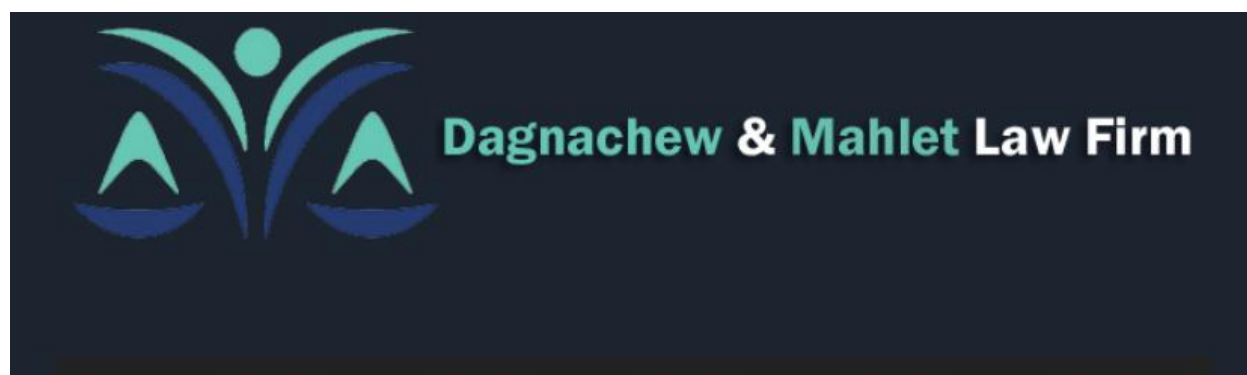


# DMLF Newsletter

SEPTEMBER 2023 | Issue 3 |



## Adoption and Foster Family Care in Ethiopia

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## FOREWORD

Greetings,

In this September issue the focus has been on Adoption and Foster Care in Ethiopia. Ethiopia has stopped inter country adoption for foreigners since 2018 and indulged itself in pursuing domestic adoption and foster family care programs. For that matter the Ministry of Women, Children and Youth Affairs, now renamed Ministry of Women and Social Affairs has issued an implementation directive namely Foster Family and Domestic Adoption Directive No 48/2020.

However, the ban on intercountry adoption for foreigners was contested in court by foreigners of Ethiopian origin and the Federal Supreme Court Cassation Court on File No 189201 Volume 24 entered a decisive decision interpreting the word ‘foreigners’ not to include foreigners of Ethiopian origin. Hence those foreigners of Ethiopian origins can adopt Ethiopian children.

War, disease and poverty may contribute greatly for a huge number of vulnerable children. These vulnerable children would benefit through adoption and foster care. This special issue on adoption and foster family care is intended to attract and aware the latest laws involving adoption and foster family care.

Hope you will have a good read.

By Dagnachew Tesfaye, Managing Partner at DMLF



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## CAN A CHILD THAT HAS BOTH PARENTS BE ADOPTED?


By Dagnachew Tesfaye, Managing Partner at DMLF

A person less than 18 years of age( including conceived child) and under guardianship can be adopted. The parties to the adoption agreement are the adopter and the guardian of the adopted child. The guardians of the adopted child being his both biological parents, can the child still be adopted? The answer is found in the Revised Family Code Proclamation No 213/2000 and Directive No 48/2020 on Foster Care and Domestic Adoption Services (Directive).

The Revised Family Proclamation on Article 191(1) requires the consent of both the father and mother of the adopted child to be given where both biological parents are alive and known. Then it is up to the court to decide whether or not the adoption is for the best interest of the child. The considerations the court shall take into account include the opinion of the child himself, the capability of the adopter to raise and take care of the child and the availability of information which will enable the court to know that the adopter will handle the adopted child as his own child and will not abuse him.

On the other hand the Directive on Article 28 state that children that have both parents who are eligible for adoption in the following conditions : a) *If both parents are living with terminal illness provided that this is medically proven;* and b) *Upon the submission of a legal evidence issued from the relevant government body that confirms they are economically inefficient to properly care for the child and due to the failure to observe the safety of the child in addition to other mandatory causes.* Therefore, the above two conditions have to be fulfilled and evidence has to be submitted in order for the adoption of a child with both parents.

To sum up, a child that has a father and a mother can be given in adoption to an adopter as long as either the biological parents have provided proof that they are affected by terminal illness or the biological parents have no sufficient economic means to raise their child in a proper way. The court shall ascertain the existence of the conditions from the side of the adoption givers and also confirm that the adopter is



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also capable of raising the child in a manner that enhances the adopted child's life. Hence the answer to the question is YES, a child that has a father and mother can still be adopted.

