

# Immigration and Refugee Board of Canada

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## Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

6 September 2017

**ZZZ105954.E**

Jordan and United Arab Emirates: Information on divorce, including requirements and procedures for husbands to initiate and complete the divorce; whether the third divorce is considered final (2015-August 2017)  
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

### 1. Divorce in Jordan

A report entitled *Musawah Overview Table on Muslim Family Laws and Practices: Jordan*, presented to the 66th session of the UN's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) held in February 2017, by Musawah, a global movement for equality and justice in the Muslim family which promotes human rights for Muslim women in their private and public lives (Musawah n.d.), indicates that there are three ways to obtain a divorce in Jordan: a "unilateral" repudiation by the husband, through a judicial divorce, or by *khul'* [*Al-Khul', Khula'*] (Musawah Feb. 2017, 11).

An article published in October 2013 by IRTIQA, an online magazine that provides diverse views about the roles of men and women in modern-day Islam, explains that *khul'* is the wife's right to seek divorce from her husband in exchange for a financial settlement (IRTIQA 31 Oct. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Musawah report also notes that "[p]rior to consummation of marriage, a wife may obtain judicial annulment of a marriage contract, whereby she returns the *mahr* [dower] and any other marriage gifts or expenses to the husband" (Musawah Feb. 2017, 13-14, emphasis in original). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

#### 1.1 Divorce by Unilateral Repudiation

According to the Musawah report, the Jordanian Personal Status Law provides that a husband can repudiate his wife, either verbally or in writing, without any reason and without the need for court permission (Musawah Feb. 2017, 11). In a September 2011 article published on his website, a practicing lawyer who specializes in Islamic Shari'a Law and Islamic marriage contracts and who also lectures on Islamic Law at Fairleigh Dickinson University, explains that marriage comes to an end when a divorce is uttered three times by the husband "at his own will" (Sawma 29 Sept. 2011). The same source further states that

[the husband] may announce the divorce in any place of his choosing, with or without reason, and no judicial supervision is required. The presence of his wife is not necessary for a divorce to take effect. The words used by the husband to divorce his wife should be expressed clearly to indicate a divorce. He can say, for example: 'you are divorced, you are divorced, you are divorced', or 'I divorce you, I divorce you, I divorce you', or 'my wife is divorced, my wife is divorced, my wife is divorced'. When uttering these words, the divorce becomes final, and the marriage will end immediately. Such a divorce is irrevocable; the husband cannot remarry his wife until she is married legally to a second man and then divorced from the second husband. (Sawma 29 Sept. 2011)

The divorce "can be pronounced orally, by phone, via text message or by any means of communication" provided it is done in the presence of Muslim witnesses, i.e. two male witnesses or one male and two female witnesses (Sawma 29 Sept. 2011). Under Islamic Sharia law, the testimony of one male is equivalent to the

testimonies of two female witnesses (Sawma 29 Sept. 2011). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## 1.2. Judicial Divorce

The Musawah report states that both the wife and the husband may apply for a judicial divorce, though the wife must also provide a valid reason for seeking divorce, namely:

a husband's contagious or venereal disease or impotence (must be proven by a medical certification), failure to provide maintenance or shelter, non-payment of the dower (*mahr*), imprisonment, and prolonged absence. In addition, strife and discord - including domestic abuse - are grounds for divorce. (Musawah Feb. 2017, 11-12, emphasis in original)

According to the article by the lawyer and lecturer of Islamic Law,

[u]nder the rules of Islamic sharia, the wife may seek judicial divorce if the husband disappeared for a long period of time, or if he neglects his wife by not providing her with maintenance, or if he has been sentenced to jail for a long period of time, or if he was impotent at the time of marriage and continued to be so after the marriage, or if the husband has been insane for a period of time or is suffering from leprosy or a virulent disease. (Sawma 29 Sept. 2011)

The same source states that a wife must go to court to obtain a judicial divorce, adding that judicial divorces "initiated by the wife may take years to obtain" (Sawma 29 Sept. 2011).

