



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$7.20

WINDHOEK - 3 November 2008

No. 4154

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Government Notices

MINISTRY OF GENDER EQUALITY AND CHILD WELFARE

No. 266 2008

COMMENCEMENT OF THE CHILDREN STATUS ACT, 2006 (ACT NO. 6 OF 2006)

In terms of section 27 of the Children Status Act, 2006 (Act No. 6 of 2006), I determine that the said Act comes into operation on 3 November 2008.

M. MUNGUNDA

MINISTER OF GENDER EQUALITY AND WELFARE

Windhoek, 20 October 2008

MINISTRY OF GENDER EQUALITY AND CHILD WELFARE

No. 267 2008

REGULATIONS RELATING TO CHILDREN STATUS: CHILDREN STATUS ACT, 2006 (Act No. 6 of 2006)

The Minister has, under section 25(1) of the Children Status Act, 2006, (Act No. 6 of 2006), made the regulations set out in the Schedule.

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Definitions

1. In these regulations any word or expression to which a meaning has been given in the Act bears that meaning and, unless the context otherwise indicates -

“applicant” means any person who is entitled to make an application in terms of the Act and who makes such application in terms of these regulations;

“clerk of court” means clerk of the children’s court, and when used in regulations 2 and 3 includes the Registrar of the High Court, a clerk of the magistrates courts or the community court or of any other court as may be established by law;

“DNA testing” means a scientific test used to establish whether a person is the biological father or mother of any person;

“messenger of the court” means a messenger of the court appointed as such in terms of section 14 or a police officer referred to in section 15 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“inquiry” means any proceedings conducted in terms of the Act other than review or appeal proceedings contemplated in section 5 or 6 of the Act;

“respondent” means a parent, primary caretaker, custodian, guardian or other person who has an interest in the welfare of the child that is the subject matter of an application in terms of the Act or these regulations; and

“the Act” means the Children Status Act, 2006 (Act No. 6 of 2006).

***Ex parte* application for interim custody order**

2. An *ex parte* application in terms of section 11(4) of the Act must be made in a form corresponding to Form CS 1 and must be submitted to the clerk of the children's court.

Interim custody order

3. (1) After an interim custody order has been granted by the court in terms of section 11(5) of the Act the clerk of the court must issue out the interim custody order in a form corresponding to Form CS 2.

(2) An interim custody order referred to in subregulation (1) must be accompanied by a form corresponding to Form CS 3 and contain a notice requesting the respondent to respond to the application within seven days of receiving the application, if he or she so wishes.

(3) The clerk of court must deliver or cause to be delivered the interim custody order referred to in subregulation (1) to the messenger of the court who must serve the order on the respondent in the manner provided for in regulation 17.

(4) On receipt of a response referred to in subregulation (2), or if the respondent fails to respond within the period referred to in that subregulation, the clerk of court must fix a date for the inquiry and the date must be notified to the parties in the manner provided for in regulation 17.

(5) After conducting an inquiry in terms of regulation 16, the court may -

(a) confirm the interim custody order and award custody of the child to the applicant or to any other person in whose favour the interim custody was issued in terms of section 11(5) of the Act; or

(b) discharge the interim custody order and award custody of the child to any person whom the court considers to be best suited to take care of the interests of the child having regard to section 3 of the Act.

(6) If a decision or an order under subregulation (5) is made by a court other than the High Court or a children's court, the clerk of that court must within seven days from the making of the decision or order, submit the decision or order together with all the documents relating to the case to the nearest children's court which has jurisdiction over the area where the court is situated for confirmation of the decision or order by the children's court.

Written agreement of custody

4. (1) The written agreement for custody of a child referred to in section 11(8) of the Act must be in a form corresponding to Form CS 4 and it must be submitted to the Permanent Secretary of the Ministry responsible for child welfare or to such other person as may be designated by the Minister for that purpose.

(2) On receipt of the agreement in terms of subregulation (1), the Permanent Secretary, or person referred to in subregulation (1), must register the agreement in the register kept for that purpose by the Ministry.

(3) If the parents of a child fail to reach agreement over the custody of the child as contemplated in section 11(3) of the Act, and no application is made to the court as contemplated in that section, the Minister or any person designated by him or her is authorised to take any decision which the primary custodian of the child could have taken on behalf of the child until such time that the issue of custody of the child is resolved.

(4) If there is more than one agreement submitted in terms of subregulation (1) and those agreements are inconsistent with each other, then in the absence of evidence of a contrary intention on the part of the parties, the most recent agreement takes precedence over earlier agreements.