## ADOPTION BY FOREIGNERS OF ETHIOPIAN ORIGIN

By Dagnachew Tesfaye, Managing Partner at DMLF

The Ethiopian Constitution Proclamation No 1/1995 under Article 36 Sub-Article 5 provides the obligation of the state as follows: *"the state shall accord special protection to orphans and encourage the establishment of institutions which ensure and promote their adoption."* The Ethiopian government assumed a duty to support organizations that care for orphans. Such orphans need to be supported to the extent of adoption. The constitutionally recommended solution is not foster care or institutional care but adoption. This is because adoption, unlike foster care or institutional care, is a permanent solution. The Constitution chose adoption for purposes of guaranteeing permanent solutions to problems of orphans. Adoption is a legally framed family creation mechanism next to blood relationship and marriage. Thus the Ethiopian Constitution is propagating that orphan children should be placed back into the family unit through adoption.

Following the Constitution, the House of Peoples' Representative enacted the Revised Family Code Proclamation No 213/2000. The Revised Family Law from Articles 180-196 incorporates detailed rules on who can be adopted and who can adopt, the rights of family of origin and orphanages, what procedure to follow when the adopter is a foreigner and finally the principle of non-revocability of approved adoption.

The implementation of the law led to the establishment of several public and private orphanages and adoption agencies. Many vulnerable children including orphans and abandoned children have benefited through adoption by Ethiopians, foreign nationals of Ethiopian origins and foreigners.

The Ethiopian government claimed that foreigners adopting Ethiopian children has resulted in an identity crisis that affects the adopted children psychologically and socially. As a result, the government coined a policy namely FDRE National Children's Policy. The National Children's Policy envisages the shift from inter-country adoption to a focus on domestic alternative care options. To fulfill the policy goal, the Ethiopian government promulgated the Revised Family Code Amendment Proclamation No 1070/2018. The preamble of this Proclamation states the fact that the Proclamation is needed to harmonize the

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Revised Family Code with the National Children's Policy. This is the sole preamble in the Proclamation. The content of Proclamation is short. It simply deletes the articles that incorporate 'foreigner' from the Revised Family Code. Consequently, Article 193 and 194(3)(d) of the Revised Family Code are declared deleted. With this, foreigners adopting Ethiopian children were **reported** to have been banned, though there is no clear indication in the Proclamation that the intention is to ban inter-country adoption.

Following the reported ban on inter-country adoption, the Ministry of Women, Children and Youth Affairs came up with a directive namely Directive on Foster Family and Domestic Adoption Services No 48/2020. The directive provides detailed rules and procedures on foster care and domestic adoption.

Foreigners of Ethiopian origin kept fighting the prohibition on them from adopting Ethiopian children. Their legal fight bears fruit. The reported ban on all 'foreigners' from adopting Ethiopian children has been found to have **basic errors of law**. The Amendment Proclamation No 1070/2018 to the Revised Family Code was subjected to interpretation by the Federal Supreme Court and found out to incorporate fundamental error of law. The Federal Supreme Court on Cassation File No 189201 Volume 24 on March 11,2020, gave a binding legal decision about the ban and said that the ban on foreigners adopting Ethiopian children is **not applicable** to foreigners of Ethiopian origin. Such a decision by the Federal Supreme Court is a binding precedent to all levels of the federal and regional courts.

Hence such a binding decision by the highest court of the land made inter-country adoption by foreigners of Ethiopian origin possible in the courtroom. However, inter-country adoption by foreigners of Ethiopian origin requires the administrative and executive organ of the Federal Government and the concerned organ of the foreign country to work in consortium.

The FDRE Ministry of Foreign Affairs together with its embassies and consular offices is required to handle issues of foreigners of Ethiopian origin in the adoption process. The Ministry should elaborate the possibility and permissiveness of inter-country adoption by foreigners of Ethiopian origin to the foreign government concerned organs or their embassies located in Addis Ababa. Some of these foreign countries require prior approval for foreigners of Ethiopian origin before they commit to adopt an Ethiopian child. To get this prior approval, these foreign countries need to be notified of the option for adoption being opened up for foreigners of Ethiopian origin. The ambiguous news that Ethiopia has banned foreigners from adopting Ethiopian children is later clarified by rule of law that the ban is non-applicable to foreigners of Ethiopian origin. This information should be clearly amplified by the

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Ministry of Foreign Affairs and our embassies. Moreover the Ministry should give support in authentication of documentations of foreigners of Ethiopian origin in their adoption process. On the other hand, the FDRE Ministry of Women and Social Affairs is the organ of the government concerned about Ethiopian children care and adoption. The Ministry should render support to court approved adoption decisions in getting the necessary vital records such as birth certificates and passports.

