of the 1980 Hague Convention (with the significant exception of Algeria and Tunisia). The individual jurisdictions have a different degree of the system's response in civil or criminal procedures. Some jurisdictions have adopted specific provisions, other apply general provisions on (civil) obstruction to justice. However, the application of general criminal provisions on abduction against parents tends to be refused (Jordan and Lebanon, where the Penal Code provides for a special crime).

*In the **People's Democratic Republic of Algeria**, the removal or retention of the child is considered wrongful when it is in breach of rights of custody attributed to a person or institution or any other body. This may be either jointly or alone and also when at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. (see Article 3 (1) paragraphs (a) and (b) of the Hague Convention 1980). The act of illegal movement is punishable under criminal law in Algeria (see Articles 327 and 328 of Penal Code)*

*In the **Arab Republic of Egypt**, the removal or retention of the child is considered wrongful when it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone (art. 3(1)(a), 1980 Hague Convention).*

*In **Israel**, the removal or retention of the child is considered wrongful when it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or individually or when, at the time of removal or retention those rights were exercised, either jointly or individually, or would have been so exercised but for the removal or retention of the child. The child must also have been habitually residing in Israel immediately before the wrongful removal or retention. (see Hague Convention Law (Return of Abducted Children) 5751, 1991)*

*In the **Kingdom of Jordan**, the removal or retention of the child is regulated by Articles 176 and 177 of the Personal Status Law, which consider it wrongful when the removal occurred without the father's consent.*

*In **Lebanon**, the removal or retention of the child is considered wrongful when it is in breach of rights of custody attributed to a person or institution or any other body, either jointly or alone. (see Article 3 (1) paragraphs (a) and (b) of the Hague Convention 1980). Not by virtue of the general provision, but by virtue of a specific provision on the removal of the child with the purpose of subtracting him/her from the legal custodian (art. 495 of the Penal Code).*

*In the **Kingdom of Morocco**, the court decides on the lawfulness or unlawfulness of the removal or retention of the child. It is not a criminal offence to withhold the child, if the marriage is still valid—courts would not intervene in such a case. If the child is below 24 months, courts can take executive decisions to return the child to the mother and issue travel documents for the child to travel with the mother. The wrongful retention ('adam taslim al-tifl) is an independent criminal offence.*

*In the **Republic of Tunisia**, the removal or retention of the child is considered wrongful under Tunisian law when it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone (Article 3(1)(a), 1980 Hague Convention) and when the right was actually exercised either jointly or alone at the time of the removal or retention, or would have been if such events had occurred (article 3(1)(b), 1980 Hague Convention). (see Law no 62-22 Comments of 24 May 1962 established on the offence of non-representation of children)*

Under this single-article law, when custody of a minor has been decided by court order – temporary or permanent – the father, mother or anyone else who will (1) retain the minor from those who have the right of custody over the child, or (2) remove or cause the removal of the child—even without fraud or violence—from those

who have custody rights or from where the latter have placed the child, shall be punished by imprisonment of three months to a year and a fine of 24 to 240 dinars or any one of these two penalties.

E1. First Contact Point

(i) For Parents (E1.01)

In most jurisdictions the first contact point for parents in case of wrongful removal or retention of the child is the consular authority, unless there is a bilateral agreement regulating the functioning of a first contact point, usually based at the Ministry of Justice.

*In the **People's Democratic Republic of Algeria**, the first point of contact for parents needing information, advice and assistance in cases of wrongful removal or retention of the child in cross-border family conflicts is the central authority as designated by agreement. The prosecutor, the police and gendarmerie are territorially competent to serve as the first point of contact.*

*In the **Arab Republic of Egypt**, the Administrative body is the first point of contact for parents needing information, advice and assistance in case of wrongful removal or retention of the child in cross-border family conflicts.*

*In **Israel**, the first point of contact for parents needing information, advice and assistance in case of wrongful removal or retention of the child in cross-border family conflicts is: (1) Central Authority for Israel under the Hague Convention on Civil Aspects of International Child Abduction; (2) the police; and (3) private attorneys. In some cases parents may also contact the police or private attorneys; however, the case is then normally referred to the Central Authority for handling.*

*In the **Kingdom of Jordan**, there is no first point of contact for parents needing information, advice and assistance in case of wrongful removal or retention of the child in cross-border family conflicts.*

*In **Lebanon**, the first point of contact for parents needing information, advice and assistance in cases of wrongful removal or retention of the child in cross-border family conflicts is the consulate of their country of residency. The consular is competent to serve as the first point of contact.*

*In the **Kingdom of Morocco**, the first point of contact for parents needing information, advice and assistance in case of wrongful removal or retention of the child in cross-border family conflicts is the headquarters of the Department of Justice, Civil Affairs Direction (Direction des Affaires Civiles).*

*In **Palestine**, there is no specialised first point of contact for parents needing information, advice and assistance in case of wrongful removal or retention of the child in cross-border family conflicts; however, in the event of such cases, it is reported to the Public Prosecution.*

*In the **Republic of Tunisia**, the first point of contact for parents needing information, advice and assistance in cases of wrongful removal or retention of the child in cross-border family conflicts is the Ministry of Justice as the central authority (in the case of existence of bilateral agreements), the Ministry of Foreign Affairs, the judiciary and the Ministry of Interior.*

(ii) For Foreign Institutions (E1.02)

Where there is no bilateral agreement, foreign institutions need to follow the ordinary diplomatic channels, filing requests through the Ministry of Foreign Affairs, which usually reaches out to the Ministry of Justice.

*In the **People's Democratic Republic of Algeria**, the first point of contact for cooperation and exchange of information between countries and between national authorities and agencies in case of wrongful removal or retention of the child in cross-border family conflicts are the Ministry of Justice and the Courts as well as the diplomatic channels.*

*In the **Arab Republic of Egypt**, the International Cooperation Committee (also known as the good office committee) is first point of contact for cooperation and exchange of information between countries and between national authorities and agencies in case of wrongful removal or retention of the child in cross-border family conflicts.*

*In **Israel**, the first point of contact for cooperation and exchange of information between countries and between national authorities and agencies in case of wrongful removal or retention of the child in cross-border family conflicts are the Central Authorities. In some cases, contact may first be made with the Ministry of Foreign Affairs or INTERPOL who then refer the case to the Central Authority.*

*In the **Kingdom of Jordan**, there is no first point of contact for cooperation and exchange of information between countries and between national authorities and*

agencies in case of wrongful removal or retention of the child in cross-border family conflicts.

*In the **Kingdom of Morocco**, the first point of contact for cooperation and exchange of information between countries and between national authorities and agencies in cases of wrongful removal or retention of the child in cross-border family conflicts are the Moroccan courts and the central administration of the Ministry of Justice and Freedoms.*

*In the **Republic of Tunisia**, the first point of contact for cooperation and exchange of information between countries and between national authorities and agencies in case of wrongful removal or retention of the child in cross-border family conflicts is the Ministry of Justice as the central authority, the Ministry of Foreign Affairs, the judicial authority and/or the Ministry of Interior.*

(iii) National Body with Expertise (E1.03)

Only in a few jurisdictions there is a national body with expertise in handling cases of wrongful removal or retention of children when a foreigner is involved (Algeria, Jordan, and Morocco). These bodies or offices are usually lodged in the Ministry of Justice. Otherwise, applicants need to resort to the regular court system.

*In the **People's Democratic Republic of Algeria**, the national body with expertise and experience that manages cross-border family law cases is the Ministry of Justice.*

*In the **Arab Republic of Egypt**, the national body with expertise and experience that manages cross-border family law cases is the International Cooperation Committee.*

*In **Israel**, the national body with expertise and experience that manages cross-border family law cases is the Central Authority for Israel under the auspices of the Hague Convention on the Civil Aspects of International Child Abduction (Attorney General, Ministry of Justice, through the Department of International Affairs).*

*In the **Kingdom of Jordan**, the national body with expertise and experience that manages cross-border family law cases is the Supreme Judge Department, the same body that handles the local cases as well.*

*In **Lebanon**, the first point of contact for cooperation and exchange of information between countries and between national authorities and agencies in case of*

wrongful removal or retention of the child in cross-border family conflicts are the consulates.