Application for custody order

5. (1) An application for custody of a child in terms of section 12(2) of the Act must -

- (a) be made in a form corresponding to Form CS 5 and must be submitted to the clerk of the children's court; and
- (b) be accompanied by a form corresponding to Form CS 3 and contain a notice requesting the respondent to respond to the application within 14 days of receiving the application, if he or she so wishes.

(2) On receipt of an application for custody of a child the clerk of court must deliver the application or cause the application to be delivered to the messenger of the court who must serve the application on the respondent in the manner provided for in regulation 17.

(3) On receipt of a response referred to in subregulation (1), or if the respondent fails to respond within the period referred to in that subregulation, the clerk of court must fix a date for the inquiry and the date must be notified to the parties in the manner provided for in regulation 17.

Application for sole guardian ship

6. (1) An application for sole guardianship of a child in terms of section 13(4) of the Act must -

- (a) be made in a form corresponding to Form CS 6 and must be submitted to the clerk of the children's court; and
- (b) be accompanied by a form corresponding to Form CS 3 and contain a notice requesting the respondent to respond to the application within 14 days of receiving the application, if he or she so wishes.

(2) On receipt of an application for guardianship of a child the clerk of court must deliver the application or cause the application to be delivered to the messenger of the court who must serve the application on the respondent in the manner provided for in regulation 17.

(3) On receipt of a response referred to in subregulation (1), or if the respondent fails to respond within the period referred to in that subregulation, the clerk of court must fix a date for the inquiry and the date must be notified to the parties in the manner provided for in regulation 17.

Application for denial or restriction of access or for access rights

7. (1) An application for restriction or denial of access to the non-custodian parent in terms of section 14(5) of the Act must be made in a form corresponding to Form CS 7 and must be submitted to the clerk of the children's court.

(2) An application for access to a child by a non-custodian parent who has not voluntarily acknowledged parentage in terms of section 14(9) of the Act must be made in a form corresponding to Form CS 8 and must be submitted to the clerk of the children's court.

(3) An application made in terms of subregulation (1) or (2) must be accompanied by a form corresponding to Form CS 3 and contain a notice requesting the respondent to respond to the application within 14 days of receiving the application, if he or she so wishes.

(4) On receipt of an application made in terms of subregulation (1) or (2) the clerk of court must deliver the application or cause the application to be delivered to the messenger of the court, who must serve the application on the respondent in the manner provided for in regulation 17.

(5) On receipt of a response referred to in subregulation (4), or if the respondent fails to respond within the period referred to in that subregulation, the clerk of court must fix a date for the inquiry and date must be notified to the parties in the manner provided for in regulation 17.

Temporary access order

8. (1) If a children's court grants a temporary access order in terms of section 14(8) of the Act, the clerk of the court must issue out the temporary access order in a form corresponding to Form CS 9.

(2) A temporary access order referred to in subregulation (1) must be accompanied by a form corresponding to Form CS 3 and contain a notice requesting the respondent to respond to the application within seven days of receiving the order, if he or she so wishes.

(3) The clerk of court must deliver or cause to be delivered the temporary access order referred to in subregulation (1) to the messenger of the court who must serve the order on the respondent in the manner provided for in regulation 17.

(4) On receipt of a response referred to in subregulation (2), or if the respondent fails to respond within the period referred to in that subregulation, the clerk of court must fix a date for the inquiry and the date must be notified to the parties in the manner provided for in regulation 17.

(5) After conducting an inquiry in terms of regulation 16, the court may -

- (a) confirm the temporary order and deny access to the non-custodian parent; or
- (b) discharge the temporary access order and allow access rights to the non-custodian parent.

Application for custody or guardianship following death of custodian or guardian

9. (1) An application for custody following death of custodian in terms of section 20(1) of the Act or guardianship following the death of a guardian in terms of section 21(5) of the Act must -

- (a) be made in a form corresponding to Form CS 10 and must be submitted to the clerk of the children's court;
- (b) be accompanied by a form corresponding to Form CS 3 and contain a notice requesting the respondent to respond to the application within 14 days of receiving the application, if he or she so wishes; and
- (c) be accompanied by the statement referred to in section 21(6) of the Act and the names and contact details of the close family members of the child who have been consulted in terms of section 21(6) of the Act.

(2) On receipt of an application made in terms of subregulation (1) the clerk of court must deliver the application or cause the application to be delivered to the messenger of the court who must, in the manner provided for in regulation 17 and as may be directed by the children's court, serve the application on the parent, custodian or primary caretaker of the child and other person who have an interest in the welfare of the child such as a social worker, traditional leader or teacher.

(3) On receipt of a response referred to in subregulation (1), or if the respondent fails to respond within the period referred to in that subregulation, the clerk of court must fix a date for the inquiry and the date must be notified to the parties in the manner provided for in regulation 17.