Foreigners of Ethiopian origin could be single parents or married couples. When they are married couples, one of them could be foreigners of Ethiopian origin or both of them could be foreigners of Ethiopian origin. The place where foreigners of Ethiopian origin live could be in Ethiopia or elsewhere. The adoption requested could be relative or kinship adoption or adoption from orphanages or adoption by step dad or step mom. The adopted child could be an orphan or an abandoned child or vulnerable child or the child of the other spouse. The fear of identity crisis, which has been the core source for banning inter-country adoption will be non-existent when the adoptive parents or at least one of them is a foreigner of Ethiopian origin.

Therefore, the Ethiopian Constitution encourages adoption. The Federal Supreme Court of Ethiopia, as the highest court of the land, by interpretation allowed foreigners of Ethiopian origin to adopt Ethiopian children. Proclamation No 1070/2018 doesn't ban foreigners of Ethiopian origin from adopting Ethiopian children. So long as the adoption serves the best interest of the child, the executive organs of the government of Ethiopia should pave the way to realizing that goal. It is their constitutional duty. The FDRE Constitution on Article 36 sub-article 2 provide as follows: *"In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child."*

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## ADOPTION OF AN ETHIOPIAN CHILD BY A FOREIGNER SPOUSE

By Dagnachew Tesfaye, Partner at DMLF

### Introduction

This article summarizes the Federal Supreme Court Cassation Decision on File No 215383 on 30/05/2022. The adoption case is filed by the 1st and 2nd applicants, namely Wro Arsema and Mr.Yergen. There is no respondent on the case. The case is about whether or not a foreigner husband can adopt his step daughter who is the child of his Ethiopian wife?

### Federal First Instance Court

The Applicants filed in the Federal First Instance Court for an approval of their adoption agreement. The child involved in the adoption is the child of the 1st applicant born prior to her marriage with the 2nd applicant. The second applicant who is the adopter of such a stepchild is a Dutch nationality. The court said that due to Revised Family Code (Amendment) Proclamation No 1070/2018, adoption of an Ethiopian child by a foreigner is prohibited. Thus the applicants request of approval of their adoption is dismissed by the court.

### Federal High Court Appeal

The Applicants submitted an appeal to the Federal High Court. However, the Federal High Court upheld the decision of the Federal First Instance Court.

### Review by the Federal Supreme Court Cassation Bench



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The Applicants presented their application for basic error of law to the Cassation Bench. The Applicants stated that the applicants are married in Ethiopia, have a son together and living in Ethiopia. The child to whom the adoption is requested is the daughter of the 1st applicant and not that of the 2nd applicant. Nowadays, this daughter lives together with her step father, who is the 2nd applicant and even uses his name as father's name as well. The Applicants argued, to enable such a daughter with equal status to her brother, who is born from both the applicants, the adoption by the step father is necessary. The Applicants said, rejecting our request for approval of such an adoption by the lower courts is not in the best interest of our daughter. Thus the Applicants demanded for the dismissal of the lower court's decision.

The Cassation bench accepted the request of the Applicants for review. The Cassation Bench identified the issue of whether Proclamation 1070/2018 is meant to prohibit adoption occurring between spouses or not?

The Cassation Bench raised the issue of the appropriate law to govern the case: is it Revised Family Code Proclamation 213/2000 or Proclamation No 1070/2018? The provisions of Proclamation No 213/2000 Article 187 provide the fact that married couples can adopt a child together or when the child to be adopted is one of the spouses only, the adoption by the other spouse is possible. This provision of the Revised Family Code does not stipulate nationality of the spouses as a precondition for an adoption. This provision doesn't state the adoption of a child of one spouse by the other spouse is allowed only for Ethiopian married couples.

