



RESPONSES TO INFORMATION REQUESTS (RIRs)

[New Search](#) | [About RIR's](#) | [Help](#)

26 September 2005

MNG100563.E

Mongolia: Role of police and medical personnel in the documentation and sharing of information regarding domestic abuse cases; whether domestic abuse is a basis for divorce, procedure to obtain divorce in case of domestic abuse of wife by husband; role of judges and courts in divorce cases based on domestic abuse and otherwise; whether divorce can be initiated by one spouse without the other spouse's consent; whether divorce can be granted based on de facto separation of spouses; whether legal separation of spouses exists and if so, whether it is a necessary step before divorce; details of the concession of custody of minor children through divorce proceedings (September 2004 - September 2005)

Research Directorate, Immigration and Refugee Board, Ottawa

Role of Police in Cases of Domestic Abuse

The 2004 Mongolian Law Against Domestic Violence, which came into force on 1 January 2005 (NCAV 21 Sept. 2005), governs the role of police officers in cases of domestic abuse (*Country Reports 2004*, 28 Feb. 2004, Sec.3). The National Center Against Violence (NCAV), a Mongolia-based organization that advocated for this law (AI 2 June 2004), forwarded a translated final version of the law to the Research Directorate (Mongolia 13 May 2004; NCAV 15 Sept. 2005a). Article 9 of this law is entitled "Responsibilities of police authorities in combating and preventing domestic violence" and reads thus:

9.1 The police authority shall be obliged to carry out the duties in preventing and combating domestic violence as follows:

9.1.1 to accept and file the complaints concerning domestic violence, visit the site of violence, interrogate the offender and witness, take notes and conduct other activities required;

9.1.2 to explain victims about their rights and offenders on regulations on restriction of their rights as stated in this Law;

9.1.3 to remind the offender of [the] possibility to impose administrative and criminal penalties;

9.1.4 to bring the victim to hospital or refuge, if possible, [or] transfer to custody of relatives in case ... it is deemed necessary;

9.1.5 to detain an offender [in] ... temporary custody in accordance with legislation on [an] administrative basis if it is deemed necessary;

9.1.6 to deliver the offender who is under the influence of excessive use of alcohol to the sobering houses;

9.1.7 to inform the social worker on offering the service as stated in provision 5.1.5 of the Law to the victim;

9.1.8 to submit and notify the request on measures to be taken to restrict the right of the offender to the relevant authority or official;

9.1.9 other duties as stipulated in Law (Mongolia 13 May 2004).

Country Reports 2004 sums up the police duties governed by this law as follows:

The law requires police to accept and file complaints, visit the site of incidents, interrogate the offender and witnesses, explain the law, impose administrative criminal penalties, bring victims to refuge, and transfer custody of relatives if necessary. Police may also detain an offender temporarily, send drunken offenders to "sobering houses," and inform social workers and advise relevant authorities on restrictions to place on an offender (28 Feb. 2005, Sec.3).

A Foreign Relations Officer/Legal Counsellor of the NCAV confirmed that after a victim of domestic abuse informs the police about a violent episode, the police detain the offender for 24 to 72 hours (NCAV 13 Sept. 2005).

According to a 2005 Asian Development Bank and World Bank report, the police do not systematically record domestic violence cases and the public are prohibited from viewing police records (ADB and WB 2005, 43).

Prior to the 2005 implementation of the Law Against Domestic Violence, the police were limited to prosecuting those accused of committing domestic violence in cases where formal charges were pressed (*Country Reports 2003*, 25 Feb. 2004, Sec. 3). Further information on the role of police officers in domestic abuse cases prior to the 2005 implementation of the Law Against Domestic Violence could not be found among the sources consulted.

Role of Medical Personnel in Cases of Domestic Abuse

The 2004 Mongolian Law Against Domestic Violence also governs the role of medical personnel in cases of domestic abuse. Article 13 of this law stipulates that

... medical personnel shall be obliged to inform ... the police [while on duty], [and] in [the] case that is impossible, [the] local authorities if domestic violence [has occurred] or ... is likely to occur ... Information may be delivered via [an] electronic communication system, mail or other means of communication (Mongolia 13 May 2004).

As is the case with the police, hospitals in Mongolia lack a systematic recording system of domestic violence cases, and the public are forbidden from accessing hospital records (ADB and WB 2005, 43).

Information on the role of medical personnel in domestic abuse cases prior to the 2005 implementation of the Law Against Domestic Violence could not be found among the sources consulted.

Domestic Abuse and Divorce

According to a Foreign Relations Officer/Legal Counsellor of the NCAV, domestic abuse is grounds for divorce in Mongolia (NCAV 13 Sept. 2005). The 11 June 1999 Mongolian Family Law governs divorce procedures, and NCAV provided a translated final version of this law to the Research Directorate (Mongolia 11 June 1999; NCAV 13 Sept. 2005). This law states that marriage may be dissolved by judicial or ministerial means. For the ministerial divorce procedure, Article 13 is used and it states the following:

13.1 On ground of mutual consent, spouses, without child[ren] under 18[or] any property dispute can apply to [the] Citizen family registration office ... separately with signed applications.

