

# **Nepal Gazette**

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## **Part 3**

**Notification**

**of**

**The Government of Nepal**

**Ministry of Women, Children and Social Welfare**

**Terms and Conditions and Process for Granting Approval**

**for Adoption**

**of Nepali Child by Alien, 2008**

**Preamble:** Whereas, it is expedient to make Terms and Conditions and Process required for granting approval for adoption of Nepali Child by alien,

Now, therefore, in exercise of the power conferred by No. 12A. of the Chapter on Adoption of the Muliki Ain (Code of the Realm), Government of Nepal has made the following Terms and Conditions and Process:-

## **Chapter-1**

### **Preliminary**

- Title and Commencement:** (1) These Terms and Conditions and Process may be cited as the "Terms and Conditions and Process for

Granting Approval for Adoption of Nepali child by an Alien 2065 (2008)".

(2) These Terms and Conditions and Process shall come into force at once.

2. **Definition:** Unless the subject or context otherwise requires, in these Terms and Condition and Process;

(a) "Ministry" means the Ministry of Women, Children and Social Welfare".

(b) "Committee" means the Investigation, Recommendation and Monitoring Committee under Section 13.

(c) "Listed organization or agency" means an organization or agency listed pursuant to sub-section (3) of Section 11.

(d) "Orphanage" means an organization which, having been registered pursuant to prevailing law, provides protection to orphan children by caring and maintaining them

(e) "Orphan child" means a child under Section 4,

(f) "Voluntarily committed child" means a child who is surrendered to the custody of a child welfare home, orphanage or children's organization (Bal Mandir), by the following person by executing a deed of consent by being present before the District Administration Office:-

(1) in the case of a child whose guardian has been appointed pursuant to Children's Act, 2048 ( 1992 A.D. and who does not own any property, by the concerned guardian,

- (2) in the case of a child whose father is dead and who has been abandoned by his/her mother after contracting another marriage, by such mother,
- (3) in the case of a child whose father and mother are poor, have given birth to more than one child, can not maintain them and any of them has already carried out permanent sterilization of family planning, by the father and the mother.
- (4) in the case of those children who are born more than one in number and whose father is dead or is medically insane or mentally unsound and who do have a poor mother unable to maintain them, by such mother.
- (5) in the case of a child whose mother having more than one child is dead or medically insane or mentally unsound and whose father, being poor, is unable to maintain them, by the father of such child.

## **Chapter-2**

### **Granting approval for adoption**

3. **Child who can be adopted:** An alien may be granted approval to adopt a child of the following condition who has stayed at least ninety days in a child welfare home, orphanage or Children's Organization listed pursuant to sub-section (3) of Section 9:-
  - (a) orphan child, and

(b) voluntarily committed child.

4. **Orphan Child:** For the purpose of these Terms and Conditions and Process, an orphan child means the following child who is caused to be certified as an orphan from the District Administration Office pursuant to sub-section (6) of Section 5:-

- (a) a foundling child found by the police,
- (b) a foundling child found in a hospital,
- (c) whose father and mother are not traced or
- (d) whose father and mother both are dead, any member, relative or heir is not traced and who does not have any property.

5. **Record of deed relating to orphan child:** (1) Every child welfare home, orphanage or Children's organization shall have to maintain the record of the following deed while admitting an orphan child:-

- (a) in the case of a child found in foundling condition in a road, way or public place, a letter issued by the concerned police office to that effect,
- (b) in the case of a child found in foundling condition in a hospital, a letter issued by the hospital recording the causes of the child being left to the hospital,
- (c) in the case of a child left in a child welfare home or orphanage or Children's Organization and vicinity thereof, a letter issued by the nearest police station along with a public inquiry deed (Sarjamin muchulka) made by it.

(2) After providing as soon as possible an information to the Central Children Welfare Board and District Children Welfare Board, that a child has been bought for admission pursuant to sub-section (1) a child welfare home, orphanage or the Children's organization shall, in order to find out the father and mother, relative, heir or guardian, have to cause to be broadcasted a news along with the identifying marks, approximate age and photograph of the child and notify to the Child Search Coordination center as well.