Proclamation No 1070/2018 contains provisions that order the cancellation of provisions of the Family Code Proclamation No 213/2000 Articles 193, 194(3)(d) and (4) that contain the word 'the adopter being a foreigner'. The Cassation court argued that the provision of Article 187 of the Revised Family Code is not deleted or amended by Proclamation No 1070/2018. Thus, the request of adoption of a child of the Ethiopian spouse born prior to the marriage to a foreigner spouse cannot be rejected mentioning Proclamation No 1070/2018; especially given the fact that the spouses are married in Ethiopia and residing in Ethiopia as a couple. Therefore, the Cassation Bench concluded that the lower court's decision rejecting the adoption approval request of the Applicants is dismissed for basic error of law. The Cassation Court ordered the Federal First Instance Court to look into the matter from this perspective and pass a decision on the adoption approval request of the Applicants.



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## Conclusion

A foreign national spouse who is married to an Ethiopian national can adopt an Ethiopian child of his Ethiopian spouses and the Revised Family Code(Amendment) Proclamation No 1070/2018 is not intended to stop such an adoption request.

## DOMESTIC ADOPTION: REQUIREMENTS AND PROCEDURES UNDER DIRECTIVE NO 48/2020

By Mahlet Mesganaw, Partner and Founder at DMLF

### Introduction

In this article 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 the 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

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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

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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 adaptive 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.

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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.

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 the 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 adaptive 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

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the Revised Family Code Article 195. If the adoptive family treats the child as a slave or handles him in a condition resembling slavery or makes 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.

## **MAJOR ASPECTS OF THE NEW FOSTER FAMILY LAW: THE CASE OF ETHIOPIA**

By [Dagnachew Tesfaye](#), Founder and Managing Partner at DMLF

### **Introduction**

The Ministry of Women, Children and Youth Affairs (MoWCYA) has come out with a registered directive namely Directive No 48/2020 on Foster Family and Domestic Adoption Services. In this brief article, an attempt shall be made to see what foster care child support looks like only. Domestic adoption process and procedure shall be dealt with in another article.

### **General Provisions**

The preamble says foster care is introduced in this directive to fulfill the promise of the government. The government promised to support vulnerable children locally. Foster care is one of the local support programs. The directive declares that it generates its powers from the ratified Child Right Convention and African Charter on the Rights and Welfare of the Child. Thus, before indulging into the details of the

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Directive, it is important to see the definitions given to foster family care, who a vulnerable child is and who are the institutions to implement the foster care directives.

The scope of the Directive is to apply on appropriate Federal Government institutions and charity organizations authorized to perform foster and adoption services as per the Federal Government. Based on this directive, regions and city administration may prepare their own directive taking into account their context.

## **Definitions**

'Foster family Care' is an alternative to providing support and care to children who have lost their family or vulnerable children. It is a 'temporary alternative program'. Foster family care can be either for a short or long period. The responsibility of the foster family shall be to properly raise the foster child by fulfilling the basic necessity. The support and care cover the psychological and physical health of the child. These responsibilities must be completed until the child is reunified with their biological parents or placed in another permanent alternative program.

'Vulnerable Child' is a child whose survival and development is jeopardized by certain circumstances and therefore in need of alternative care services. Those includes: a. Abandoned Children; b. Single or double orphan; c. Non-orphan whose parents are unable to support the child due to illness, physical disability and mental impairment; d. Street children; e. Children living in orphanages; f. Abandon children due to their biological parents' displacement; g. Children who are not getting support from their biological parents due to economic deprivation; and h. Children neglected by their biological parents.

'Institution' means a government or charity organization which has authority and license from the federal government to perform domestic adoption and foster care service.

## **Registration and Eligibility**

The first thing to do is registration. Registration at the institution as an interested foster family. The institutions shall have responsibility to prepare registration forms to be filled by potential families. The registration must also include the foster family needs, including age, gender, health status and other conditions of the child.

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The registered foster care family should fulfill eligibility requirements. The registered foster family must have Ethiopian nationality and solely reside in Ethiopia permanently. They should be above 25 years of age. Unless and otherwise there is no option, the child must only be given to married persons. Priority shall be given to a family who reside in the area where the foster child resides. Family must duly approve their willingness by written consent to foster the child. Family shall have sufficient economical capacity to raise the child. Foster family should be a person who has not been convicted by a court of competent jurisdiction for offenses related to children. Family must have a medical certificate that enables them to raise the child.

### **Home Study**

After making sure that the eligibility requirements are fulfilled, before the concerned authority places the child to foster family, a home study shall be done. The concerned organ shall assess the foster family by attending home visits to acknowledge their psycho-social and economic conditions in accordance with the checklist.

