

ADOPTION OF CHILDREN ORDINANCE 1936. ⁽¹⁾

No. 26 of 1936.

An Ordinance Relating to the Adoption of Children.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

1. This Ordinance may be cited as the *Adoption of Children Ordinance 1936.*⁽¹⁾ Short title.

2. In this Ordinance, unless the contrary intention appears— Definitions.
- “adopter” means a person authorized under this Ordinance to adopt an infant;
 - “adopted child” means an infant authorized to be adopted under this Ordinance;
 - “infant” means a person under the age of twenty-one years;
 - “Registrar-General” means the Registrar-General appointed under the *Registration of Births, Deaths, and Marriages Ordinance 1935.*⁽²⁾ and includes a Deputy Registrar-General so appointed;
 - “the Court” means the Supreme Court.

3.—(1.) Upon application by any person desirous of adopting an infant, other than a native, who has never married the Court may, subject to the provisions of this Ordinance, make an adoption order authorizing the applicant to adopt the infant. Power to make adoption order.

(2.) Except in the case of an application for an adoption order by two spouses jointly, an adoption order authorizing more than one person to adopt an infant shall not be made.

4.—(1.) An adoption order shall not be made in any case where— Restrictions on making adoption orders.

(a) the applicant is under the age of twenty-five years; or

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
27.2.1936	15.6.1936	27.2.1936 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 441)

(2) Now the *Registration of Births, Deaths, and Marriages Ordinance 1935-1941.*

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- (b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made:

Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, or, being of the same sex, are of the same blood, the Court may, if it thinks fit, make the adoption order although the applicant is under the age of twenty-five years or is less than twenty-one years older than the infant.

(2.) An adoption order shall not, unless the Court is satisfied that exceptional circumstances justify the order, be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female.

(3.) An adoption order shall not be made except with the consent in writing of every person who—

- (a) is a parent or guardian of the infant in respect of whom the application is made;
- (b) has the actual custody of the infant; or
- (c) is liable to contribute to the support of the infant:

Provided that the Court may dispense with any consent required under this sub-section in any case where the person whose consent is to be dispensed with—

- (d) has abandoned or deserted the infant;
- (e) cannot be found;
- (f) is incapable of giving the consent;
- (g) being a person liable to contribute to the support of the infant has persistently neglected or refused to do so;
- or
- (h) is a person whose consent should, in the opinion of the Court and in all the circumstances of the case, be dispensed with.

(4.) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the Court may dispense with such consent—

- (a) where the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent;
- or
- (b) where the spouses have separated and are living apart and the separation is likely to be permanent.

Matters with respect to which Court to be satisfied.

5. The Court, before making an adoption order, shall be satisfied—

- (a) that every person whose consent is necessary under this Ordinance and whose consent is not dispensed with

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has consented to and understands the nature and effect of the adoption order for which application has been made, and, in particular, in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the order, if made, will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

(c) that the applicant has not received or agreed to receive, and that no other person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption of the infant, except such as the Court sanctions.

6. The Court in an adoption order may impose such terms and conditions as it thinks fit, and may require the adopter, by bond or otherwise, to make for the adopted child such provision as it thinks expedient and just.

Power of Court to impose terms and conditions.

7. A copy of every adoption order containing particulars as to the name in full of the infant, the place and date of its birth, and the names of its natural parents and of the adopter or adopters, and a copy of every order made under section fourteen of this Ordinance, shall be forwarded by the Registrar of the Court to the Registrar-General, who shall record the particulars in a register to be called "Adopted Children Register" to be kept for that purpose and, if the birth of the infant is registered in the Territory, make or cause to be made opposite the entry relating to the infant in any Register of Births a note of the adoption or of the order made under section fourteen of this Ordinance, as the case may be.

Particulars to be forwarded to Registrar.

8.—(1.) The Court may, on application by the adopter or adopters, authorize the alteration of the surname of the adopted child to that of the adopter or adopters.

Alteration of name of adopted child.

(2.) The Registrar-General shall amend or cause to be amended the particulars in any Register of Births relating to any adopted child whose surname has been altered in pursuance of the last preceding sub-section.

9.—(1.) Upon the making of an adoption order all rights, duties, obligations, and liabilities of the parent or parents, or guardian or guardians, of the adopted child, in relation to the future custody, maintenance, and education of the child, including the right to appoint a guardian or to consent to marriage, shall be extinguished and all those rights, duties, obligations, and liabilities

Effect of adoption order.

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shall vest in, and be exercisable by and enforceable against, the adopter as though the child was born to the adopter in lawful wedlock.