(4) When considering an application under section 21 of the Act, the commissioner may require that the applicant present the child in question to the commissioner, if the requirements of section 4(6) of the Act are met, and the commissioner considers that it is in the best interest of the child.

Complaint against guardian

10. (1) A compliant on guardianship in terms of section 21(12) of the Act must be made in a form corresponding to Form CS 11 and must be submitted to the clerk of the children's court.

(2) If it is the wish of the complainant under section 21(12) of the Act, his or her name and particulars may be omitted from Form CS 11.

Report by social worker

11. (1) The report by a social worker referred to in section 21(13) of the Act must be made in a form corresponding to Form CS 12.

(2) On receipt of a report referred to in subregulation (1), the clerk of court must refer the report to a commissioner who may, if he or she considers it necessary, before making an alteration in terms of section 21(14) of the Act, order that an inquiry into the matter be held.

(3) If the commissioner orders an inquiry in terms of subregulation (2), the clerk must fix a date for the inquiry and the date must be notified to the parties in the manner provided for in regulation 17.

Proof of parentage

12. (1) In order to establish parentage in proceedings brought under section 8(2) of the Act, the children's court may order that the putative mother or putative father as well as the child in question undergo a DNA testing.

(2) Any costs incurred in carrying out a DNA testing must be borne by the party who is disputing paternity or maternity but in cases where it is proved that the party is unable to pay, the court may order that the costs be shared between that party and the State or that all the costs be borne fully by the State.

Consent to adoption or departure of child from Namibia

13. The written consent of both parents required in terms of -

(a) section 13(7)(a) of the Act, must be made before the commissioner for child welfare in a form corresponding to Form CS 13; and

(b) section 13(7)(b) of the Act, must be made before the commissioner for child welfare in a form corresponding to Form CS 14.

Certificate of guardianship

14. A certificate of guardianship issued in terms of section 21(8) of the Act or after an inquiry done pursuant to regulation 16 must be in a form corresponding to Form CS 15.

Notification of interested parties

15. (1) A person seeking custody, guardianship, or access to a child must, at any time before making an application in terms of these regulations or at any other appropriate time determined by the children's court, notify the clerk of the children's court of the names and contact details of the persons referred to in section 12(3), 13(5) or 14(6) of the Act.

(2) On receipt of the information under subregulation (1), the clerk of the court must issue out a notice -

(a) in Form CS 16 notifying the person of the applicant's intention to make the application; and

(b) requesting the person to, within the period specified in the notice, make any representations in relation to the intended application, if he or she so wishes.

(3) The clerk of court must deliver or cause to be delivered the notice referred in subregulation (2) to the messenger of the court who must serve the notice on the person stated in the notice in the manner provided for in regulation 17.

(4) Before conducting an inquiry in terms of regulation 16, the children's court may request proof that notice has been given to the persons in terms of subregulation (3).

Conduct of proceedings

16. (1) In addition to the provisions of section 8 and 9 of the Children's Act, 1960 (Act No. 33 of 1960), and to any rules made thereunder, the rules set out in this regulation apply during an inquiry in a children's court.

(2) The enquiry referred to in subregulation (1) must -

(a) be held in the presence of the respondent or in his or her absence, on production of proof that the respondent was served with any notice or document as required by regulation 17; and

(b) where the requirements of section 4(6) of the Act are met, and the court considers that it is in the best interest of the child, be held in the presence of the child.

(3) Unless otherwise provided for in the Act or in these regulations, proceedings at an enquiry must be conducted in accordance with practice and procedure followed in civil proceedings in the magistrates courts in Namibia.

(4) The court may, when conducting an enquiry, depart from any strict rule of practice or procedure as contemplated in subregulation (3), if the court considers that departure from that practice or procedure would ensure that substantial justice is achieved between the parties to the enquiry.

(5) The court must, where both or one of the parties are not represented, assist such parties in order to ensure that substantial justice is achieved and may use its discretion to ensure that the inquiry is held in a relaxed atmosphere where the parties can express themselves freely.

(6) The court holding an inquiry must play an active role in the proceedings and may, at any time during the inquiry, cause any person to be summoned as a witness or examine any person who is present at the inquiry, although that person was not summoned as a witness, and may recall and re-examine any person already examined, in an objective attempt to determine the facts in a manner that is aimed at ensuring that substantial justice is achieved between the parties.

(7) The court holding an inquiry must keep a record of the proceedings or cause the proceedings to be recorded in full be it in shorthand or by mechanical means by a person directed by the presiding officer to do so.