*In the **Kingdom of Morocco**, the national body with expertise and experience that manages cross-border family law cases are the Moroccan courts and the central administration of the Ministry of Justice and Freedoms.*

*In the **Republic of Tunisia**, the national body with expertise and experience that manages cross-border family law cases is the judiciary and the Central Authority at the Ministry of Justice.*

E2. Jurisdiction and Applicable Law

The various jurisdictions attach civil or criminal consequences to the wrongful removal or retention of the child. This decision has an effect on the jurisdiction and applicable law. The presence of a foreign element adds a further level of complexity to the picture.

Whereas for the “civil” consequences there are clear analogies with the regular articulation of jurisdictions and applicable laws for the resolution of ordinary cross-border family conflicts, the “criminal” consequences are regulated by a single state jurisdiction with a single applicable law.

(i) Jurisdiction (E2.01)

Besides general jurisdiction based on the qualification of the wrongful removal or retention of the child as an act with civil and/or criminal consequences, domestic courts tend to claim jurisdiction based on the habitual residence of the child, or on her actual localisation. In case of criminal consequences, if the wrongful removal or retention happened within the territory of the state, it is domestic courts that claim full jurisdiction.

*In the **People’s Democratic Republic of Algeria**, the competent jurisdiction for the wrongful removal or retention of the child when a foreigner is involved is court of the location or whoever holds custody. (see Article 426 of CPCA)*

*In the **Arab Republic of Egypt**, the competent jurisdiction for wrongful removal or retention of the child in cross-border family conflicts is the one in which the child is present.*

*In **Israel**, the competent jurisdiction for wrongful removal or retention of the child in cross-border family disputes are the Court of Family Matters – appeals can be made by right to the District Court and by leave to the Supreme Court of Israel.*

*In **Lebanon**, the competent jurisdiction for the wrongful removal or retention of the child when a foreigner is involved is determined based on who is dealing with the person or property of the child, representing and assisting the child; it is also based on the religion and type of marriage of the parties.*

*In the **Kingdom of Morocco**, the competent jurisdiction for the wrongful removal or retention of the child when a foreigner is involved is the Court of the First Instance of the place where the child is located (lieu factif).*

*In **Palestine**, the competent jurisdiction for the wrongful removal or retention of the child when a foreigner is involved is the national judiciary.*

*In the **Republic of Tunisia**, the competent jurisdiction for the wrongful removal or retention of the child when a foreigner is involved is the national civil and criminal courts (First Instance, Appeal and Cassation). (see Articles 39 -42 of the Code of Civil and Commercial Procedure and Law 62-22 of 24 May 1962 establishing an offence of non-representation of children)*

(ii) Applicable Law (E2.02)

Regulations of wrongful removal or retention of the child tend to be regulated by domestic law with ad-hoc legislation (Algeria, Morocco and Tunisia), with the exception of Jordan, Lebanon and Palestine—where the general rules on non-compliance with court orders are applied.

*In the **People's Democratic Republic of Algeria**, regulation of the wrongful removal or retention of the child falls under the laws of non-representation of the child towards the person who is entitled to custody after the end of the visit or if it be a case of wrongful removal of the child outside of the country. No differentiation is made between the regulations for domestic or foreign wrongful removal.*

*In the **Arab Republic of Egypt**, regulation of the wrongful removal or retention of the child, when a foreigner is involved, is under the auspices of the custody articles in the Family Laws and the Child Act.*

*In **Israel**, regulation of the wrongful removal or retention of the child, when a foreigner, is under the auspices of the Family Court, there is no differentiation between citizens and foreigners in such a case.*

*In the **Kingdom of Jordan**, regulation of the wrongful removal or retention of the child, when a foreigner is involved, is under the auspices of the Personal Status Law, which is the same in local conflicts.*

*In **Lebanon**, there are no specific regulations on the wrongful removal or retention of the child, when a foreigner, involved.*

*In the **Kingdom of Morocco**, regulation of the wrongful removal or retention of the child, when a foreigner, is involved is under the laws of non-representation of the child.*

*In **Palestine**, the rules of private international law govern the regulations on the wrongful removal or retention of the child, when a foreigner, involved.*

*In the **Republic of Tunisia**, regulation of the wrongful removal or retention of the child, when a foreigner, is involved consists of two parts. On the one side, parental authority is regulated by the law of the child's country of citizenship. However, interim or urgent measures can be ordered on the basis of Tunisian law if the child is, or the assets are, on Tunisian territory. On the other side, custody is regulated either by the law applied to the dissolution of marriage, by the law of the child's country of citizenship, or that of the country of the child's habitual residence. The judge will apply the most favourable one to the child. (see Articles 41 and 50 of the Code of Private International Law)*

E3. Applications for Return

Accelerated procedures for return after a wrongful removal or retention of a child tend to exist only when provided for in an international convention or a bilateral agreement. The existence of a special procedure for return is contingent on the existence of ad-hoc legislation on the wrongful removal or retention of the child (Algeria, Morocco and Tunisia).

(i) Procedure (E3.01-03)

*In the **People's Democratic Republic of Algeria**, and in accordance with the Algerian-French Agreement of 21 June 1988, the custodial parent maintains the central authority, or the place, where custody is held. The attorney in the case ensures the effective return of the child by the requisition of the police. There is a particular*

application required for the return request. The documents required for the application include: child's identity, applicant's identity, identity of the person alleged to have removed the child, the grounds for the applicant's claim, the initial indication of the child's whereabouts and any useful comments to the whereabouts of the child that facilitates the return procedures.

*In the **Arab Republic of Egypt**, there is no expedited procedure for exceptional cases of wrongful removal or retention of the child when a foreigner is involved. Nor is there a particular form application for return required.*

*In **Israel**, there is no expedited procedure for exceptional cases of wrongful removal or retention of the child when a foreigner is involved. Israel's Civil Procedure Regulations provide for expedited proceedings in all abduction cases, whether or not a foreigner is involved. There is a particular application for return form required, Israel's Civil Procedure Regulations provide that a claim for return must be filed in an affidavit in a specific form, and also sets out the documentation that must be attached to the affidavit. The information required for the application includes: the identity of the child, identity of the applicant, identity of the person alleged to have removed the child, grounds for the applicant's claim, initial indication of the child's whereabouts, copy of documents that prove the legal basis of the claim, photographs of the child and the person alleged to have removed the child, documents proving habitual residence, birth certificate or other documentation proving parentage.*

*In the **Kingdom of Jordan**, there is no expedited procedure for exceptional cases of wrongful removal or retention of the child when a foreigner is involved. Nor is there a particular form application for return required.*

*In **Lebanon**, there is no expedited procedure for exceptional cases of wrongful removal or retention of the child. Nor is there a particular application required for the return request.*

*In the **Kingdom of Morocco**, there is an expedited procedure for exceptional cases of unlawful removal or retention of child when a foreigner is involved and the immediate return is necessary in order to ensure the best interest of the child. There is a particular application required for the return request, which is an administrative process. The documents required for the application include: child's identity, applicant's identity, identity of the person alleged to have removed the child, the grounds for the applicant's claim, the initial indication of the child's whereabouts and any useful comments to the whereabouts of the child that facilitates the return procedures.*

*In **Palestine**, there is no expedited procedure for exceptional cases of wrongful removal or retention of the child. Nor is there a particular application required for the return request.*

*In the **Republic of Tunisia**, there is an expedited procedure for exceptional cases of unlawful removal or retention of child when a foreigner is involved and the immediate return is necessary in order to ensure the best interest of the child. This is an action that requires implementation of bilateral agreements. There is no particular application required for the return request. The documents required for the application include: child's identity, applicant's identity, identity of the person alleged to have removed the child, the grounds for the applicant's claim, the initial indication of the child's whereabouts and any useful comments to the whereabouts of the child that facilitates the return procedures.*

E4. Locating a Child and Preventing Removal

(i) Locating the Child (Timing, Required Information, Available Ways) (E4.01-03)

While a few jurisdictions accept the filing of applications for the return of the child before the child is located (Lebanon, Morocco, Palestine), most do not. In the absence of international conventions or bilateral agreements, locating the child usually needs to follow the diplomatic channels.