(3) A child welfare home, orphanage or the Children's Organization shall have to send, within seven days of admission of a child pursuant to sub-section (1), to the Police Headquarters a deed together with the photograph, the date of admission, approximate age and other details of the admitted child and then publish the same in the Gorakhapatra or a daily newspaper of national circulation.

(4) The notice under sub-section (3) shall contain, in addition to the description referred to in that sub-section, a statement to the effect that any person having claim over or knowledge about whether or not the child does have father and mother, relative, heir or guardian and the property the child is entitled to make a claim before or provide information to any body out of the child welfare home, orphanage, Children's Organization that has published the notice or the Central or District Child Welfare Board or the police office of the district where the child was found; otherwise, such child may be granted for domestic or inter country adoption.

(5) The period of the notice under sub-section (3) shall be of thirty five days and if no claim or information is received during that period a notice shall be required to be re-published and broadcasted,

ten days after the lapse of such period, in the Gorkhapatra, a daily newspaper of national circulation and local newspaper, if possible, and through the electronics media.

(6) If a child welfare home or orphanage or the Children's Organization that has published notice or the central or district child welfare Board or police office does not receive a claim or information even within the period of the notice published pursuant to sub-section (5) or the received claim or information is baseless, it shall have such child certified as an orphan from the concerned District Administration Office, sating the same statement.

6. **Record of Voluntarily committed child:** (1) In admitting a voluntarily committed child, every child welfare home, orphanage or the Children's Organization shall have to keep the records of the documents showing the following matters:-

- (a) name, age, identifying marks, birth registration certificate and recently taken photograph of the child,
- (b) name, address of child's father and mother and cause of commitment,
- (c) if the father or mother or both have brought child for voluntary commitment, photocopy of their Nepali citizenship certificate,
- (d) where the guardian has brought the child for commitment, deed of the appointment of guardian and photocopy of his/her Nepali citizenship certificate.

- (e) a recommendation made by the concerned local body disclosing the economic, social and cultural status of the father and mother of the child.
- (2) The concerned child welfare home, orphanage or Children's Organization shall have to give information of the record under sub-section (1) to the Central Child Welfare Board, concerned District Child Welfare Board and District Administration Office.
- (3) If the person or mother, father who has or the father and mother who have executed the deed of consent want/s to take back the child who has been committed voluntarily before the child is adopted and such child wants to return to such person, the concerned child welfare home or orphanage or Children's Organization shall surrender such child into the custody of the concerned person in the presence of the District Administration Office by causing a deed of taking into the custody executed by him/her.
- (4) The information of having surrendered the custody of the child pursuant to sub-section (3) shall be required to be given to the Ministry, Central Child Welfare Board and District Child Welfare Board.

### **Chapter-3**

#### **Person who can adopt**

7. **Alien who can adopt:** Subject to the Chapter on Adoption of the Muluki Ain (Code of the Realm) the following alien may be granted an approval to adopt Nepali child:-

- (a) a married couple who have completed at least four years of their marriage or
  - (b) an unmarried, widow, divorcee or judicially separated woman who has completed thirty years of age but not crossed fifty five years of age.
- (2) There shall be difference of at least thirteen years of age between the foreign couple or woman under sub-section (1) and the child to be adopted.
- (3) Notwithstanding anything contained in these Terms and Conditions and Process, an alien shall not be given an approval to adopt a son if s/he has a son and a daughter if s/he has a daughter.
- (4) A child to be adopted shall be of lesser age than that of an alien's son or daughter, if s/he has any.

Provided that where an alien has already adopted a Nepali child, this Section shall not be deemed to have caused an obstruction to adopt the sibling of such child by the same alien.

**8. Application to be filed for adoption:** (1) An alien who wants to adopt a Nepali child shall have to file an application before the Committee stating the age, sex and other description of the Nepali child to be adopted, through listed foreign organization or agency or Nepal based embassy of his/her country and, where no such embassy exists in Nepal, the embassy designated for Nepal.