According to the Musawah report, in cases of divorce based on strife and discord, the judge first attempts to reconcile the husband and the wife and, should this fail, the judge appoints an arbitrator from the husband's family and one from the wife's family (Musawah Feb. 2017, 12). The arbitrators attempt to reconcile the couple and, should they be unsuccessful, they make a ruling on the terms of the divorce on any compensation due, before the judge reviews and ratifies them (Musawah Feb. 2017, 12). According to the same source, the wife must have two witnesses in order to be able to prove that harm was done, as her testimony is not enough by itself (Musawah Feb. 2017, 12).

The Musawah report states that an irrevocable divorce is granted if the husband is in the wrong, and if the wife is in the wrong, divorce is granted in exchange for a financial settlement that is less than the mahr (Musawah Feb. 2017, 12). Should both be in the wrong, then a financial settlement is reached whereby the dowry is divided between the husband and the wife proportionate to the wrongs committed by each (Musawah Feb. 2017, 12). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## 1.3. Divorce by *Kuhl'*

The Musawah report indicates that

[t]he Personal Status Law permits a wife to obtain divorce through *khul'*, in exchange for a mutually-agreed compensation to be paid to the husband. The consent of both parties is required for a *khul'* divorce. However, if no agreement is reached, a wife may bring a court case, whereby she declares her inability to remain with her husband and pledges to return her dower (*mahr*) and renounce all her financial rights. In such a case, the court must order a 30-day reconciliation process, and if it fails, it must then rule for divorce (*faskh*).

In case of a mutually-agreed *khul'*, *iddah* [waiting period] maintenance is not considered forfeited unless the *khul'* agreement clearly states so. In all cases, a husband cannot coerce a mother to renounce custody of her children as part of a *khul'* compensation. (Musawah Feb. 2017, 13, emphasis in original)

The article by the lawyer and lecturer of Islamic Law similarly indicates that the wife can obtain divorce through *khul'*, but that she relinquishes her right to the dower or to any financial compensation in doing so (Sawma 29 Sept. 2011). The same source states that divorce through *khul'* can be obtained by mutual consent of both the husband and wife, and notes that "any kind of divorce initiated by women has to be done through the judiciary" (Sawma 29 Sept. 2011).

## 2. Divorce in the United Arab Emirates

### 2.1 Divorce by Repudiation

Articles 98, 99, 100, and 101 of the United Arab Emirates' federal law 28 on Personal Status of 2005 provide the following:

Article 98

1. The contract of marriage shall be rescinded if it includes an impediment that is in contradiction with its requirements or the occurrence of something that prevented its legal continuation.
2. Disunion between the spouses occurs by divorce, rescission or death.
3. Prior to deciding disunion between spouses, the court has to endeavour reconciliation.
4. Should the divorced woman marry another man with whom she has carnal knowledge, the number of divorces pronounced by her previous husband shall be considered as non-existent.

## Article 99

1. Repudiation is the dissolution of the valid contract of marriage in the form legally prescribed.
2. Repudiation takes place verbally or in writing and, in case of inability, by an understandable sign.

## Article 100

Repudiation takes place by the husband or his proxy, designated in a special power of Attorney or the wife if her husband gave her complete autonomy of herself.

## Article 101

1. The repudiator must be of sound mind and have free choice.
2. Repudiation done by a man of unsound mind due to a banned substance shall be considered a choice. (United Arab Emirates 2005)

In correspondence with the Research Directorate, a consultant for a law firm based in Dubai, who specializes in international family law and who practices family law, indicated that, in a divorce by repudiation, the husband or his "valid" proxy tells the wife "three times" that he divorces her (Legal Consultant 3 Aug. 2017). According to the same source, divorce by repudiation requires the presence of witnesses, though the source is aware of a valid instance of divorce whereby the husband informed his wife through telephone text message (Legal Consultant 3 Aug. 2017).