*In the **People's Democratic Republic of Algeria**, return proceedings cannot commence before the child is located. Diplomatic efforts are required in obtaining evidence and information is required regarding the child's whereabouts to begin any assistance in locating the child. The mechanisms and/or sources of information available to locate the child can be done through the usage of an employment registry and the police. Evidence and or information are required regarding the child's whereabouts and proof that the child has entered the territory of the State as well as information from the applicant. The mechanism and sources of information used to locate the child are population registries, information maintained by other government agencies and the police. All legal means and sources of official information can be used to locate the child.*

*In the **Arab Republic of Egypt**, return proceedings cannot commence before the child is located. Evidence and information are required regarding the child's whereabouts to begin assisting with locating the child. The mechanisms and/or sources of information available to locate the child can be done through the police and INTERPOL.*

*In **Israel**, return proceedings may commence before the child is located. Upon confirmation from the border authorities that the child has entered Israel, an application can be made to the court in the area where the child is believed to be. If the location in Israel is unknown, Israel's Civil Proceedings provide that an application can be made to the Family Court of Tel Aviv. Evidence and information is required regarding the child's whereabouts to begin assisting with locating the child. The mechanisms and/or sources of information available to locate the child can be done through private location services, information maintained by other government agencies, the police, INTERPOL and court orders to compel the production on the whereabouts of the child.*

*In the **Kingdom of Jordan**, return proceedings cannot commence before the child is located. Diplomatic efforts are required in obtaining evidence and information is required regarding the child's whereabouts to begin assisting with locating the child. The mechanisms and or sources of information available to locate the child can be done through the use of an employment register and the police.*

*In **Lebanon**, return proceedings can commence before the child is located.*

*In the **Kingdom of Morocco**, return proceedings may be commenced before the child is located through a complaint to the public prosecutor. Evidence and/or information are required regarding the child's whereabouts through a complaint to the public prosecutor. The mechanism and sources of information used to locate the child is initiated through an investigation under the auspices of the public prosecution (ministère public).*

*In **Palestine**, return proceedings can commence before the child is located. In cases regarding wrongful removal of the child, it is not necessary to have information or evidence regarding the whereabouts of the child in order to begin the return proceedings. The available sources of information to determine the location of the child are the police.*

*In the **Republic of Tunisia**, return proceedings cannot commence before the child is located. Evidence and/or information required regarding the child's whereabouts through evidence that the child has entered the State and information from the applicant. The mechanisms and sources of information used to locate the child are employment records, information maintained by other government agencies, the police, INTERPOL and court orders to compel the production on the whereabouts of the child.*

(ii) Preventing a Wrongful Removal (E4.04-05)

Jurisdictions with ad-hoc legislation on wrongful removal or retention of the child (Algeria, Morocco, Tunisia) tend to be the only ones with an operational system of preventing the wrongful removal or retention, or at least, simplifying the location of the child in such a case.

*In the **People's Democratic Republic of Algeria**, there is no alternative legal framework to give cross-border effect to contact agreements. There are no prescribed alternative ways to avoid wrongful removal or retention in cross-border conflicts, but if a parent seriously suspects the other parent, he or she may request that the authorities take all legal measures to prevent the unlawful removal or disposal of the child.*

*In the **Arab Republic of Egypt**, there is no alternative legal framework to give cross-border effect to contact agreements. There are no alternative ways to avoid wrongful removal or retention in cross-border conflicts.*

*In **Israel**, there is no alternative legal framework to give cross-border effect to contact agreements. However, there are alternative ways to avoid wrongful removal or retention in cross-border conflicts, which include that the child's passport(s) be deposited with the authorities, alleged abductor's passport be deposited with the authorities, obtain orders to prevent the removal of the child, require the alleged abductor to report periodically to the authorities, require the alleged abductor to pay a bond or deposit and temporary placement of the child in an institutional facility, but only in exceptional cases.*

*In the **Kingdom of Jordan**, there is no alternative legal framework to give cross-border effect to contact agreements. However, there are alternative ways to avoid wrongful removal or retention in cross-border conflicts.*

*In the **Kingdom of Morocco**, there is no alternative legal framework to give cross-border effect to contact agreements. There are alternative ways to avoid wrongful removal or retention in cross-border conflicts, which include: child's passport(s) to be deposited with the authorities, alleged abductor's passport to be deposited with the authorities and the temporary placement of the child in institutional care. The Courts' Presidents can intervene as juge des référés.*

*In **Palestine**, there is no alternative legal framework to give effect to contact agreements. However, there are alternative ways to avoid wrongful removal or retention in cross-border family conflicts. Travel is not allowed outside the territory without the consent of the custodial parent and after verifying the interests. Second, border control should be notified prior to travel and prove that there is special*

permission allowing for cross border passage. (see Article 166 Jordanian Personal Status Law)

*In the **Republic of Tunisia**, there is no alternative legal framework to give cross-border effect to contact agreements. The alternative ways to avoid wrongful removal or retention in cross-border conflicts, which include: child's passport(s) to be deposited with the authorities, alleged abductor's passport to be deposited with the authorities, obtain orders to prevent removal of the child, issuing border and/or port alerts, require the alleged abductor to pay a bond or deposit and the temporary placement of the child in institutional care.*

E5. Legal Representation

(i) Compulsory Nature (E5.01)

In a few jurisdictions, legal representation for completion of the procedures for the return of the child is not required (Egypt, Israel, Morocco, and Palestine), which heavily simplifies the operation for the parent abroad. However, in the other jurisdictions it is required (Algeria, Jordan, Lebanon, and Tunisia).

*In the **People's Democratic Republic of Algeria**, legal representation is required in the return proceedings involving a wrongfully removed or retained child.*

*In the **Arab Republic of Egypt**, legal representation is not required in the return proceedings involving a wrongfully removed or retained child.*

*In **Israel**, legal representation is not required in the return proceedings involving a wrongfully removed or retained child.*

*In the **Kingdom of Jordan**, legal representation is required in the return proceedings involving a wrongfully removed or retained child.*

*In **Lebanon**, legal representation is required in the return proceedings involving a wrongfully removed or retained child.*

*In the **Kingdom of Morocco**, legal representation is not required in the return proceedings involving a wrongfully removed or retained child.*

*In **Palestine**, legal representation is not required in the return proceedings involving a wrongfully removed or retained child.*

*In the **Republic of Tunisia**, legal representation is required in the return proceedings involving a wrongfully removed or retained child. It can be arranged through the Central authority, the public prosecutor (ministère public), or a lawyer.*

(ii) Assistance with Arranging Legal Representation (E5.02)

The existence of an international convention or a bilateral agreement greatly simplifies the arrangement of legal representation for the applying parent. Both in the systems where it is mandatory and where it is merely optional. It is usually the central authority identified and/or established by international agreement that assists parties with legal representation.

*In the **People's Democratic Republic of Algeria**, the Central Authority plays a role in arranging legal representation through public prosecutors and the Central Authority makes any amicable solution that can provide the delivery or access to the child. (see Part 2 of the Algerian-French Convention 21 June 1988)*

*In the **Arab Republic of Egypt**, the Central Authority does not play a role in arranging legal representation.*

*In **Israel**, the Central Authority plays a role in arranging legal representation. If the applicant can afford private representation, the Central Authority provides a list of lawyers. If the applicant cannot afford a private attorney but provides proof of entitlement to legal aid in his/her country, the Central Authority will request that the Legal Aid Bureau in Israel appoint an attorney.*

*In the **Kingdom of Morocco**, the Central Authority plays a role in arranging legal representation through lawyers of the Central Authority, lawyers from the private sector and the public prosecutors.*

*In the **Republic of Tunisia**, the Central Authority plays a role in arranging legal representation through the public prosecutors.*

(iii) Expenses (E5.03)

A few jurisdictions provide free or reduced-rate legal representation in cross-border family conflicts when conditions are met (Algeria, Palestine, Tunisia).