### **Evidences Concerning the Foster Family**

The foster family should produce Ethiopian nationality identification card, birth certificate, medical certificate, police clearance certificate, marriage certificate and income evidence. Medical certificates should confirm they are completely free from transferable or uncured diseases so as to confirm their health capability to properly raise a child.

### **Evidences Concerning the Child**

Once the status of the foster family is assessed and completed, then the status of the child shall follow. General information of the child namely gender, age, language, religion (for a child capable of expressing himself/herself), place of birth and other related information, residential address of the child, birth certificate of the child, family status of the child (abandon, single or double orphan) and other related status shall be organized. The child's physical, mental, psychological and health status, educational status of a child, economical status of a child, (for example acquiring property through inherits or grant) shall also be identified. If the child is found abandoned, the name and address of the person who found the child, date, place and other related information must be organized.

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## **Training**

Training to the foster family shall be given by the government organ or the institution. Such training mainly consists of proper upbringing and securing children right and other related subjects.

## **Matching, Attachment and Bonding**

The next step is matching. After organizing the evidence of both the foster family and the child, the INSTITUTION shall match the child with a suitable family.

Then creating attachment and bonding shall follow. Matching and bonding involves introducing physically the child with the foster family, the biological children of the foster family with the child, taking the child to the village of the foster family so as to allow him to adapt with the community shall be done.

## **Foster Care Agreement**

Once the bonding activity is carried out, legally binding agreement shall be made between the institution and the foster family. If an agreement is signed between the charity institution and the foster family, the concerned governmental institution shall also sign as a witness. After the agreement is concluded, in order to protect economic and social rights of the child, the foster family may present its petition of guardianship to the competent court of law.

## **Support and Follow up**

After the placement is done, the concerned institution shall provide continuous support and follow up to ensure the right and welfare of the child is reasonably maintained.

## **Transition**

Transition of foster care service to other alternatives may be implemented. If the biological parents exist while the child is given to the foster family and if the biological parents are capable of raising their child,



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reunification with biological parents shall be performed by a foster care institution.

### **Termination of Agreement**

If the foster family commit child labor, physical or psychological violence, sexual harassment, or any exploitation has been committed by a family member or by others, then if such incidents confirmed by the concerned institution, without the prejudice of legal liability, the contract will be terminated.

### **Conclusion**

To sum up, the MoWCYA has come out for the first time with binding details of foster care implementation procedure. From the registration of interested foster families to required assessments and documents, to signing a foster care contract agreement has been stated under Directive 48/2020. It is a commendable act in the right direction. Publicly announcing the Directive and effectively implementing the Directive for the benefit of the vulnerable children are equally important steps.


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## **MAJOR MILESTONE ON INTER-COUNTRY ADOPTION FOR FOREIGN NATIONALS OF ETHIOPIAN ORIGIN**

The Federal Supreme Court Cassation Bench on Cassation File No 189201 on March 11,2020 Volume 24 made a landmark decision in favor of allowing adoption by foreign nationals of Ethiopian origin.

The Revised Family Code Amendment Proclamation No 1070/2018 on its preamble and to some extent on its content held the idea of prohibition of adoption by foreign nationals. The term 'foreign nationals' was not defined. There was a question as to whether 'foreign nationals' include foreign nationals of Ethiopian origin that acquire yellow cards.

The case decided by the Federal Supreme Court Cassation Bench on File No 189201 gave an interpretation to the question. The Cassation Decision states that Foreign Nationals of Ethiopian Origin are allowed to adopt Ethiopian children. The Revised Family Code Amendment Proclamation No 1070/2018 does not prohibit



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foreign nationals of Ethiopian origin from adopting Ethiopian children.

To reach the decision the Federal Supreme Court Cassation bench looked closely into the Ethiopian Children Policy document, the Diaspora Policy document, the best interest of the child and especially Article 36(5) of in the FDRE Constitution, Child Right Convention Article 20-21 and African Charter on the Rights and Welfare of the Child Article 24 , the Revised Family Code of Ethiopia Proclamation No 213/2000, Foreign National of Ethiopian Origin Proclamation No 270/2002, and Banking Amendment Proclamation No 1159/2019, that shows the trend of the government of Ethiopia in allowing economic participation of Foreigners of Ethiopian origin in the banking sector.