Article 103 of the 2005 Personal Status Law provides the following:

## Article 103

1. Divorce subject to a condition precedent to do or depart from something shall not be effective unless there is an intention to divorce.
2. In the absence of an intention to divorce, there is no divorce in case of perjury to an oath.
3. A divorce made verbally, in writing or by sign, whether repeated or in conjunction with a number, shall be construed to be once only.
4. A divorce may not be contingent on the happening of a future event. (United Arab Emirates 2005)

The information in the following paragraphs was provided by the legal consultant in correspondence with the Research Directorate:

For the repudiation to be valid, "there should be no condition precedent and the divorce must not be contingent on a future event." The repudiation is valid provided there are witnesses or evidence of the repudiation, or if the wife accepted or acknowledged the repudiation.

The husband, together with two male witnesses and proxy (if any), attends the respective Emirate's court for the repudiation to be "validated" and recorded in the court. Depending on the Emirate, the process may first involve a meeting with a counsellor at the Family Reconciliation Section before a further meeting occurs with a judge, or the counsellor may take the husband, witnesses and proxy (if any) directly to the judge in the first meeting (Legal Consultant 3 Aug. 2017).

Articles 104, 105, 136, and 137 of the 2005 law on Personal Status provide the following:

## Article 104

Repudiation is either retractable or non-retractable:

1. The retractable repudiation does not put an end to marriage unless after the expiry of the waiting period (Idda).
2. The non-retractable repudiation ends the marriage upon its occurrence. It may take one of the following two forms:
  - a. Repudiation with right to remarry: The divorcee may not return to the man who divorced her except after a new contract of marriage and a new dowry;
  - b. Final and decisive repudiation: The divorcee may not return to the man who divorced her except after expiry of the waiting period (Idda) from another husband who had carnal knowledge of her pursuant to a valid marriage.

## Article 105

Every repudiation is retractable except the repudiation completing the third, the one occurring prior to sexual penetration and the one considered by law final and decisive.

...

## Article 136

"Idda" is an obligatory waiting period during which the wife remains without marriage, as a result of separation.

#### Article 137

1. The waiting period starts as of the occurrence of separation.
2. The waiting period, in case of doubtful copulation, starts as of the last sexual intercourse.
3. Waiting period in marriage shall begin from the date of separation, divorce or death of the husband.
4. In case of ruling divorce, separation, rescission, nullity of the contract or judicial declaration of death of the disappeared, the waiting period starts as of the time the judgment becomes final. (United Arab Emirates 2005)

The information in the following paragraphs was provided by the legal consultant in correspondence with the Research Directorate:

The wife has a three-month "Iddat," or waiting period, once the repudiation occurs before she can marry again. The divorce is revoked if the husband and wife reconcile during the three-month waiting period. Unless the wife has "an immediate right to remarry," the divorce becomes irrevocable after the repudiation has been pronounced three times and the wife's waiting period is over; if reconciliation occurs during the waiting period, "it is as if no divorce took place." A husband can take up to four wives and he can marry an additional wife without a divorce from another wife needing to become irrevocable, while "the wife may only remarry once the divorce has become final and irrevocable at the conclusion of her three-month waiting period unless expressly provided for in an irrevocable divorce".

If the husband and wife resumed their marriage during the wife's waiting period and the husband still claims that the divorce is irrevocable, then the wife can apply to the court to have the divorce recognized as having been revoked. Once the divorce is irrevocable, the divorcee has to marry and irrevocably divorce a different man before she can re-marry her previous husband with a new marriage contract. Two Muslim male witnesses or four Muslim woman witnesses, or a combination of both, is required to prove before the court whether or not a marriage became irrevocable.