*In the **People's Democratic Republic of Algeria**, the foreigner may benefit from legal assistance to enforce their rights in court. In accordance with the Algerian-French agreement, the two central authorities intervene gratuitously. (see Law no. 09-02 amending and supplementing, Ordinance no. 71-57 relating to legal aid and Algerian-French Convention of 21 June 1988)*

*In the **Arab Republic of Egypt**, within the Family Courts there are no associated fees.*

*In **Israel**, there is free or reduced-rate legal representation available. There are also lawyers who provide reduced-fee legal representation.*

*In the **Kingdom of Jordan**, there is no free or reduced-rate legal representation available. The applicant is responsible for all fees and expenses associated with the case, which includes lawsuit fees, lawyer's fee and experts' fees.*

*In **Lebanon**, there is free or reduced-rate legal representation available. (see Bar Association)*

*In the **Kingdom of Morocco**, legal representation is not mandatory.*

*In **Palestine**, there is free or reduced-rate legal representation. Public defence is offered by lawyers whenever litigants meet the legal requirements, but applicants have the option to request the service of a civil lawyer commissioned by the courts.*

*In the **Republic of Tunisia**, there is free legal representation available through public prosecution (ministère public).*

E6. Return Procedures

(i) Starting the Procedure (E6.01)

Applicants are the formal contact in return procedures in the vast majority of jurisdictions, alone or in conjunction with the general prosecutor (as in Tunisia (*ministère public*)). The main exception being Palestine, where there is no official applicant for the return procedure.

*In the **People's Democratic Republic of Algeria**, the applicant is the formal contact in return procedures for cross-border family conflicts.*

*In the **Arab Republic of Egypt**, the public prosecutor is the formal contact in return procedures for cross-border family conflicts.*

*In **Israel**, the applicant is the formal contact in return procedures for cross-border family conflicts.*

*In the **Kingdom of Jordan**, the applicant is the formal contact in return procedures for cross-border family conflicts.*

*In **Lebanon**, the applicant is the formal contact in return procedures for cross-border family conflicts.*

*In the **Kingdom of Morocco**, the applicant is the formal contact in return procedures for cross-border family conflicts.*

*In **Palestine**, there is no official applicant required for formal contact in return procedures for cross-border family conflicts.*

*In the **Republic of Tunisia**, the applicant and the public prosecutor are the formal contacts in return procedures for cross-border family conflicts.*

(ii) Procedure Delays (E6.02)

For most jurisdictions it is extremely difficult to predict how long a procedure for return will take. Algeria's prediction is based on the operation of the Central Authority (which operates only on the cases covered by the bilateral agreement).

*In the **People's Democratic Republic of Algeria**, the return procedures are accelerated due to direct communication between the two Central Authorities, which ensures that the decision can generally be expected within six weeks of filing the application.*

*In **Israel**, Civil Procedure Regulations provide for expedited proceedings in Hague Convention cases, including a timeframe for filing responses and for the setting of hearing dates. They also provide that the court is to give its decision within 6 weeks of the filing of the claim. However the circumstances of a particular case may result in this timeframe being longer than six weeks.*

*In the **Kingdom of Morocco**, the return procedures are accelerated based on the measures necessary to facilitate return.*

*In **Palestine**, there is no specific timeline indicated for the return procedures.*

(iii) Participation (E6.03)

Whereas in some jurisdictions (Algeria, Tunisia) legal representation fulfils the legislation's requirements, in other jurisdictions in-person participation during the procedure is mandatory (Jordan, Morocco).

*In the **People's Democratic Republic of Algeria**, the applicant in the return proceedings is expected to participate in-person during the procedure, but can also be represented via his or her legal representative.*

*In the **Arab Republic of Egypt**, the applicant in the return proceedings is not expected to participate in the procedure.*

*In **Israel**, the applicant in the return proceedings is not expected to participate in-person during the procedure. However the Civil Procedure Regulations provide that if the court requests a party to attend a hearing, it must give a written reason. However in some cases the attendance can be done by phone or videoconference, depending on the circumstances.*

*In the **Kingdom of Jordan**, the applicant in the return proceedings is expected to participate in-person during the procedure, as video-conferencing and phone participation are not allowed.*

*In the **Kingdom of Morocco**, the applicant in the return proceedings is expected to participate in-person during the procedure.*

*In **Palestine**, there is no official application process and there is no official legal reference for dealing with wrongful removal and retention of the child, so it is usually treated as in other similar issues and referred to the public prosecutor where the general rules apply.*

*In the **Republic of Tunisia**, the applicant in the return proceedings is not expected to participate in-person during the procedure.*

(iv) Alternative Participation and Its Costs (E6.04)

Alternative participation does not seem to be allowed in any of the jurisdictions, except for Tunisia and Algeria (where it applies only under the operation of a bilateral agreement and is regulated by it). The costs associated to the procedure in case of regular/traditional forms of participation (which is how the other national teams answered) need to be assumed by the applicant, which should come to no surprise.

*In the **People's Democratic Republic of Algeria**, the applicant is responsible for the costs of the alternative participation facilities. For the purposes of the Algerian-French Convention of 1988, the parties will be fully entitled in the territory of each state's legal aid, regardless of recourse.*

*In the **Arab Republic of Egypt**, the applicant is responsible for the costs of the alternative participation facilities, as well as the costs of translation.*

*In the **Kingdom of Jordan**, the applicant is responsible for the costs of the alternative participation facilities, as well as the costs of translation.*

*In the **Kingdom of Morocco**, the issue of responsibility for the costs of the alternative participation facilities is regulated by the bilateral agreements, if necessary.*

*In **Palestine**, there is no regulation for determining who is responsible for the costs of the alternative participation facilities.*

*In the **Republic of Tunisia**, the Tunisian Central Authority and the judiciary cover the costs of the alternative participation facilities.*

(v) Hearings (E6.05-06)

Where a procedure for return is available, it generally includes oral hearings, and the judge is allowed to hear the child (with no prescribed limits as to the minimum age).

*In the **People's Democratic Republic of Algeria**, the procedure includes an oral hearing, during which time oral evidence can be received. Additionally, the child is heard during these proceedings and is directly interviewed by the judge. There is no prescribed age limit in accordance with the law.*

*In the **Arab Republic of Egypt**, the procedure does not include an oral hearing. The child is heard and directly interviewed by the judge.*

*In **Israel**, the hearing is normally conducted on the basis of affidavit evidence. Parties or other witnesses can be summoned to be cross-examined on their affidavits. In some cases, depending on the child's age and level of maturity, they may be heard and directly interviewed by the judge.*

*In the **Kingdom of Morocco**, the procedure includes an oral hearing. Additionally, the child is heard during these proceedings at the discretion of the court and if the opportunity is available.*

*In **Palestine**, there is no oral hearing since there is no standard for such a procedure. In procedures (not necessarily oral hearings related to the return proceeding, but generally) the child is heard based on the discretion of the judge. Based on the level of maturity of the child and the level of expression, the child is allowed to participate.*

*In the **Republic of Tunisia**, the procedure includes an oral hearing, during which oral evidence may be received. Additionally, the child is heard during these proceedings and is directly interviewed by the judge, through a report prepared for the court by an independent expert and through the legal representation of the child.*

(vi) Appeal (E6.07)

Appeal on the return procedure is available in all jurisdictions considered.

(vii) Travel Arrangements and Expenses (E6.08)

When ruling on a return application, courts in Morocco and Tunisia address the responsibility for the travel arrangements and expenses. In Algeria the applicant can decide, upon resolution of the case, to file another application for litigation compensation and travel expenses.

*In the **People's Democratic Republic of Algeria**, return decisions do not regulate responsibility for travel arrangements and travel expenses. The aggrieved parent may file a lawsuit to seek compensation and travel expense.*

*In the **Arab Republic of Egypt**, return decisions do not regulate responsibility for travel arrangements and travel expenses.*

*In **Israel**, return decisions regulate responsibility for travel arrangements and travel expenses according to the court's discretion – courts do not always make such provisions in return orders, although it is preferable to do so.*

*In the **Kingdom of Morocco**, return decisions regulated responsibility for travel arrangements and travel expenses is determined by the courts.*

*In **Palestine**, return decisions do not regulate responsibility for travel arrangements and travel expenses.*

*In the **Republic of Tunisia**, return decisions regulated responsibility for travel arrangements and travel expenses is determined by the courts.*

E7. Consequences of Wrongful Removal or Retention of the Child

(i) Domestic Regulations (E7.01-02)

In all jurisdictions, except for Jordan, wrongful removal or retention of the child are considered criminal offences punished by state courts according to a single applicable (criminal) law.