(8) At the inquiry, a statement in writing by any person, other than one of the parties, is admissible as evidence to the same extent as oral evidence to the same effect by the person concerned, but, a copy of the statement must, at least 14 days before the date on which the statement is to be submitted as evidence, be served on the other party and he or she may, at least seven days before the commencement of the inquiry, object to the statement.

(9) Where a party wishes to arrange to summon witnesses through the court, the clerk of the court must assist such person to locate and summon such witnesses but, where the court considers it necessary, it may limit the number of persons to be called as witnesses.

(10) If a person -

(a) objects to the production of a statement as contemplated in subregulation (8), the court must inquire into the reasons for such objection and after doing so, give a ruling as to whether such statement is admissible as evidence or not; or

(b) does not object, the statement contemplated in subregulation (8) may on its mere production at the inquiry be admitted as evidence in the inquiry.

Service of documents

17. (1) Service of any documents which are required to be served under the Act or these regulations must be served by the messenger of the court for the area in which the children's court is located.

(2) A document, which under the Act or these regulations is required to be served by the messenger of the court must, together with any copy, be handed over to the messenger of the court who must, subject this regulation, forthwith serve it on the person referred to in that document by delivering a copy of the document in one of the following ways -

(a) to that person personally;

(b) to that person's legal practitioner of record, if that person has provided the name and address of his or her legal practitioner of record for the purposes of any proceedings under the Act;

(c) at that person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there;

(d) at that person's place of employment to a person apparently not less than 16 years of age and apparently in authority over that person or, in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at that person's place of employment; and

(e) in the case of a juristic person, at its registered office or main place of business within the area of jurisdiction of the court concerned, to a director or a responsible employee of the juristic person.

(3) For the purpose of subregulation (2)(b), "residence" means, where the building is occupied by more than one person or family, that portion of the building occupied by the person on whom service is to be effected.

(4) A messenger of the court must, if requested by the person on whom a document is or is to be served, show him or her the original of the document.

(5) Where the person on whom a document is to be or may be served keeps his or her residence, place of business or place of employment closed and thereby prevents the messenger of the court from serving the document, it is sufficient service to affix a copy of the document to the outer or principal door or security gate of such residence, place of business or place of employment, or to place a copy of such document in the mail box at such residence, place of business or employment.

(6) Service of any document in terms of these regulations must be effected in the manner set out in this regulation, but where no provision is made for any matter regarding service of documents, the rules relating to the service of process in civil matters in the magistrates courts are, subject such necessary changes or modifications as may be required by contracts, applicable to service of documents under these regulations.

Review proceedings

18. The clerk of the children's court which makes any order in terms of section 5 of the Act must within 21 days of the date of such order forward to the Registrar of the High Court the record of the proceedings in the case, together with -

- (a) such remarks as the person presiding at the inquiry may wish to append thereto; and
- (b) any written statement or argument made by or on behalf of any person affected by the order and provided to the clerk of the children's court within three days of the date of such order;

and the Registrar of the High Court must, as soon as possible, lay these documents in chambers before a judge of the High Court for his or her consideration.

Lodging of appeals

19. (1) The clerk of the children's court must render all the necessary assistance, including the completion all the relevant documents relating to the appeal, to any person who lodges as appeal in terms of section 6 of the Act and these regulations to the High Court.

(2) An appeal in terms of section 6 of the Act must be noted within 30 days of the granting of the order appealed against and any cross-appeal must be noted within seven days of the noting of the appeal.

(3) An appeal or cross-appeal must be noted by delivery, within the period prescribed in subregulation (2), to the clerk of the children's court concerned, the register of the High Court and to the other party, of a notice stating -

- (a) whether the whole or part only of the order is appealed against and, if part only, which part; and
 - (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.
- (4) The person who presided at the enquiry must -
- (a) within 14 days of the noting of an appeal; or

- (b) if the proceedings at the enquiry were recorded by mechanical means, within 14 days after the transcription of the mechanical record of the proceedings has been placed before him or her by the clerk of the children's court,

transmit to the clerk of the children's court a statement in writing setting out -

- (i) the facts he or she found to be proved;
- (ii) his or her reasons for any finding of fact specified in the notice of appeal; and
- (iii) his or her reasons for any ruling on a question of law or for the admission or rejection of any evidence specified in the notice of appeal.

(5) Where an appeal has been noted under this regulation, the clerk of the relevant children's court must, if the proceedings at an enquiry were recorded by mechanical means, forthwith cause the mechanical record of the proceedings to be transcribed and the person transcribing the record must certify the record as true.

(6) The person who has noted an appeal bears the cost of the transcription contemplated in subregulation (5), but, if the commissioner of the relevant children's court is satisfied that such person is unable to pay the costs, the costs must be paid by the State.