(2.) Where an infant has been adopted by two spouses the infant shall, in the event of any question arising between the spouses as to the custody, maintenance, or education of, or access to, the infant, be deemed by the Court exercising jurisdiction in the matter to have been born to the two spouses in lawful wedlock.

(3.) Subject to the provisions of this section, on, from, and after the making of the adoption order, the adopted child—

(a) shall be entitled to succeed (whether under any intestacy or disposition) to the real and personal property of the adopter or adopters to the same extent as would have been the case if the child had in fact been a child born to the adopter or adopters in lawful wedlock:

Provided that an adopted child shall not have—

- (i) any right of succession to the real or personal property of a relative of the adopter or adopters who dies intestate; or
 - (ii) any right to any real or personal property under any disposition made by a person or persons, other than the adopter or adopters, in favour of the issue child or children of the adopter or adopters unless it appears that it was the intention of the person or persons making the disposition to include adopted children as objects of such disposition; and
- (b) shall not have any right of succession to any real or personal property of its natural parent or parents which, if the adoption order had not been made, might have been claimed (whether under any intestacy or disposition) by such child as a child born to its natural parent or parents in lawful wedlock, unless in the case of a disposition the child is expressly named therein:

Provided that the making of the adoption order shall not deprive the adopted child of—

- (i) any right of succession to the real or personal property of a relative of its natural parent or parents who dies intestate; or

- (ii). any right to any real or personal property under any disposition made by a person or persons other than its natural parent or parents in favour of the issue child or children of its natural parent or parents unless it appears that it was the intention of the person or persons making the disposition to exclude as objects of the disposition such of the children of the natural parent or parents as have been adopted by another person or other persons.

(4.) The making of an adoption order shall not affect any estate, right, or interest in any real or personal property to which any person has become entitled either mediately or immediately in possession, expectancy, or contingency by virtue of any disposition made before the making of the adoption order, or by virtue of any devolution by law on the death of any person dying before the making of the adoption order.

(5.) The law for the time being in force in the Territory with respect to the marriage of persons within the degrees of consanguinity or affinity, which may affect at law the validity of marriages in fact celebrated, shall apply to any infant adopted in pursuance of this Ordinance both as respects its relations by adoption and as respects its relations by blood.

10. An adopter shall not marry his or her adopted child and any marriage contracted in contravention of this section shall be void.

Marriage between adopter and adopted child prohibited.

11.—(1.) Upon the hearing of any application for an adoption order, the Court may—

Interim order.

- (a) postpone the hearing; and
(b) make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period, upon such terms and conditions as to the maintenance, education, and supervision of the welfare of the infant as the Court thinks fit.

(2.) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the Court to dispense with any such consent.

12. An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and upon any application for the further adoption order, the adopter or adopters under the adoption order last previously

Power to make subsequent order in respect of infant already subject to an order.

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made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Ordinance.

Provisions as to existing *de facto* adoptions.

13. Where at the date of the commencement of this Ordinance any infant is in the custody of, and being brought up, maintained, and educated by, any person or two spouses jointly as his, her, or their own child under any *de facto* adoption, the Court may, upon the application of the person or spouses, and notwithstanding that the applicant is a male and the infant a female, make an adoption order authorizing him or them to adopt the infant without requiring the consent of any parent or guardian of the infant to be obtained, upon being satisfied that, in all the circumstances of the case, it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

Power to vary or discharge adoption order.

14.—(1.) Upon the application of the Crown Law Officer, the Court may in its discretion vary or discharge an adoption order subject to such terms and conditions as it thinks fit; but the adoption order shall not be varied or discharged unless the Court is satisfied that the variation or discharge of the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

(2.) Where an adoption order is discharged then, subject to the conditions (if any) named in the discharging order, the infant and its natural parents and the adopter shall be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the adoption order was made:

Provided that the restoration shall not affect anything lawfully done or any right or interest which became vested in the infant while the adoption order was in force.

Rules of Court.

15.—(1.) The Chief Judge may make Rules of Court⁽³⁾ for regulating the practice and procedure in respect of proceedings of any kind under this Ordinance.

(2.) All Rules of Court made under this section shall be published in the *New Guinea Gazette*.

(3.) The Minister⁽⁴⁾ may, by notification in the *New Guinea Gazette*, disallow any Rule of Court made under this section, and thereupon the Rule so disallowed shall cease to have effect.

(3) No Rules of Court have been made.

(4) Section 4 of the *Ordinances Interpretation Ordinance 1934-1941* provides that "In any Ordinance, unless the contrary intention appears, 'Minister' means the Minister of State for the time being administering the *New Guinea Act 1920-1932*."