

International Child Abduction
When The 1980 Hague Child Abduction Convention Does Not apply
The UK-Pakistan Protocol

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Although the 1980 Hague Child Abduction Convention has been extremely successful, there remain many jurisdictions which are unable to become parties to it. This means that abductions between those jurisdictions, or where one of the jurisdictions is not a party, will not benefit from the Convention regime which, in almost all cases, will result in the return of the child to the State of habitual residence.

In turn, this means that the left-behind parent will need to find some other way of securing the return of his or her child. As the facility provided by the Central Authority system of the 1980 Hague Convention will not be available in non-Convention cases, the left-behind parent will have to negotiate many difficulties and obstacles, including those relating to language, finance, and legal process. Even when those have been met, the left-behind parent will often be unable to secure the return of his or her child because of the inherent restrictions imposed by local law regarding custody of the child. This is especially relevant in jurisdictions governed by religious law and, in particular, those practising Sharia Law.

This was the background to the implementation of the UK-Pakistan Protocol on Children Matters between the United Kingdom and Pakistan (the Protocol) which came into effect in 2003. Pakistan is not a party to the 1980 Hague Convention and the Protocol was the culmination of a process which emanated from the deep concern of those who witnessed the increasing number of cases involving wrongful removals or retentions of children between the United Kingdom and Pakistan, and the difficulties experienced in securing return of the children involved.

Clearly, it is crucial that instruments such as the Protocol are effective, otherwise the situation in non-Convention cases has not been improved and, conversely, may have been worsened as left-behind parents are relying on an instrument which does not work as intended. For this reason, I conducted a project for reunite, the International Child Abduction Centre, supported by the Foreign and Commonwealth Office, to enquire into the way in which the Protocol is working in both jurisdictions. That project has recently been completed. My paper will discuss the findings and their implications in terms of non-Convention abduction cases.