*In the **People's Democratic Republic of Algeria**, the wrongful removal or retention of a child by an Algerian parent is considered a criminal offence and is subject to pecuniary measures, which includes monetary recompense and imprisonment. (see Articles 327 and 328 of the Criminal Code)*

*In the **Arab Republic of Egypt**, the wrongful removal of a child by an Egyptian parent is considered a criminal offence, punishable by imprisonment. The wrongful retention of a child by an Egyptian parent is considered a criminal offence.*

*In **Israel**, the wrongful removal of a child by an Israeli parent is considered a criminal offence, with imprisonment of 7 – 10 years depending on the exact offence. (see sections 370 and 373 of Israel's Penal Law 1973) The same remains true for the wrongful retention of a child by an Israeli parent.*

*In the **Kingdom of Jordan**, the wrongful removal of a child by a Jordanian parent is not considered a criminal offence. Nor is the wrongful retention of a child by a Jordanian parent considered a criminal offence, unless it includes an assault on the child from the other parent. It is framed as an assault on child custody (i'tida' 'ala hirasat al-qasir).*

*In **Lebanon**, the wrongful removal of a child by a Lebanese parent is considered a criminal offence and is subject to pecuniary measures, which includes monetary recompense and imprisonment of up to 6 months to 3 years and 3 months to 2 years. (see Articles 495 and 497 of the Lebanese penal Code) The wrongful retention of a child by a Lebanese parent is also considered is a criminal offence and is subject to pecuniary measures, which includes monetary recompense and imprisonment of up to 6 months to 3 years and 3 months to 2 years. (see Articles 495 and 497 of the Lebanese penal Code)*

*In the **Kingdom of Morocco**, the wrongful removal of a child by a Moroccan parent is considered a criminal offence and is subject to pecuniary measures, which includes monetary recompense and imprisonment. (see Articles 477 of the Penal Code) The wrongful retention of a child by a Moroccan parent considered is a criminal offence and is subject to pecuniary measures, which includes monetary recompense and imprisonment. (see Articles 477 of the Penal Code)*

*In **Palestine**, the wrongful removal of a child by a parent is considered a criminal offence and is subject to pecuniary measures, which includes imprisonment. (see Penal Code) The wrongful retention of a child by a parent is also considered is a criminal offence and is subject to pecuniary measures, which includes imprisonment. (see Penal Code)*

*In the **Republic of Tunisia**, the wrongful removal of a child by a Tunisian parent is considered a criminal offence and is subject to pecuniary measures, which includes monetary recompense and imprisonment. (see Law no. 62-22/1962) The wrongful retention of a child by a Tunisian parent is considered a criminal offence and is subject to pecuniary measures, which include monetary recompense and imprisonment. (see Law No. 62-22 Comments of 24 May 1962 established the offense of non-representation of children.*

Under this single-article law, when custody of a minor has been decided by court order – temporary or permanent – the father, mother or anyone else who will (1) retain the minor from those who have the right of custody over the child, or (2) remove or cause the removal of the child--even without fraud or violence--from those who have custody rights or from where the latter have placed the child, shall be punished by imprisonment of three months to a year and a fine of 24 to 240 dinars or any one of these two penalties.)

E8. International Obligations

(i) 1980 Hague Convention (E8.01)

The 1980 Hague Convention on the Civil Aspects on International Child Abduction (see Convention of 25 October 1980) has been signed and ratified only by Israel and Morocco.

(ii) Implementing Legislation (E8.02)

*In **Israel**, the 1980 Hague Convention on the Civil Aspects on International Child Abduction was signed on 4 September 1991 and became enforceable on 1 December 1991. A reservation was made to Article 26. Implementing legislation was necessary, whereas the Convention was incorporated under the Civil Procedure Regulations 1984, Chapter 22: Return Abroad of Abducted Children (Amended 1995).*

*In the **Kingdom of Morocco**, the 1980 Hague Convention on the Civil Aspects on International Child Abduction entered into force on 1 June 2012, with no implementing legislation introduced. The judge is required to interpret existing domestic legislation in a way that allows for compliance with the convention (ta'wil al-qadi).*

(iii) Bilateral Agreements (E8.03)

Only in **Algeria**, **Egypt**, **Morocco**, and **Tunisia**, bilateral agreements on matters related to wrongful removal or retention of a child have been signed. In **Egypt**, the existing bilateral agreements on matters relevant to the 1980 Hague Convention are the Cairo Declaration, which resulted from Anglo-Egyptian meetings on judicial cooperation in international child abduction matters between Egypt and the United Kingdom in 2004-2005, and the Treaty of the Mutual Cooperation in Family Matters between Egypt and Australia in 2000. In **Lebanon**, there is a bilateral agreement on matters relating to family cases in the Lebanese-French Agreement of 12 July 1999 and Lebanese-Canadian Agreement. This agreement does not have a procedure record, but a joint advisory commission with conciliation, mediation, facilitation and coordination on the movement of the child.

F. Child Support and Other Forms of Family Maintenance in Cross-Border Family Conflicts

(i) Domestic Definition and Regulation (F.01-02)

The definition of the content of child support and other forms of family maintenance depend on the applicable law. In systems with multiple applicable laws, there are multiple definitions and regulations (Egypt, Israel, Jordan, Lebanon, and Palestine). When a foreigner is involved, Tunisian rules of conflict of laws require the court to apply the most favourable law to the creditor (especially in matters of child support).

*In the **People's Democratic Republic of Algeria**, child support and other forms of family maintenance are defined and regulated at the discretion of the judge, who takes into account the situation of the spouses and their living conditions. (see article 79 of the Family Code) Algerian regulations on child support and other forms of family maintenance differentiate among food and drink, accommodation, health treatments, educational fees and whatever is considered necessary with regard to usage and customs. Alimony covers the aforementioned expenses listed above. (Article 78 Family Code)*

*In the **Arab Republic of Egypt**, child support and other forms of family maintenance are defined and regulated in accordance with family law and the family courts. Egyptian regulations on child support and other forms of family maintenance differentiate among food and drink, accommodation, health treatments and educational fees.*

*In **Israel**, child support is defined by the religious affiliations of the parents. Domestic regulations on child support and or other forms of family maintenance do not differentiate among food and drink, accommodation, health treatments, educational fees or any other costs.*

*In the **Kingdom of Jordan**, regulations on child support and other forms of family maintenance differentiate among food and drink, accommodation, health treatments, educational fees and the costs of travel.*

*In **Lebanon**, child support and other forms of family maintenance are defined and regulated depending upon religious affiliations and the type of marriage, which then determines the applicable law.*

*In the **Kingdom of Morocco**, child support and other forms of family maintenance are defined and regulated depending on the standard of living established for the child and the parent's income. Domestic regulations on child support and or forms of family maintenance differentiate among food and drink, accommodation, health treatments, educational fees and everything that comes under usage and customs.*

*In **Palestine**, child support and other forms of family maintenance are defined and regulated by the Sharia Courts and has established the Palestinian National Authority Alimony Fund to repay alimony for those defaulting on payment. (see Law on Alimony Fund) Domestic regulations on child support and/or other forms of family maintenance differentiate according to the applicable law and implementation. (see articles 36 and 37 of the Palestinian Alimony Laws)*

*In the **Republic of Tunisia**, child support and other forms of family maintenance are defined and regulated by the national law of the creditor or of his domicile, or by the national law of the debtor or his home. The judge will apply the law that is most favourable to the creditor. However, spousal support or alimony is governed by the law under which the marriage bond is dissolved; this is the conflict rule applicable in cross-border family conflicts regarding maintenance. (see Article 51 of Code of Private International Law) Domestic regulations on child support and or forms of family maintenance include food and drink, accommodation, educational fees and everything that is considered necessary for existence, in accordance to usage and customs. (see Article 50 of the Personal Status Code)*

(ii) Jurisdiction (F.03)

Courts with jurisdiction on family law tend to have jurisdiction also on child support and other forms of family maintenance. In systems with multiple jurisdictions, the same conflict of jurisdictions rules as in other family law conflicts apply. Algeria's answer on the territorial jurisdiction of the creditor's habitual residence needs to be considered in the framework of a case filed for non-fulfilment of obligations of child support.