(7) After an appeal has been noted in terms of sub-regulation (2), the appeal must be prosecuted as if it were an appeal against the decision of a magistrates' court in a civil case and the rules regulating the conduct of the proceedings of the High Court in so far as they relate to civil appeals from the magistrates' courts do, with the necessary changes, apply to such an appeal.

(8) The clerk of the children's court must, within seven days of the receipt by that clerk of court of a notice that an appeal has been set down for hearing, transmit to the Registrar of the High Court, the record of the proceedings at the enquiry, certified by the presiding commissioner as a true record of the proceedings and a transcription of that part of the proceedings mechanically recorded, certified as provided for in subregulation (5).

(9) If the applicant notes an appeal or cross-appeal, as the case may be, and he or she cannot afford a legal practitioner, the applicant must notify the clerk of the children's court who must request a commissioner to make an order contemplated in section 4(4) of the Act.

Application of Rules of the High Court

20. Where regulations 18 or 19 do not make provision for the procedure to be followed in review or appeal proceedings instituted before High Court pursuant to the Act or these regulations, the rules made in terms of section 39 (1) of the High Court Act, 1990 (Act No. 16 of 1990) applicable in the High Court to review or appeal proceedings from decisions of magistrates courts apply to proceedings before the High Court with such qualifications, modifications and adaptations as the court may deem necessary.

Costs

21. (1) The children's court may order that the costs for anything done or required to be done in terms of the Act or these regulations be borne by either party or be shared by parties to the proceedings, but where a party or the parties are unable to bear the costs the court may order that the costs be borne by the State.

(2) Where costs are required in terms of these regulations to be borne by the State such costs must be defrayed from the money allocated to the Ministry responsible for Child Welfare by Parliament.

Commencement of regulations

22. These regulations come into operation on 3 November 2008.

FORMS

Form CS1	<i>Ex parte</i> application for interim custody
Form CS2	Interim custody order
Form CS3	Notice of intention to oppose application
Form CS4	Written agreement of custody
Form CS5	Application for custody order
Form CS6	Application for sole guardianship
Form CS7	Application for denial or restriction of access
Form CS8	Application for access rights
Form CS9	Temporary access order
Form CS10	Application for custody or guardianship following death
Form CS11	Complaint against guardian
Form CS12	Report by social worker
Form CS13	Consent to adoption of child
Form CS 14	Consent to departure of child from Namibia
Form CS 15	Certificate of guardianship
Form CS 16	Notice to interested parties

ANNEXURES

FORM CS 1
(Regulation 2)

EX PARTE APPLICATION FOR INTERIM CUSTODY: SECTION 11(4) OF THE ACT

Custody is responsibility for the day-to-day care of a child, including the power to make decisions about the child’s daily care. The parent with this duty is the child’s custodian.

This application can be made if the parents cannot agree and the child’s best interests are in danger of being compromised, “the person who has physical custody of the child” can make an application to court for interim custody.

(Children of the same parent(s) may be completed on one application form)

Reference No:

I,
(Full name and surname of applicant)

hereby apply to have interim custody of the following child(ren):

- born on

Date of Birth:

Identity No.:

Place of Birth:

Region: Constituency: Town: Village:

Residential Address:

Postal Address:

Telephone Nos: (Home) (Work)..... (Cell)

Name of relative/friend who is not living with applicant:

Residential Address:

Postal Address:

Telephone Nos: (Home) (Work) (Cell)

Relation of applicant to the child(ren):

Current Caregiver of child(ren):

Full Name:

Residential Address:

Postal Address:

Telephone Nos: (Home) (Work) (Cell)

Identifying/Personal details of parents of child(ren)

Full name of Father of child(ren):.....

Date of Birth:
 Identity No:
 Place of birth:
 Region:
 Constituency: Town: Village:
 Residential Address:
 Postal Address:
 Telephone No: (Home) (Work) (Cell)

Full name of Mother of child(ren):
 Date of Birth:
 Identity No:
 Place of Birth:
 Region: Constituency: Town: Village:
 Residential Address:
 Postal Address:
 Telephone No: (Home) (Work) (Cell)

Reason for applying for interim custody:

Declaration:

I, the under signed hereby declare that the information provided in this application is to the best of my knowledge true and correct.

Signature of applicant:
 Date: Place:

FORM CS 2
(Regulation 3)

INTERIM CUSTODY ORDER: SECTION 11(5) OF THE ACT

Custody is responsibility for the day-to-day care of a child, including the power to make decisions about the child’s daily care. The parent with this duty is the child’s custodian.

The interim order will remain in effect until the same court makes a final decision on custody.

