

Iraq

Response to Information Request Number:	IRQ02001.HAB
Date:	June 03, 2002
Subject:	Iraq: Information on Removal of Minor Children from Mother by Husband's Family in Iraqi Kurdistan if Husband Dies
From:	INS Resource Information Center
Keywords:	Iraq / Child custody / Marriage / Parental rights

Query:

Is it general practice in Iraqi Kurdistan for a husband's family to remove minor children from a mother's care when the husband dies? In this case, the claimant states her minor children were removed from her care by her first husband's family when she remarried several years after her first husband's death.

Response:

According to the founder of the Iraq Foundation and author of several books on Iraqi culture: "To the best of my knowledge it is not the common custom, although it can happen in individual cases" (27 April 2002).

A visiting fellow at the Washington Institute for Near East Policy, who has spent time recently in Iraqi Kurdistan, stated: "I don't think it is common, but it is certainly plausible. There is often tension between a wife and a mother-in-law who retains much greater family rights than would happen in the West. Should the mother-in-law (or husband's family) remove the children, there would be very little legal recourse just because Iraqi Kurdistan is small enough that in all likelihood, the husband's family would have some connections within the judicial system or police (in a society of 3.5 million people, that's not hard)" (24 April 2002).

A researcher on Egypt and Iraq with Human Rights Watch in London, said that the normal situation if a husband died would be for the children to remain with the mother. However, if the woman remarried, that "does change the situation." If a woman remarries, "it is common for the family to raise objections" to the new husband's role and to claim the right to raise the children. "It does happen in practice." After consulting with an expert on Shari'a law, the researcher stated that the normal situation, where the husband dies and the wife remarries, would be for the mother to maintain custody of the child(ren), unless there was a compelling reason why she should not, e.g., she was sick or an unfit mother. However, the former husband's parents can go to the Shari'a court to try to get custody, if there is a good reason, or if the new husband does not want to take care of the children. Where there is a dispute, the Shari'a court will have a good deal of discretion and flexibility on who should get custody. The tendency would normally be to allow the mother to retain custody (and this is particularly the case with young children under the age of seven in Iraq), but if the court finds good reason why this should not be the case, they will award custody to the former husband's family (26 April 2002; 1, 2 May 2002).

According to a Senior Legal Specialist at the Law Library of Congress, Eastern Law Division (3 June 2002):

“As far as this office can ascertain, the Iraqi Law of Personal Status continues to apply to the Kurdish region of Northern Iraq. The law gives priority to the mother for the custody of her child, whether during or after the pendency of the marriage, so long as she is qualified to [care for the child]. Furthermore, in the event the father of the child dies, the mother continues to have the right to the custody of the child until it has attained the age of maturity, which is eighteen years according to article 106 of the Iraqi Civil Code. The law states unequivocally that the mother’s right to the custody of the child in the event the father dies is incontestable by either the male or female relations of the deceased father.”

This response was prepared after researching publicly accessible information currently available to the RIC within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

References:

Eastern Law Division, Law Library of Congress. Senior Legal Specialist. “Iraq/Kurdish Region: Child Custody” (Washington, D.C.: 3 June 2002), 1 p.

Human Rights Watch. Researcher on Iraq and Egypt. Telephone interviews (London: 26 April, 1 and 2 May 2002).

Iraq Foundation. Founder. Electronic mail communication to the INS Resource Information Center (27 April 2002).

Washington Institute for Near East Policy. Visiting Fellow. Electronic mail communication to the Resource Information Center (24 April 2002).

Attachments:

Eastern Law Division, Law Library of Congress. Senior Legal Specialist. “Iraq/Kurdish Region: Child Custody” (Washington, D.C.: 3 June 2002), 1 p.

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