*In the **People's Democratic Republic of Algeria**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts is the court of the place of residency of the creditor in deciding the nutritional section of family affairs. (see Article 426-5 of CPCA)*

*In **Israel**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts is determined based upon the religious affiliation of the parents.*

*In the **Kingdom of Jordan**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts are the Sharia Courts, Denominations Councils and Civil Courts, although there is no differentiate between local and cross-border family conflicts.*

*In **Lebanon**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts is dependent upon religious affiliations and the type of marriage, which then determines the applicable methods.*

*In the **Kingdom of Morocco**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts is the Family Chamber in the Court of First Instance.*

*In **Palestine**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts is the Sharia Court.*

*In the **Republic of Tunisia**, the competent authority to rule on child support and other forms of family maintenance in cross-border family conflicts is the district court judge and incidentally, the family. (see Article 39 of the Code of Civil and Commercial Matters and section 32 of the Code of Personal Status)*

(iii) Enforcing Foreign Judgments on Child Support (F.04-07)

A foreign judgement on child support and/or other forms of family maintenance needs to be signed off by a domestic court before being enforced in the country. As any other form of *exequatur* (pre-enforcement check), the fundamental obstacle is the elusive definition of public policy.

*In the **People's Democratic Republic of Algeria**, there are no foreign judgements immediately enforceable on child support and other forms of family maintenance in cross-border family conflicts. Foreign judgements on child support and other forms of family maintenance can be considered contrary to public policy in cases of approval if the order of the payment of money is prohibited in Algeria. The monetary unit must be in the Algerian Dinar. (see Article 01 of Ordinance no. 03-11 pertaining to money and credit by amending and supplementing Ordinance No. 10-04) The special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts take the monetary differences and terms of payment into consideration. The non-payment of alimony constitutes a criminal offence under Article 331 of the Penal Code. The available enforcement measures for*

the recovery of child support are wage withholding, garnishment from bank accounts and other sources, lien on or forced sale of property, withholding or attachment of pension and the use of mediation, conciliation or similar processes to bring about voluntary compliance. If there is an arrest made because of failure to pay alimony then garnishment of wages and/or pension benefits are allowed. (see Article 777 of the CPCA)

*In the **Arab Republic of Egypt**, foreign judgements on child support and other forms of family maintenance cannot be considered contrary to public policy. The special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts can be done through a lawsuit. The available enforcement measures for recovery of child support in cross-border family conflicts require a judicial procedure.*

*In **Israel**, there are no foreign judgements immediately enforceable on child support and other forms of family maintenance in cross-border family conflicts, the foreign judgement should be ratified by the Israeli court. Foreign judgements on child support and other forms of family maintenance cannot be considered contrary to public policy. The special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts requires that after ratification of the foreign judgement, it can be enforced at the Israeli Execution and Enforcement Authority. There are available enforcement measures for recovery of child support in cross-border family conflicts and they include: wage withholding, garnishment from bank accounts and other sources, deductions from social security payments, lien on or forced sale of property, withholding or attachment of pension benefits and or denial, suspension or revocation of various licenses.*

*In the **Kingdom of Jordan**, there are no foreign judgements immediately enforceable on child support and other forms of family maintenance in cross-border family conflicts. Foreign judgements on child support and other forms of family maintenance can be considered contrary to public policy in cases of approval if some items of maintenance are not provided by law or if the amount of money is too large and not commensurate with the imposed maintenance or if it was from the husband to the wife. There are currently no special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts, just as there are no special procedures for their regular or exceptional enforcement. There is currently a process of establishing an Alimony Fund for lending; however, it has not yet been adopted by law. (See Article 321 of the Personal Status Law) There are available enforcement measures for recovery of child support in cross-border family conflicts.*

*In **Lebanon**, there are no foreign judgements immediately enforceable on child support and other forms of family maintenance in cross-border family conflicts, the exequatur must first be obtained and once it is granted, alimony must be attached in*

the case of refusal to pay. (see Article 997 of Code of Civil Procedure) Foreign judgements on child support and other forms of family maintenance can be considered contrary to public policy in cases where exclusive jurisdiction of the Lebanese Religious courts find the orders contrary to religion and the decision of the civil court abroad. Foreign judgements on child support and other forms of family maintenance are not immediately enforceable; the exequatur must first be obtained. There are no special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts which consider the monetary differences and terms of payment. The available enforcement measures for the recovery of child support are a lien on or forced sale of property or imprisonment.

In the Kingdom of Morocco, there are no foreign judgements immediately enforceable on child support and other forms of family maintenance in cross-border family conflicts; the exequatur must first be obtained. Foreign judgements on child support and other forms of family maintenance are not immediately enforceable; the exequatur must first be obtained. Foreign judgements on child support and other forms of family maintenance can be considered contrary to public policy depending on the case, if a judgement by a non-competent authority or if the judgement is contrary to public order then it can be considered contrary. There are no special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts except for the garnishment of wages. The available enforcement measures for the recovery of child support are wage withholding, garnishment from bank accounts and other sources, a lien on or forced sale of property or the use of mediation, conciliation and other alternative dispute resolution to promote voluntary compliance.

In Palestine, the special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts must respond to the court's decision and that it is based on income. The available enforcement measures for the recovery of child support are wage withholding, garnishment from bank accounts and other sources and or a lien on or forced sale of property.

In the Republic of Tunisia, there are no foreign judgements immediately enforceable on child support and other forms of family maintenance in cross-border family conflicts; the exequatur must first be obtained. In relation to enforcement action, the non-recognition or declaration of enforceability of foreign judgements and decisions, they must be brought before the Court of the First Instance of the place of domicile of the party against whom the foreign judgement is invoked. A case with a lack of residence in Tunisia must be brought before the Court of the First Instance in Tunis.

Foreign judgements and decisions become enforceable in Tunisia and in accordance with Tunisian law and are subject to the law of reciprocity. (see Articles 16 and 18 of the Code of Private International Law)

Foreign judgements on child support and other forms of family maintenance can be considered contrary to public policy only within the definition of the Tunisian Private International Law. The public order exception may be raised by the judge if the provisions of the foreign law designated opposed the fundamental choices of the Tunisian legal system. (see Articles 11 and 36 of the Code of Private International Law)

The special procedures established to guarantee the recovery of child support and other forms of maintenance in cross-border family conflicts require that the District Court tries first to reconcile the parties. However, whoever was ordered to pay child support or divorce fee, and decided not to pay for a month, is punished with imprisonment of three months to one year and a fine of one hundred dinars to one thousand dinars. Payment stops any prosecution, trial or enforcement of the sentence. The guarantee fund of alimony and divorce annuity shall, under the conditions laid down by the law establishing the fund, the payment of alimony or divorce annuity subject to final judgements in favour of the divorced women and child born of their union with the debtors, but remained unexecuted by instances of procrastination. The guaranteed fund has standing in place of the beneficiaries of the judgement for the recovery sums it has paid. (see Article 38 of the Code of Civil and Commercial Procedure and Article 53 of the Code of Personal Status)

The available enforcement measures for the recovery of child support are wage withholding, garnishment from bank accounts and other sources, a lien on or forced sale of property, withholding or attachment of pension, or the use of mediation, conciliation and other alternative dispute resolution to promote voluntary compliance. (see Articles 322 of the Code of Civil Procedure Relating to Commercial and Seizures)

(iv) 2007 Hague Convention (F.08)

The 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention of 23 November 2007) has not been signed by any of the jurisdictions.

(v) Implementing Legislation (F.09)

As a consequence, no implementing legislation was required.

(vi) Bilateral Agreements (F.10)

In **Algeria, Israel, Morocco, and Tunisia**, bilateral agreements on matters related to child support and other forms of family maintenance have been signed. In **Algeria and Israel** the bilateral agreements are based on the UN Convention on the Recovery of Maintenance Abroad, New York 20 June 1956. In the **Arab Republic of Egypt**, there are existing bilateral agreements on matters relevant to the 2007 Hague Convention. The Cairo Declaration, which resulted from Anglo-Egyptian meetings on judicial cooperation in international child abduction matters between Egypt and the United Kingdom in 2004-2005, as well as the Treaty of the Mutual Cooperation in Family Matters between Egypt and Australia in 2000.

G. Adoption in Cross-Border Family Conflicts

(i) Domestic Definition and Regulation (G.01)

Most jurisdictions (Algeria, Egypt, Jordan, Lebanon-for Muslim communities only, Morocco, Palestine) do not consider adoption—as defined in creating a permanent parent-child relationship in accordance with Article 2(2) of the 1993 Hague Convention. At times it is even expressly prohibited by the law (Article 46 of the Algerian Family Code). In Lebanon it is recognised by non-Muslim jurisdictions, and in Tunisia for all citizens.

