

Domestic Adoption: Requirements and Procedures under Directive No 48/2020

Description

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Introduction

In the previous article on this website on Major Contents of Foster Family on Directive No 48 / 2020 (<https://dmethiolawyers.com/foster-care-directive/>), an attempt has been made to briefly indicate the procedures involved in the process of foster care. Now a brief look into the procedure and document requirements for domestic adoption will be made. The article will contain ideas contained in the preamble, registration of the prospective adoptive parents and the adopted child, and document requirements for the prospective adoptive parents and the child. Few opinions of the writer on certain ambiguous requirements set out in the Directive are also included.

The Need for a Directive

The Ministry of Women, Children and Youth (MoWCY) is the issuing body of the Directive 48/2020 on Foster Family and Domestic Adoption Services (hereafter the Directive). The reason behind the need to come up with the Directive is the fact that the Revised Family Code of Ethiopia Proclamation No 213/2001 that has provisions on adoption contain general principles and require a directive for proper implementation. Hence the Directive is issued by Ministry of Women, Children and Youth and registered by the Federal Attorney General website under the Directive No 48 / 2020.

Raising Awareness

The Directive imposes duties on government organs and private institutions to design different awareness-raising programs so that orphans and vulnerable children will be supported by domestic adoption. As per the opinion of the writer, those customary beliefs of treating adopted children as house maids and fear of adoption in terms of inheritance, should also be addressed within the awareness creation programs.

Registration, Recruitment and Selection

To facilitate and match a prospective adoptive parent to an orphan or vulnerable child, a registration process is introduced. The government organ or private institutions are responsible to organize proper registration forms. The registration by the prospective adoptive parents shall indicate the age, gender and health status and other circumstances of the child that they want to adopt. On the other hand, the registration form for the child shall hold details of the biography of the child and his family.

Who Gives Consent for Adoption for the Child ?

Consent of adoption for the child is given by the parent or parents of the child. In their absence, extended families including grandparents, uncles or aunts or brother and sisters above 18 years of age are allowed to give their consent. In the absence of the latter, the Directive gives the responsibility to give consent of adoption to be given by the guardians, relevant private or government institutions. The

phrase 'relevant private or government institution' is an ambiguous reference which may include both orphanages and government administrative organs. The Revised Family Code on Article 192 clearly gives power of consent for an adoption of a child under their custody to private or government orphanages. The law considers orphanages as artificial parents of the child. As a result, the right to give consent on behalf of the child for adoption rests on orphanage both private and government. The general indication on the Directive of consent to be given by relevant private or government institutions should be read as orphanages. This will create conformity with the parent legislation, i.e. the Revised Family Code.

Terminal Illness

Article 28 of the Directive requires duly proven terminal illness and proven economic hardship of the parents as a condition precedent for them to put their child into a private or government institution and then for adoption. The Revised Family Code on Article 190 states the fact that adoption agreement shall be made between guardians of the child and adoptive parents. The proclamation doesn't have a terminal illness requirement as a condition precedent for the guardians to enter into an adoption agreement. The focus on the Proclamation is the best interests of the child. No matter what the background of the family of origin, so long as the court confirms the best interest of the child will be met by the adoption agreement, the Proclamation gives a green light for the adoption. The restrictive requirement of terminal illness is not there in the Proclamation. The Directive, by putting terminal illness and economic hardship, as preconditions for allowing adoption, for that matter domestic adoption, seems to create a new set of laws not envisaged by the Proclamation.

Adoption Agreement

Adoption agreement signed by the guardian of the child and the adoptive parents or their legal agents. The adoption agreement should show the date of execution of the adoption agreement, the parties to the agreement, the full name, age, sex of the child, clear provisions that contain consent for giving and receiving the adoption, signed by the parties, witnessed by at least two witnesses and stamped with the passport size picture of the child.

Evidences Compiled for the Child

The evidence compiled for the child include birth certificate, medical certificate, short profile of the child containing the picture of the child as well as the pictures of the guardian or custodian of the child.