Reference No.

In the High Court of Namibia or Children’s Court/Community Court/Magistrates Court for district of held at

In the matter between:

..... Applicant

and

..... Respondent

NOTICE TO RESPONDENT

An application has been made for an interim custody order in terms of the Children Status Act, 2006. A copy of the application and statements made in support of the application is attached, along with any other evidence which was put before the court. On the basis of this information, the court has issued an interim custody order in favour of

You are hereby requested to respond to the application within seven (7) days of receiving the application if you so wish. If you intend to oppose the application please complete Form CS 3 which is attached.

PARTICULARS OF RESPONDENT (IF KNOWN)

Full names:

Date of Birth:

Identity No:

Sex:

Place of Birth:

Region: Constituency: Town: Village:

Occupation:

Name of employer:

Work address:

Residential Address:

Postal Address:

Telephone Nos: (Home) (Work) (Cell)

ORDER OF COURT

1. The court orders that
 - a) the application for the custody order is dismissed.

- b) the application for the custody order is granted as set out on the following:
 - (i) temporary custody of the following children is granted to the applicant.
names:
 - (ii) temporary custody of the following children is granted to
.....
names:

2. It is further ordered as follows:
.....

JUDGE/PRESIDING OFFICER CHILDRENS/COMMUNITY COURT /MAGISTRATE
..... DATE PLACE

FORM CS 3
(Regulation 3)

NOTICE OF INTENTION TO OPPOSE APPLICATION

To the Commissioner of Child Welfare

.....

I, the biological mother/father/guardian/custodian/relative of (name of child/ren) born on hereby give notice of my intention to oppose the application for made by (name of applicant) on (date) in..... (court) at (place).

Signature: Date: Place.....
Respondent

FORM CS 4
(Regulation 4)

WRITTEN AGREEMENT OF CUSTODY: SECTION 11 (8) OF THE ACT

(AGREEMENT ON PARENTAL RIGHTS AND RESPONSIBILITIES
FOR CHILD BORN OUTSIDE MARRIAGE)

Custody is responsibility for the day-to-day care of a child, including the power to make decisions about the child's daily care. The parent with this duty is the child's custodian.

Guardianship is responsibility for making important legal decisions on behalf of the child. The parent with this duty is the child's guardian.

Registration: This agreement may be registered by giving it to the Permanent Secretary or to any person designated by him or her in terms of regulation 4(1) and should be handed in with the child's birth certificate. It's not mandatory to register the agreement, but registration is advisable.

FULL NAME OF CHILD: _____

CHILD'S DATE OF BIRTH: _____

We, the parents of the child named above, agree that the custodian of this child will be _____. We understand that the custodian of the child will also be the child's guardian. We understand that we can change this choice in future if we wish by registering a new agreement. If we cannot agree on this question, or if one of us has a complaint about the other parent's treatment of the child, we understand that we must go to a children's court for a decision.

FULL NAME OF MOTHER OF CHILD: _____

MOTHER'S DATE OF BIRTH: _____

MOTHER'S ID NUMBER: _____

SIGNATURE OR MARK: _____

FULL NAME OF FATHER OF CHILD: _____

FATHER'S DATE OF BIRTH: _____

FATHER'S ID NUMBER: _____

SIGNATURE OR MARK: _____

DATE OF AGREEMENT: _____

WITNESS (print name and sign): _____

WITNESS (print name and sign): _____

FORM CS 5
(Regulation 5)

APPLICATION FOR CUSTODY ORDER: SECTION 12(2) OF THE ACT

Custody is responsibility for the day-to-day care of a child, including the power to make decisions about the child’s daily care. The parent with this duty is the child’s custodian.

Guardianship is responsibility for making important legal decisions on behalf of the child. The parent with this duty is the child’s guardian.

Primary custodian: Both parents have an equal right to become the child’s custodian, but if they are not married one of them must act as the primary custodian.

(Children of the same parent(s) may be completed on one application form)

Reference No:.....

I,.....

(Full name and surname of applicant)

hereby apply to have custody of the following child(ren):

..... born on
..... born on

Date of Birth:

Identity No.:

Place of Birth:

Region: Constituency: Town: Village:

Residential Address

Postal Address

Telephone Nos.: (Home) (Work) (Cell)

Name of relative/friend who is not living with applicant:

Residential Address:

Postal Address

Telephone Nos.: (Home) (Work) (Cell)

Relation of applicant to the child(ren):

Current Caregiver of child(ren):

Full Name:

Residential Address:

Postal Address:

Telephone Nos.: (Home) (Work) (Cell)

Identifying/Personal details of parents of child(ren)

Full name of Father of child(ren):

Date of Birth:

Identity No:

Place of birth:
 Region:
 Constituency: Town: Village:
 Residential Address:
 Postal Address:
 Telephone Nos.: (Home) (Work) (Cell)

Full name of Mother of child(ren):

.....
 Date of Birth:
 Identity No:
 Place of Birth:
 Region: Constituency:
 Town: Village:
 Residential Address:
 Postal Address:
 Telephone Nos: (Home) (Work) (Cell)

Reason for applying for custody:

.....