If the divorce becomes irrevocable, the wife can apply for a Certificate of Status that proves that she has been irrevocably divorced. It is also possible to apply for a certificate proving the marriage is still in effect (Legal Consultant 3 Aug. 2017). Corroborating information and further details on where such certificates may be obtained could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## 2.2 Divorce by Separation

Article 112 of the 2005 law on Personal Status provides the following:

#### Article 112

1. Should one of the spouses find in the other a deep-rooted repulsive or harmful defect such as insanity and leprosy, or those preventing sexual pleasure such as obstruction of genital canals or similar defects, he may ask for the rescission of the marriage whether this flaw existed prior to the contract or occurred later.
2. His right to rescission shall be forfeited if he had knowledge of the defect before the contract or accepted it expressly or impliedly thereafter.
3. However, the wife's right to claim rescission on grounds of defects preventing sexual pleasure shall not, under any circumstance, be forfeited.
4. The court shall examine, in chambers, the case of rescission of marriage on grounds of sexual defects. (United Arab Emirates 2005)

The information in the following paragraphs was provided by the legal consultant in correspondence with the Research Directorate:

Divorce by separation can occur when the separation is due to defect, to prejudice and discord, to absence and disappearance or when the separation is due to imprisonment. In order to divorce by separation, the husband first meets with a counsellor at the Family Reconciliation Section of "the respective Emirate" in order to explain the issues leading him to seek separation. The counsellor will hold a meeting with both the husband and the wife in order to explore the possibility of reconciliation or of an agreement being reached between them. If it is necessary to refer the matter to a judge, the counsellor gives the husband a note of consent to start the case in court.

The husband will issue an application (typed in Arabic) and pay the Court fee and file other required documents, e.g. marriage contract/certificate; passport ID copies; children's birth certificates, all attested and legally translated into Arabic if issued by a non-Emirati country.

Once the case for divorce by separation goes to court,

[t]he case will be listed for first hearing and proceed by way of inquiry, and pleadings/counterclaims in Arabic, with witnesses being heard, until either a party applies for Judgment or the Judge determines that Judgment should be given. ... In cases of this type, which are fundamentally evidence-based, ... a wife may challenge the husband's evidence and call her own witnesses to rebut allegations made by the husband.

The judge may decide to refer the case to arbitrators, who will then meet with both parties, investigate the complaints and provide their opinion by writing (in Arabic). However, the arbitrators' report may be challenged in court. The same source noted that the wife will "often" not be represented, or lack the funds necessary to pay for the translation of documents or even for a Sharia "Advocate" who could represent her in the court proceedings (Legal Consultant 3 Aug. 2017).

### 3. Recognition of repudiations made in another country by the United Arab Emirates

The information in the following paragraphs was provided by the legal consultant in correspondence with the Research Directorate:

The law of the United Arab Emirates would only fail to recognise a talaq [statement of repudiation] uttered in another country as binding if the Court were persuaded that there was no evidence to support pronouncement of a valid talaq having been uttered.

The United Arab Emirates' court would recognize a repudiation consisting of one utterance of "I divorce you," but "there would need to be witnesses, or other cogent evidence or evidence of the wife's acceptance/acknowledgment, in order for the [United Arab Emirates'] Courts to accept its existence." "[M]ost" Islamic countries have provisions to record repudiations to the "respective" court (Legal Consultant 3 Aug. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

## References

IRTIQA. 31 October 2013. Nadia Cassim. "[A Woman's Right to Divorce in Islam](#)." [Accessed 11 Aug. 2017]

Legal Consultant, Dubai. 3 August 2017. Correspondence with the Research Directorate.

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Sawma, Gabriel. 29 September 2011. "[Islamic Jordanian Divorce in USA](#)." International Law. [Accessed 28 Aug. 2017]

United Arab Emirates. 2005. [On Personal Status](#). Federal Law No. 28. Official Translation by the United Arab Emirates [Accessed 10 Aug. 2017]

## Additional Sources Consulted

**Oral sources:** Arab Renaissance for Democracy and Development; Law firm in Amman; Legal consultant in Amman; Marriage law specialist in Jordan.

**Internet sites, including:** ecoi.net; Human Rights Watch; Jordan – Ministry of Justice; United Nations – Office of the High Commissioner, Refworld; United States – Department of State, The Law Library of Congress; Women Living Under Muslim Laws.

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