Documents Compiled for the Adoptive Parents

The adoptive family shall come up with documents including medical certificate, birth certificates, marriage certificate, income statements, police clearance letter, home study, passport size photographs and id cards or passport copies. Manner of organizing these documents has certain requirements indicated in the Directive. Some of those requirements on the documents are indicated below.

Medical certificates: The medical certificate should show that the adoptive parents are free from any health problems that prohibit them from raising the adopted child. The doctor or medical examiner has to attest the fact that they are capable of adopting a child.

Birth Certificates: Age wise, one requirement that is repeated in the Directive from the Proclamation is

the fact that the adoptive father or mother should attain the age of 25 years. In addition to this, the Directive contains a controversial requirement of age under Article 32 Sub article 5. The Directive on Article 32(5) provide the following:

'(b) the age difference between the adoptive family and the adopted child shall not be below 18 years as well as above 50 years of age.'

The Directive is saying the acceptable age difference between the adoptive family and the adopted child should be between 18 to 50 years. If the difference in age is below 18 years old or above 50 years, then the adoptive parents cannot adopt. It means a 1 year old child cannot be adopted by a 52 year old couple or it means a 16 year old child cannot be adopted by a 31 year old couple. Such a requirement is a new set of rules not envisaged nor indicated by their parent legislation i.e the Revised Family Code.

If one looks into the Revised Family Code, the rules on adoption try to expand the option of the child to be adopted and not restrict them. Under the Proclamation, for example, married or single parents can adopt, parents with a child of their own or no child of their own can adopt, if either of the married couples are above 25 years of age they can adopt. The focus is on providing multiple options for the child to join a family environment. When it comes to the Directive, a new age wise restrictive approach is put in place. The age difference requirements seem contrary to the Revised the Family Code. It should have been the court or judge on the adoption case that should determine based on the age of the adoptive families that the adoption is or is not for the best interest of the child. When a Directive is contrary to the parent legislation, anyone can request the revocation of the provision of the Directive following the procedures indicated in the Federal Administrative Procedure Proclamation no 1183/2020. For further reading on the point see the link: (<https://dmethiolawyers.com/directives-procedure-to-adopt-binding-nature-and-accessing-them/>).

The home study assessment has been designated to be done by a government institution. The adoptive families will appear in person before the government institution and the assessment is done based on the interview made and the above documents compiled. Such an approach is taken because of lack of 'social conditions and local income level'. There is no mention of private institutions participation in the preparation of home study, which makes the Directive short sighted.

Counseling and Training

The Directive states that a government organ shall conduct counseling and training of the adoptive families before matching. Similarly the government body is taking the burden. Participation of private institutions that work in adoption related services can involve in the counseling and training of adoptive families.

Matching, Attachment and Bonding

The Institution shall make the matching as per the organized documents of both the prospective adoptive families and the child. Physical introduction including the meeting up with biological children , if any, and visiting the living environment shall be done. If the matching and attachment went well, then the adoption agreement shall be signed.

Post-adoption Follow up and Revocation

The institution or the government shall make a visit to see the rights and welfare of the child are well respected. The visits and follow ups should not be considered as supervision of the adoptive families. Rather the visit and follow up are done to make sure the rights and welfare of the child is intact. In principle adoption once approved is irrevocable. The exceptional circumstances whereby adoption will be revoked are indicated in the Revised Family Code Article 195. If the adoptive family treat the child as a slave or handles him in a condition resembling slavery or make him engage in immoral acts for his gain or handles the child in any other manner detrimental to the child's future, the court may revoke the adoption. Procedure to be followed when asking for revocation is stated in the Revised Family Code Article 196.

Conclusion

Every child deserves a loving family. Domestic adoption is one form of creation of a family environment for vulnerable children. Domestic adoption has to be encouraged as it is a creation of permanency. Orphans or vulnerable children should be given the chance to grow in a family environment. Institutional care for vulnerable children is not commendable. The bridge between institutional care and family care is adoption. The procedure to do so has to be transparent and efficient with the vision of securing the best interest of the child. The Directive is a step forward in creating the necessary procedures but the Directive needs amendments to attain the best interest of the child through domestic adoption.

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Date Created

September 25, 2021

Author

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