(2) The following document shall have to be attached along with the application under sub-section (1):-

- (a) a consent letter granted by the government of his/her country for adoption from Nepal,

- (b) a guarantee letter written by the government of the concerned country or Nepal based embassy of that country or the embassy of that country designated for Nepal to the effect that under the law of the country of the adoptive father/mother the status of the child is equal to that of his/her own biological child.
  - (c) applicant's birth registration certificate,
  - (d) a deed certifying the marital status of the applicant,
  - (e) applicant's family description, including the birth registration certificate of his/her son or daughter or adopted son or daughter, if any,
  - (f) certificate given by a registered medical doctor as regards the health of applicant,
  - (g) certificate given by government body as regards good characteristics,
  - (h) a deed that certifies applicant's property and income source,
  - (i) photocopy of applicant's passport,
  - (j) applicant's social, psychological home study report.
- (3) Upon receipt of application pursuant to sub-section (1), the Ministry shall make necessary investigation and prepare a separate file of the applicant.
- (4) The deed under sub-section (2) shall be written in English language or translated into English language by an authorized body.

## **Chapter-4**

## **Listing of Child Welfare home, Orphanage or Children's' organization**

9. **Child welfare home, Orphanage or Children's Organization to be listed:** (1) A Child Welfare home, Orphanage or Children's organization in operation after being registered pursuant to prevailing law shall have to file an application before the Ministry for being listed for the purpose of carrying out business relating to inter country adoption.
- (2) The application under sub-section (1) shall contain the following matters:-
- (a) statute of the concerned child welfare home, orphanage or Children's Organization and deed relating to renewal,
  - (b) a recommendation made by the central child welfare Board to the effect that the applicant has complied with the "Minimum standard for operation and management of a child home" and "child welfare home operation guidelines" specified by the Ministry, and
  - (c) description of the physical property of the child welfare home or orphanage or Children's Organization.
- (3) The Ministry shall, if it finds appropriate from an inquiry made over the application under sub-section (1), list such child welfare home, orphanage, children's' organization and notify the same to the applicant.
- (4) A child welfare home orphanage or the Children's Organization listed pursuant to sub-section (3) shall have to renew itself in every two years.

(5) A child welfare home, orphanage or Children's Organization shall prepare separate personal description as provided hereunder of the child who can be granted for adoption by an alien, send such report to the family matching committee under Section 14 and inform the same to the Committee:-

- (a) birth registration certificate,
- (b) health report of past six months,
- (c) recently taken photograph,
- (d) a deed that shows that a reasonable endeavor had been made for domestic adoption of the child,
- (e) a deed showing the records of the child under Section 5 and 6.

**10. Suspension or removal of child welfare home, orphanage or children's organization from list:**

(1) If a child welfare home, orphanage or Children's Organization listed pursuant to Section 9 is found to have submitted false description or committed or is about to commit an act in contravention of prevailing law, the Terms and Conditions and Process and the direction given by the Ministry, it may suspend, by specifying period, or remove from the list such child welfare home, orphanage or children's organization.

(2) Before suspending or removing from list pursuant to subsection (1) the Ministry shall have to provide an opportunity to a child welfare home, orphanage or Children's Organization to submit clarification in that matter.

## Chapter-5

### Listing of foreign organization or agency

11. **Foreign organization or agency to be listed:** (1) A foreign organization or agency desirous of carrying out business relating to adoption in Nepal shall have to file an application before the Committee for listing.

(2) The foreign organization or agency filing application pursuant to sub-section (1) shall have to enclose the following documents along with the application:-

- (a) certificate of having obtained approval from the country of its incorporation to carry out business relating to inter-country adoption,
- (b) a document which certifies that under the law of the concerned country the status of an adopted son and adopted daughter is equal to that of a son and daughter of a citizen of that country.
- (c) a document which certifies that it has been carrying out business relating to inter country adoption at least for three years.
- (d) a recommendation made by the responsible body of the concerned country to the effect that it has been working reliably in the field of inter country, adoption, and
- (e) other necessary document specified from time to time by the Ministry,

(3) If the Board finds from an investigation over the application received pursuant to sub-section (1) it appropriate to list such organization or agency it shall recommend the Ministry and the Ministry shall list it and give notice thereof to the applicant.

(4) The foreign organization or agency listed pursuant to sub-section (3) shall have to appoint its agent in Nepal and give notice thereof to the Ministry.