*In **Israel**, adoption, as defined in creating a permanent parent-child relationship in accordance with Article 2(2) of the 1993 Hague Convention, is considered.*

*In **Lebanon**, adoption, as defined in creating a permanent parent-child relationship in accordance with Article 2(2) of the 1993 Hague Convention, are considered in Lebanon, with the exception of Muslim communities because adoption is prohibited by Sharia law. (see Article 46 of the Family Code)*

*In **The Republic of Tunisia**, adoption, as defined in creating a permanent parent-child relationship in accordance with Article 2(2) of the 1993 Hague Convention, are considered. Adoption is regulated by the same laws and obligations as those regulating the legitimate child and the adopter, vis-à-vis the adopted has the same rights that the law recognises the legitimate parents and imposes the same obligations. (see Article 15 of Law no. 58-27 of 4 March 1958 on Public Guardianship, Guardianship and Informal Adoption)*

(ii) Recognition of Foreign Adoptions (G.02)

Most jurisdictions who do not consider domestic adoption, do not consider as well a foreign adoption. However, the level of opposition to the practice can be measured by the refusal to recognise even a foreign adoption. For instance, in Algeria and Morocco, recognition is possible when the foreigner's national law has to be applied and includes adoption.

*In **Israel**, foreign adoption is recognised for the purposes of determining parental responsibilities, custody and contact rights. Subject to the conditions of Article 11(a) of Israel's Foreign Judgments Enforcement Law – 1958 – through which the condition of upholding an agreement with another country is upheld.*

*In **The Republic of Tunisia**, foreign adoption is recognised for the purposes of determining parental responsibilities, custody and contact rights between foreigners. Foreigners are subject to the law of the adopter and the adopted and what concerns them. The effects of the adoption are subject to the domestic laws of the adopting parent. If the adoption is in accordance of two from different nationalities, the effects are the law of the common domicile. (see Article 53 of the Code of Private International Law)*

(iii) 1993 Hague Convention (G.03)

The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption (Convention of 29 May 1993) has only been signed and ratified by **Israel**.

(iv) Implementing Legislation (G.04)

*In **Israel**, implementing legislation was necessary and Israel's Adoption Law 1981 was amended in 1996 to include provisions that regulate the operation of inter-country adoptions according to the 1993 Hague Convention.*

(v) Bilateral Agreements (G.05)

No bilateral agreements on adoption have been signed by any of the jurisdictions.

H. Institutions Assisting Cross-Border Family Conflicts Resolution

H1. Central Authority

(i) Existence and Operation (H1.01-09)

Only Israel and Morocco have signed and ratified the 1980 Hague Convention on the Civil Aspects of International Child Abduction, with the consequent establishment of a full-fledged central authority.

*In **Israel**, there is a Central Authority for parents and children affected by cross-border family disputes, which was created in pursuance to the Hague Convention on the Civil Aspects of International Child Abduction. The Central Authority is professionally staffed and operates with established continuity. The Central Authority has established internal links with child protection and law enforcement services, which has been established in accordance with the Child Abduction Convention that has established specific liaisons with the relevant authorities, which includes the Israeli Police, the Ministry of Social welfare and the Ministry of Foreign Affairs. The offices of the Central Authority are well equipped and capable to effectively cooperate with its counterparts in other countries if need be. As part of its scope, it can assure the swift communication of proceedings and orders and in doing so provides solutions to language barriers. The concerned parties must initiate all procedures; the Central Authority is not permitted to do so on their behalf. Israel has not utilised or benefited from the Technical Assistance Program of the Hague Conference on Private International Law for countries wishing to establish and consolidate their Central Authority.*

*In the **Kingdom of Morocco**, there is a central authority for parents and children affected by cross-border family disputes through the Central Authority of the Ministry of Justice and Liberties. Officially appointed is the Directorate of Civil Affairs (mudiriyyat al-shu'un al-madaniyyah) for the civil aspects, and the Directorate of Criminal Affairs for the criminal aspects (mudiriyyat al-shu'un al-jaza'iyyah wa-l-'afw); in the case of both authorities, the responsible director is the Directorate of Criminal Affairs. It is professionally staffed and adequately resources and continually operates. The authority has internal links with child protection, law enforcement and other related services through the Division of Family Affairs, minors and incompetents within the Department of Civil Affairs of the Ministry of Justice and Freedoms. This authority has the capacity to cooperate with its counterparts in other countries and assures swift communications of procedures and orders. The authority also provides assistance in overcoming various language barriers. The Central*

Authority can initiate a procedure on behalf of the parties only for the protection of the child's best interests.

H2. Joint Advisory Commission

(i) Existence and Operation (H2.01-08)

A variety of joint advisory commissions have been established on the basis of bilateral agreements (in particular in Algeria, Lebanon, Morocco and Tunisia), and tend to follow a comparable operational scheme.

*In the **People's Democratic Republic of Algeria**, there is no Central Authority for parents and children affected by cross-border family disputes. There is however an application within the Algerian-French Convention of 21 June 1988 relative to the children of spouses of Algerian-France that provides service through the central government. (see article 1 of Algerian-French Convention of 21 June 1988) The administration is professionally staffed and with adequate resources. There is continuity between its operations, with internal links to child protection, law enforcement and other related services; the Central Authority communicates directly with those offices and their services are free of charge. They are tasked with ensuring the protection of minors and ensuring the cooperation of the competence of authorities. The Central Authority has the capacity to effectively cooperate with France. Algeria has the capacity to assure swift communication of proceedings, while providing ways to overcome language barriers. The Central Authority is permitted to initiate a procedure on behalf of the parties in any case. Algeria does not benefit from the Technical Assistance Program of the Hague Conference on Private International Law for countries wishing to establish and consolidate their Central Authority.*

*In **Lebanon**, there are two Judicial Advisory Commissions assisting in cross-border family conflicts, which have been created on the basis of an international bilateral agreement. (see Lebanese-French Convention of 12 July 1999 and Lebanese-Canadian Convention) The commission is composed of representatives from the Ministry of Justice, the Interior of Foreign Affair and a coordinator responsible for monitoring the work of the commission and liaison with the other party. (Lebanese-France Convention 1999)*

*In **the Kingdom of Morocco**, there are Joint Advisory Commissions assisting in cross-border family conflicts with the countries that have signed onto bilateral agreements.*

These commissions are continuous; however, there are no internal links to child protection, law enforcement or other related services. The commission has the capacity to cooperate effectively with counterparts in other countries, through which it can assure swift communications of proceedings and the issuance of orders. It also provides means to overcome language barriers in these proceedings. The Joint Advisory Commission can initiate a procedure on behalf of the parties only for the protection of the child's best interests.

*In the **Republic of Tunisia**, there are Joint Advisory Commissions assisting in cross-border family conflicts that have been created on the basis of international bilateral agreements: the Tunisian-French Agreement of 18 March 1982 and Tunisian-Belgian Agreement of 27 April 1989 and the Tunisian-Swedish Agreement of 16 September 1994. These commissions are not professionally staffed and adequately resourced. However, there is continuity in its operation and there are links internally with child protection, law enforcement and other related services. These Commissions have the capacity to cooperate effectively with its counterparts in other countries. The Commission can also facilitate communication of proceedings and orders as well as providing ways in which to overcome language barriers. The Joint Advisory Commission cannot initiate a procedure on behalf of the parties.*

H3. Other Institutions Assisting in Cross-Border Family Conflicts

(i) Existence (H3.01)

Three widely differing institutions obligated to assist in cross-border family conflicts exist in Egypt, Israel and Tunisia. In Egypt, a Committee has been created at the Ministry of Justice. In Israel, there is a liaison judges' network. In Tunisia, a central authority has been created at the Ministry of Justice and that highly resembles central authorities in systems that have ratified the 1980 Hague Convention.