Declaration:

I, the under signed hereby declare that the information provided in this application is to the best of my knowledge true and correct.

Signature of applicant: Date:

NOTICE TO RESPONDENT

You are hereby requested to respond to the application within fourteen (14) days of receiving the application if you so wish. If you intend to oppose the application please complete please complete Form CS3 which is attached.

PARTICULARS OF RESPONDENT (IF KNOWN)

Full names:
 Date of Birth:
 Identity No:
 Sex:
 Place of Birth:
 Region: Constituency: Town: Village:
 Occupation:
 Name of employer:
 Work address:
 Residential Address:
 Postal Address:
 Telephone Nos: (Home) (Work) (Cell)

FORM CS 6
(Regulation 6)

APPLICATION FOR SOLE GUARDIANSHIP: SECTION 13(4) OF THE ACT

Guardianship is responsibility for making important legal decisions on behalf of the child. The parent with this duty is the child's guardian.

Sole guardianship is the exercise of the rights, duties and powers of custody by one person to the exclusion of all other persons.

(Children of the same parent should be completed on one application form)

Reference No:

I,
(Full name and surname of applicant)

hereby apply to have sole guardianship of the following child(ren):

- born on

Date of Birth:

Identity No:

Place of Birth:

Region: Constituency: Town: Village:

Residential Address:

Postal Address:

Telephone Nos.: (Home) (Work) (Cell)

Name of relative/friend who is not living with applicant:

Residential Address:

Postal Address:

Telephone Nos.: (Home) (Work) (Cell)

Relation of applicant to the child(ren):

Current Caregiver of child(ren):

Full Name:

Residential Address:

Postal Address:

Telephone Nos.: (Home) (Work) (Cell)

Identifying/Personal details of parents of child(ren)

Full name of Father of child(ren):

Date of Birth: Identity No:

Place of Birth: Region:

Constituency:..... Town: Village:

Residential Address:
Postal Address:
Telephone Nos.: (Home) (Work) (Cell)

Full name of Mother of child(ren):

Date of Birth: Identity No:
Place of Birth: Region:
Constituency: Town: Village:
Residential Address:
Postal Address:
Telephone Nos.: (Home) (Work) (Cell)

Reason for applying for sole guardianship:

.....
.....
.....
.....
.....
.....

Declaration:

I, the under signed hereby declare that the information provided in this application is to the best of my knowledge true and correct.

Signature of applicant: Date:

NOTICE TO RESPONDENT

You are hereby requested to respond to the application within fourteen (14) days of receiving the application if you so wish. If you intend to oppose the application please complete please complete Form CS3 which is attached.

PARTICULARS OF RESPONDENT (IF KNOWN)

Full names:
Date of Birth: Identity No:
Sex: Place of Birth:
Region: Constituency:
Town: Village:
Occupation:
Name of employer:
Work address:
Residential Address:
Postal Address:
Telephone Nos.: (Home) (Work) (Cell)

FORM CS 9
(Regulation 8)

TEMPORARY ACCESS ORDER: SECTION 14(8) OF THE ACT

Temporary Access order gives the non-custodian parent temporary access rights to the child.

Reference No.

In the Children's Court/Community Court/Magistrates Court for district of
held at

In the matter between:

..... Applicant

and

..... Respondent

NOTICE TO RESPONDENT

An application has been made for a temporary access order in terms of the Children Status Act, 2006. A copy of the application and statements made in support of the application is attached, along with any other evidence which was put before the court. On the basis of this information, the court has issued a temporary access order in favour of

You are hereby requested to respond to the application within seven (7) days of receiving the application if you so wish. If you intend to oppose the application please complete attached formed.

PARTICULARS OF RESPONDENT (IF KNOWN)

Full names:

Date of Birth:

Identity No:

Sex:

Place of Birth:

Region: Constituency: Town: Village:

Occupation:

Name of employer:

Work address:

Residential Address:

Postal Address:

Telephone Nos: (Home) (Work)..... (Cell)

ORDER OF COURT

1. The court orders that
 - a) the application for the access order is dismissed.
 - b) the application for the access order is granted as set out on the following:

(i) temporary access of the following children is granted to the applicant.

names:

(ii) temporary access of the following children is granted to

names:

2. It is further ordered as follows:

.....