The Cassation Bench reached the conclusion that foreign nationals of Ethiopian origin can adopt an Ethiopian child. The position of the Federal First Instance and Federal High Court, that a foreigner with Ethiopian origin cannot adopt an Ethiopian child is dismissed by the Federal Supreme Court Cassation Bench. The Interpretation of the law by the Federal Supreme Court Cassation Bench, as per Federal Courts Re-amendment Proclamation No 454/2005, is binding on federal as well as regional courts of all levels.

To sum up, the Federal Supreme Court Cassation Bench by a legally binding interpretation has filled the legislative gap that happened on Proclamation no 1070/2018 and allowed foreigners of Ethiopian origin who have the valid yellow card, to adopt Ethiopian children.

## **ADOPTED CHILD FATHER'S AND FAMILY NAME: CASSATION BENCH JUDGMENT**

### **Introduction**

The Federal Supreme Court(FSC) of Ethiopia Cassation Bench on File No 173628 Volume 24 held the position that adoption agreement approval does not affect the procedure in which adoption certificates will be issued. The adoption certificate that will be issued shall contain the adoptee's given name/s, fathers and grandfathers names. The father's name and grandfather's name shall come from the adoptive parent's names and not that of the family of origin. The request by the applicants to the bench to retain the original fathers and grandfathers names of the adoptees on the adoption certificate was disregarded by the FSC Cassation court as it is contrary to the Directive No 7/2018 Section 4 Sub section 3 Article 43(3) that is issued in accordance with the Registration of Vital Events and National Identity Card Proclamation No 760/2012 Article 70(2) and its

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amendment Proclamation No 1049/2017.

### **Background**

The applicants were the birth parents and the adoptive mother suing the respondent Vital Event Registration Office. The claim of the applicants is that the Federal Court has approved their adoption agreement that allowed four children of the birth families to be the adopted children of the adoptor. Then the request of the applicants to register as it is the father's and grand father's name of the adopted children on the adoption certificate was met by opposition from the Vital Event Registration Office. The Office says that the adopted children's father's and grand father's name will change to that of the adoptive parent and it dismissed the request of the applicants. Here the applicants sued the Office's to be obliged to accept their request and its refusal to be dismissed.

### **First Instance and Appeal Courts**

The suit of the applicants at the First Instance level was dismissed for lack of jurisdiction citing the reason that the claim should be presented to the special adoption bench or ask for execution of judgment based on the file the adoption agreement is approved. The applicants appealed to the Federal High Court. The High Court accepted the case and decided the case on the merits. The appellate court said that adoption certificates will not be issued unless the father and grandfather's names of the adopted children change to that of the adoptive parent. The court dismissed the appeal of the appellant based on Proclamation No 760/2012 and its amendment Proclamation No 1049/2017 and Directive No 7/2018 Article 30 Section 4 Sub-section 3 and Article 43.

### **Court of the FSC Cassation Bench**

The Cassation court accepted the application of the applicant in Cassation file no 173628. The bench coined the issues of the case to relate to whether the position of the appellate court decision based on Proclamation No 760/2012 and its Directive 7/2018 contradict the already court approved adoption agreement?

The Cassation bench held the position that the already court approved adoption agreement only shows the existence of an agreement only. There was no determination by the court that approved the adoption agreement on the manner of issuance of an adoption certificate as per Proclamation No 760/2012 and its Directive No 7/2018. Thus the court said based on the approved adoption agreement, a relevant government

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office shall make sure the requirements are met when it issues the adoption certificate. The bench concluded that doing so is not contrary to the law or the approved adoption agreement.

The Cassation court further concluded that as per Directive No 7/2018 Section 4 Sub Section 3 of Article 43, whenever the adoptive parent is a single woman, the name of the adopted child shall be the given name of the child on the adoption agreement, the father's name shall be the father's name of the adoptive mother and grand father's name shall be the grand father's name of the adoptive mother.

The Cassation bench highlighted that the procedure contained in the Directive 7/2018 Article 43(3) will not harm the best interest of the adopted child/children if implemented. Therefore, the Cassation bench upheld the appellate court decision and dismissed the applicants' requests.

### **Conclusion**

The judgment emphasizes the fact that when an adoption certificate is issued, the names of the birth parents will change to that of the adoptive parent/s. Since adoption creates a permanent family relationship, the adoptive parent/s will have precedence or priority over that of the families of origin. As a result the adopted child/children will take their given name and in addition to that their father's name and grandfather's name will follow the adoptive family's name.

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