*In the **Arab Republic of Egypt**, the Central Authority for parents and children affected by cross-border family dispute and can be accessed through the Good Office Committee at the Ministry of Justice.*

The "good office" committee was established by ministerial decree in 2000 (MoJ Decree 613/2000). Its official name is: "The International Cooperation Committee for Custody Disputes Related to Children Born from Mixed Marriage" (lagnat al-ta'awun al-dawli fi 'l-munaza'at al-muta'alliqa bi-hadanat al-atfal al-mawludin min zigat mukhtalita). The Committee plays a non-/pre-judicial role, and operates as a first contact point for bilateral agreements signed with Canada (Treaty on Mutual Cooperation of 1997), Australia (Treaty on Mutual Cooperation of 2000), the United States of America (Memorandum of Understanding of 2003), and the United

Kingdom (Cairo Declaration of 2004). The Committee is chaired by the MoJ Secretary for International Cooperation, and includes representatives from the Ministry of Foreign Affairs, the Ministry of the Interior, the Office of the Public Prosecutor, and the Dar al-ifta' (the official State consultative authority on Islamic law matters). In February 2013, the Committee had 273 open cases.

This Committee is professionally staffed and operates with established continuity. The Committee has established internal links with child protection and law enforcement services. The offices of the Committee are well equipped and capable to effectively cooperate with its counterparts in other countries, if need be. As part of its scope, it can assure the swift communication of proceedings and orders and in doing so provides solutions to language barriers. The concerned parties must initiate all procedures; the Committee is not permitted to do so on their behalf. Egypt has not utilised or benefited from the Technical Assistance Program of the Hague Conference on Private International Law for countries wishing to establish and consolidate their Central Authority—as the Committee does not function as a Central Authority.

*In **Israel**, there is a Liaison Judges Network that assists in cross-border family conflicts.*

*In the **Republic of Tunisia**, there is a Central Authority for parents and children affected by cross-border family disputes. The authority is professionally staffed and adequately resourced and is in continual operation. The Authority has established internal links with child protection, law enforcement and other related services. It also has the capacity to cooperate effectively with its counterparts in other countries and can assure swift communication of proceedings and orders. The Authority also provides ways to overcome language barriers. However, the Central Authority does not initiate a procedure on behalf of the parties.*

I. Reforms Underway

(i) Reforms Underway (I.01)

The most significant reforms underway on matters relevant in cross-border family conflicts resolution have been identified by the national teams in Jordan, Morocco, and Tunisia.

*In the **Kingdom of Jordan**, the Law of Conciliation (al-tawfiq wa-l-sulh) has entered into force, and the Conciliation Offices are currently being formed. An amendment to the 2013 Law is being debated in Parliament to allow the conciliation agreement immediate enforcement after court confirmation (tasdiq). The other bill under consideration is a reform of Shar'i Courts' procedures.*

*In **Lebanon**, civil marriage celebrated in the country seems close to recognition. In March 2013, the Committee for Legislation and Consultation (Hay'at al-tashri' wa-l-istisharat) accepted the registration of a civil marriage celebrated in front of a Lebanese notary public in Lebanon. The Committee provides legal consultation on acts produced by the administration.*

*In the **Kingdom of Morocco**, an overall reform of the justice system is underway.*

*In the **Republic of Tunisia**, the possibility of signing the Hague Conventions is being discussed and considered.*

Closing Remarks and Recommendations

While offering an overview of the current situation and a comparative analysis of cross-border family conflicts resolution in the ENPI South region, the report also allows us to identify areas in which further research is needed, in particular for policy-relevant purposes.

In-depth, **INDIVIDUAL STUDIES OF THE SINGLE MACRO-AREAS** is in order. For two sets of reasons. (1) There are clear indications that even where different systems employ the same term, this may bring about different effects in each jurisdiction. This should come as no surprise as it is the bread and butter of any comparative law enterprise. In order to properly measure differences or conclude similarities between jurisdictions, one should consider the various elements that affect the regulation of a particular matter (chiefly the relevant legislative texts (where present), the courts' construction of such texts, and also the way in which they are conceptualised by scholars). The fact that Arabic is the official or one of the official languages of each State in the region does not simplify the operation. Quite the opposite. One could consider the existence of as many legal Arabics as the jurisdictions considered. This means a significantly higher number than the one of countries surveyed, considering the variety of jurisdictions and applicable laws in the region--a consideration that leads us to the second set of reasons. (2) There might be a significant degree of difference within the same system, wherever there is no single jurisdiction or single applicable law. This is often the case in matters of family law. The most readily available example could be here the recognition of adoption in Lebanon for non-Muslim communities only. A measure of the internal variations can be achieved only by an ad-hoc study.

MEDIATION can serve as a good complement to the previous considerations. As a non-conventional form of family conflicts resolution, mediation involves a completely new level; that of legal transplants. From translation into Arabic to the nuts and bolts of the procedure, mediation deserves to be closely followed. Not only for its ever growing interest (attested also by reforms underway, as in Jordan), but also for the dynamics of domestic rooting (beyond the sheer adoption by an act of parliament) and the patterns of regional diffusion.

ENFORCEMENT OF FOREIGN JUDGEMENTS seems to be one of the cruxes of cross-border family conflicts. Bilateral agreements appear to provide a significant degree of improvement in the general attitude towards the foreign judgement just as in the procedure required for the enforcement. However, bilateral agreements do not arrive at addressing issues of a fundamental disagreement that may emerge in the

form of public policy. A closer look at the operation of bilateral agreements, and even the possibility of multilateral agreements might be worth considering.

An **OPEN DISCUSSION** across the Mediterranean on (a) the **CONFLICT OF JURISDICTION (AND LAWS) RULES** and (b) **MUTUAL ENFORCEMENT OF FOREIGN JUDGEMENTS** would greatly advance a common approach to the resolution of cross-border family conflicts. The advantages and disadvantages of the different solutions (citizenship, habitual residence, law of celebration, etc.) can be only fruitfully debated, however, in a context of mutual respect and recognition, in order to avoid the invocation of public policy negatively affecting the entire process.

The rate of **SIGNATURES AND RATIFICATIONS ON THE HAGUE CONVENTIONS** is not very high in the ENPI South region. It is interesting to note, however, that **TWO JURISDICTIONS** (Israel and Morocco) are a party to a few such conventions and have established a central authority. They belong to the two main models of jurisdiction and applicable law architecture in the region. Further studying the experience of Israel's central authority could benefit all the systems that, like Israel's, have a multiplicity of jurisdictions and applicable laws, whereas conversely Morocco's could benefit all those that have a single jurisdiction and a single applicable law. Tunisian authorities seem to be considering signing onto the convention(s), and it could be worthwhile considering what role in the final decision are taking various political and legal considerations, but also the previous experience of a contact point at the Ministry of Justice for bilateral agreements.

"PUBLIC POLICY" still features prominently as an instrument that domestic jurisdictions invoke to prevent enforcement of foreign judgements. An in-depth analysis of the way in which public policy is constructed would help assess the main points of conflict between jurisdictions. As a non-static (and, at times, geographically located) concept, public policy would need to be considered across time and space within an individual jurisdiction, and on a regional basis. In the case of public policy, it would be particularly useful to look at the case law and jurisprudence of the apical courts (that are present throughout the region in the form of cassation courts or supreme courts).

A second, key concept deserving full attention is **"THE BEST INTEREST OF THE CHILD"**. Often invoked, either in legislative texts or in court judgments, the degrees of variation in the construction of the concept are extremely wide. The systems which do not refer to the concept, often--however--consider it as fully integrated part of the system, so that to the question whether the best interest of the child is considered, would respond that, yes, it has been considered by the legislator (the phenomenon is particularly evident in cases of confessional laws).

THE REPORT, THE FIRST OF ITS KIND FOR BREADTH AND ASPIRATIONS, WILL NEED TO BE COMPLEMENTED BY AD-HOC STUDIES ON THE MACRO-AREAS AND THE OTHER COMPONENTS IDENTIFIED HERE IN ORDER TO BECOME A STANDARD REFERENCE POINT FOR EU INSTITUTIONS, MEMBER STATES AND PRACTITIONERS ACROSS THE MEDITERRANEAN.

The information contained in this Research Report is based on the information which has been provided by the experts and representatives of the concerned beneficiary countries in the framework of the work carried out under the Euromed Justice III Project. The Consortium implementing the project cannot be held responsible for its accuracy, actuality or exhaustiveness, nor can it be made liable for any errors or omissions contained in this report.