(5) The function, duty and power of the agent to be appointed pursuant to sub-section (4) shall be as prescribed by the Ministry on recommendation of the Committee.

(6) An organization or agency listed pursuant to this Section shall be required to renew every two year before the Ministry.

**12. Suspension or removal of organization or agency from the list: (1)**

If a listed organization or agency is found to have committed an act in contravention of prevailing law, these Terms and Conditions and Process or direction of the Ministry, the Ministry may, on recommendation of the Committee, suspend specifying period, or remove such organization or agency from the list.

(2) Before suspending or removing a listed organization or agency pursuant to sub-section (1), it shall be given an opportunity to submit its clarification.

## **Chapter-6**

### **Recommendation and Approval**

13. Investigation, Recommendation and Monitoring Committee: (1) There shall be an Investigation, Recommendation and Monitoring Committee for also making a recommendation to the Ministry after making investigation, subject to prevailing law and these Terms and Conditions and Process and on the basis of the application received by the committee and other document, over granting an approval to an alien to adopt a Nepali child.

(2) The committee under Section (1) shall consists of the following coordinator and members:-

- (a) Joint Secretary, Ministry of Women,  
Child and Social Welfare- Coordinator
- (b) Joint Secretary Ministry of Law,  
Justice and Parliamentary Affairs- Member
- (c) Joint Secretary, Ministry of Home  
Affairs- Member
- (d) Representative, Central Child  
Welfare Board (one from among the  
child psychologist or doctor  
member)- Member
- (e) Representative, federation of non-  
governmental organizations for child,  
Nepal Member
- (f) Legal officer (under secretary),  
Ministry of Women, Child and Member-  
welfare- Secretary

(3) The committee itself shall determine procedure of its meeting.

(4) A meeting of the Committee may take place if at least three members including the coordinator are present.

(5) The meeting allowance of the committee shall be as specified by the Ministry.

**14. Family matching for child:** (1) There shall be a family matching committee consisting of the following to match a foreign family for child to be adopted:-

- (a) a gazetted first class officer  
designated by the Ministry- Coordinator
- (b) Executive Director Central Child  
Welfare Committee- Member
- (c) Representative, Ministry of Law,  
Justice and Parliamentary Affairs- Member

(2) Notwithstanding anything contained in sub-section (1), there shall be a following family matching committee to match a foreign family for a child to be adopted from the Nepal Children's Organization:-

- (a) General Secretary of Nepal  
Children's Organization- Coordinator
- (b) Representative, Ministry of woman,  
Child and Social Welfare Member

- (c) Representative, Ministry of Law,  
Justice and Parliamentary Affairs- Member
- (d) Representative, Ministry of Home  
Affairs- Member
- (e) Representative, Police Headquarter,  
(Women Cell)- Member

(3) The family matching committee under sub-section (1) or (2) shall match a child on the basis of the details stated in the application pursuant to Section 8 and the personal description of the child prepared pursuant to sub-section (5) of Section 9.

(4) The secretariat of the family matching committee under sub-section (1) shall lie in the Central Child Welfare Board.

Provided that the secretariat of the committee under sub-section (2) shall lie in the central office of the Nepal Children's Organization.

(5) The secretary of the committee under sub-section (1) and (2) shall be specified by the concerned committee.

(6) The committee itself shall determine its procedure.

(7) The meeting allowance of the committee shall be as specified by the Ministry.

(8) Provisions relating to matching family other than the ones provided for in this Section shall be as specified by the Ministry on recommendation of the Committee.

**15. Ministry to give approval:** (1) If the committee makes a recommendation after making investigation pursuant to Section 13,

the Ministry may grant approval to an alien for adoption of a Nepali child.

(2) Upon receipt of approval pursuant to sub-section (1) for adoption, the applicant shall takeover child by being present in person.

Provided that if one of the applicant spouse is unable to be present in person, an authoritative deed of consent executed by the absent husband or wife shall be required to be submitted to the Ministry.

(3) Notwithstanding anything contained in sub-section (1) and (2), if the father and mother or guardian of the concerned child wants to take back, prior to the final decision being made for granting approval to an alien family for adoption, such child shall not be allowed to be adopted.