13.2 [The] citizens' family registration office must proceed [with] the applications, provided in 13.1 of this law within 30 days thereafter and may dissolve a marriage (Mongolia 11 Jun. 1999).

For the judicial divorce procedure, governed by Article 14,

[t]he court shall decide on [the] dissolution of a marriage [based on grounds submitted by] consent [ing] spouses, a spouse, or [the custodian] of a wife or husband who is not [a] full legal capacity person ... (ibid.).

An NCAV Foreign Relations Officer/Legal Counsellor confirmed that one spouse may file for divorce without the consent of the other spouse (13 Sept. 2005).

According to the 1999 Mongolian Family Law, the court has the discretion to schedule a divorce hearing up to three months after receiving the case. However, in the case of the existence of a "real threat" to the lives of family members or to the welfare of any children involved, the court has the power to dissolve the marriage without delay (*Country Reports 2004*, 28 Feb. 2005, Sec.3; Mongolia 11 Jun. 1999, Art. 14). However, Article 12.2 of the 1999 Family Law states that "if the wife is pregnant and a child is under one year, it is forbidden to dissolve the marriage".

In 15 September 2005 correspondence with the Research Directorate, a Foreign Relations Officer/Legal Counsellor of the NCAV confirmed that police officials testify in court in divorce cases that involve domestic abuse (15 Sept. 2005b). In such cases, medical staff may also testify and if the victim of domestic abuse received counselling from the NCAV or stayed at the NCAV shelter, the court may call a representative from the NCAV to testify at the divorce case (NCAV 15 Sept. 2005b).

Separation of Spouses

Legal and de facto separation of spouses does exist in Mongolia (ibid.). Spouses can divorce each other if they have been physically separated from one another for more than six months (ibid.).

Divorce and Custody of Children

The 1999 Mongolian Family Law details parents' rights in a divorce situation (*Country Reports 2004* 28 Feb. 2005, Sec.3; Mongolia 11 June 1999). The spouses may decide which parent will retain custody of the children, but should the spouses fail to reach an agreement on this issue, the court has the discretion to decide who will be

awarded custody of the children (Mongolia 11 June 1999, Art. 14). To reach this decision, the court considers incidents of domestic violence, the age of the child(ren), parental "prudence", the economic circumstances of the spouses and "morality" (ibid.). If the child in question is over seven years of age, the court will take into account his or her opinion when rendering a custody decision (ibid.).

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 additional sources consulted in researching this Information Request.

References

Amnesty International. 2 June 2004. "Mongolia: NGO's claim victory against violence in the family." <<http://news.amnesty.org/mavp/news.nsf/print/ENGASA306022004>> [Accessed 21 Sept. 2005]

Asian Development Bank and World Bank (ADB and WB). 2005. *Country Gender Assessment: Mongolia*. <<http://www.adb.org/Documents/Reports/CGA/cga-mongolia.pdf>> [Accessed 20 Sept. 2003]

Country Reports on Human Rights Practices for 2004. 28 February 2005. United States Department of State. Washington, DC. <<http://www.state.gov/g/drl/rls/hrrpt/2004/41652.htm>> [Accessed 20 Sept. 2005]

Country Reports on Human Rights Practices for 2003. 25 February 2004. United States Department of State. Washington, DC. <<http://www.state.gov/g/drl/rls/hrrpt/2003/27781.htm>> [Accessed 20 Sept. 2005]

Mongolia. 13 May 2004. Law Against Domestic Violence. (National Center Against Violence).

_____. 11 June 1999. Family Law. (National Center Against Violence).

National Center Against Violence. 21 September 2005. Correspondence with a Foreign Relations Officer/Legal Counsellor.

_____. 15 September 2005a. Correspondence with a Foreign Relations Officer/Legal Counsellor.

_____. 15 September 2005b. Correspondence with a Foreign Relations Officer/Legal Counsellor.

_____. 13 September 2005. Correspondence with a Foreign Relations Officer/Legal Counsellor.

Additional Sources Consulted

Internet sites, including: Amnesty International Mongolia, Asia Foundation, Centre for Human Rights and Development, Eurasianet, European Country of Origin Information Network (ECOI), Freedom House Report, International Red Cross and Red Crescent Society, Liberal Women's Brain Pool, Mongolia Today, Mongolian Foundation for Open Society, Mongolian Women Lawyers Association, Mongolian Women's Federation, Mongolian Women's NGO Coalition, National Centre Against Violence, National Human Rights Commission of Mongolia, Parliament of Mongolia, Thinking East, United Nations Development Fund for Women (UNIFEM), United Nations Human Development Report, United Nations in Mongolia, United Nations Office of the High Commissioner for Human Rights, Women for Social Progress in Mongolia, Women Information and Research Centre in Mongolia.

The attached reproduction is a copy of an official work that is published by the Government of Canada. The reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.