## **Chapter-7**

### **Miscellaneous**

**16. Provision relating to monitoring:** (1) If the committee deems it necessary, it may inspect and monitor a child welfare home, orphanage or Children's Organization listed pursuant to these Terms and Conditions and Process and give necessary direction.

(2) The committee shall monitor whether the organization or agency listed pursuant to Section 11 is consistent with inter-country adoption standard or not and the adoptive family once a year. It shall have to submit to the Ministry a report containing the information obtained from such monitoring and measures to solve the problems faced in the act of inter-country adoption.

**17. Details to be made available:** (1) The Ministry shall have to make available details of the Nepali child adopted by an alien and of the alien who has adopted Nepali child pursuant to these Terms and Conditions and Process to the Ministry of Foreign Affairs.

(2) The Ministry of Foreign Affairs shall have to make available the details under sub-section (1) to the Nepalese embassy or diplomatic mission designated for the concerned country. Such embassy or mission shall have to render assistance in making monitoring pursuant to Section 16.

(3) Every alien having adopted a Nepali child after obtaining approval from the Ministry pursuant to these Terms and Conditions and Process shall be required to send once a year through the concerned listed organization or agency or Nepal based embassy of his/her country and, in its absence, the embassy looking after Nepal the statement relating to the maintenance, education and health of such child and recently taken post-card size photograph of the child, until s/he attends majority as per the law of the concerned country.

**18. Proposal to be submitted:** (1) A listed organization or agency desirous of providing any assistance to a Nepal based child welfare home, orphanage or children's organization shall have to submit a proposal relating to such assistance to the Ministry. The Ministry may, if it finds, appropriate from investigation, approve such proposal.

(2) An amount up to ten percent of the assistance to be received pursuant to sub-section (1) may be expended in administrative work.

**19. Fee and other amount may be specified:** The Ministry may, on recommendation of the committee, specify the expenditure for the following service fee:-

- (a) fee applicable for listing and renewal of a child welfare home, orphanage or Children's Organization, pursuant to sub-section (3) of Section 9.
- (b) fee for application filed for listing of organization or agency pursuant to sub-section (1) of Section 11 and fee applicable for renewal,
- (c) fee applicable for monitoring pursuant to sub-section (2) of Section 16 and to be received from an alien to whom approval has been given for adoption pursuant of Section 15.
- (d) amount for the cost of service and expenditure borne by a child welfare home, orphanage or Children's Organization for maintaining the child adopted.

(2) The amount for the fee to be paid pursuant to clause (a), (b) and (c) of Section (1) shall be collected into the Government of Nepal's account.

(3) The Ministry of Finance shall release a sum of money equal to the amount collected in one year in the account under sub-section (2) to the Ministry's name.

(4) The money available pursuant to sub-section (3) shall be expended for welfare and protection of orphan child, the monitoring of listed foreign organization or agency, child welfare home,

orphanage or Children's Organization, adopted child and other work determined by the Ministry.

**20. Power to remove difficulties:** If any difficulty is faced in the implementation of these Terms and Condition and Process, the Ministry may subject to the Muluki Ain (Code of the Realm) and these Terms and Conditions and Process, remove such difficulties.

**21. Repeal and Saving:** (1) The notification published in the Nepal Gazette, part 4, on 2034/2/17 B.S. (June 30, 1977) in the name of the then His Majesty's' Government, Home and Panchayat Ministry, and the Terms and Conditions and Process for granting approval to aliens for adoption of Nepali Child, 2057 B.S. (2000 A.D.) are hereby repealed.

(2) The act and activities carried out pursuant to the Terms and Conditions and Process approved on 2057.3.12 B.S. (July 26, 2000) shall be deemed to have been carried out pursuant to these Terms and Condition and Process.

(3) There shall be no obstruction in disposing of an application relating to granting approval to an alien for adoption registered in the concerned District Administration Office, under consideration of the Nepal Children's Organization or in the process of the Ministry up to the end of the month of Jestha of the year two thousand sixty four (June 13, 2007 A.D.) after matching foreign family, by processing the application as per the Terms and Conditions and Process existing immediately before commencement of These Terms and Conditions and Process.