PRESIDING OFFICER CHILDRENS/COMMUNITY COURT /MAGISTRATE

..... **DATE** **PLACE**

FORM CS 10
(Regulation 9)

APPLICATION FOR CUSTODY OR GUARDIANSHIP FOLLOWING DEATH: SECTION 21(5) OF THE ACT

(Children of the same parent should be completed on one application form)

Custody is responsibility for the day-to-day care of a child, including the power to make decisions about the child's daily care. The person with this duty is the child's custodian.

Guardianship is responsibility for making important legal decisions on behalf of the child. The person with this duty is the child's guardian.

A single person can be named as both custodian and guardian. It is also possible for custody and guardianship to be separate, with one person being named as custodian and another as guardian.

You must take this form to a children's court in order to be confirmed as the child's custodian or guardian. If possible, you should also provide copies of (1) the birth certificate of the child in question (2) your ID or birth certificate and (3) the death certificate of the custodian or guardian who has died.

1. Give details about the child. (If you are applying to be the custodian/guardian of more than one child, you must fill in one form for each child.)

FULL NAME OF CHILD: _____

CHILD'S DATE OF BIRTH: _____

CONTACT DETAILS FOR CHILD'S CURRENT RESIDENCE:

Physical address: _____

Postal address: _____

Telephone: _____

NAME OF SCHOOL CHILD ATTENDS (if child is in school): _____

FULL NAME OF CHILD'S MOTHER: _____

MOTHER'S ID OR DATE OF BIRTH (if known): _____

IS MOTHER DECEASED? yes/ no / I don't know

If so, give date of death: _____

If deceased, did mother leave a written or oral will?

yes/ no/ I don't know

If NOT deceased, give contact details if known:

Physical address: _____

Postal address: _____

Telephone: (home) _____ (work) _____ (cell) _____

FULL NAME OF CHILD'S FATHER: _____

FATHER'S ID OR DATE OF BIRTH (if known): _____

IS FATHER DECEASED? yes/ no / I don't know

If so, give date of death: _____

If deceased, did father leave a written or oral will?

yes/ no / I don't know

If NOT deceased, give contact details if known:

Physical address: _____

Postal address: _____

- Telephone: (home) _____ (work) _____ (cell) _____
2. Give details about the child's PRIMARY CARETAKER. This is the person who is actually taking care of the child now.
 NAME: _____
 Physical address: _____
 Postal address: _____
 Telephone: (home) _____ (work) _____ (cell) _____
3. I am applying to be:
 custodian of this child
 guardian of this child
 both custodian and guardian of this child
4. My relation to the child is
 aunt
 uncle
 grandparent
 sister
 brother
 other _____
5. Give information about the current or previous CUSTODIAN of the child IF THIS WAS SOMEONE OTHER THAN THE CHILD'S MOTHER OR FATHER:
 Name: _____
 Physical address: _____
 Postal address: _____
 Telephone: (home) _____ (work) _____ (cell) _____
 Is this person deceased? yes/ no
 If so, give date of death: _____
 If deceased, did this person leave a written or oral will?
 yes/ no / I don't know
6. Give information about the current or previous GUARDIAN of the child IF THIS WAS SOMEONE OTHER THAN THE CHILD'S MOTHER OR FATHER:
 Name: _____
 Physical address: _____
 Postal address: _____
 Telephone: (home) _____ (work) _____ (cell) _____
 Is this person deceased? yes/ no
 If so, give date of death: _____
 If deceased, did this person leave a written or oral will?
 yes/ no/ I don't know
7. Have you consulted members of the child's extended family about who should be the child's custodian and/or guardian? yes/ no
- If so, list persons consulted:
- a) Name: _____
 Contact details: _____
 Relation to child: _____
- b) Name: _____
 Contact details: _____
 Relation to child: _____

- c) Name: _____
 Contact details: _____
 Relation to child: _____
- d) Name: _____
 Contact details: _____
 Relation to child: _____
- e) Name: _____
 Contact details: _____
 Relation to child: _____
- f) Name: _____
 Contact details: _____
 Relation to child: _____
- g) Name: _____
 Contact details: _____
 Relation to child: _____

CONTINUE OF REVERSE SIDE OF FORM IF NECESSARY

8. Did anyone consulted object to your application to become custodian/guardian?

___yes/ ___no

If so, please give details:

9. Please fill in the following information about yourself:

FULL NAME: _____

DATE OF BIRTH: _____

ID NUMBER: _____

PHYSICAL ADDRESS: _____

POSTAL ADDRESS: _____

TELEPHONE: (home) _____ (work) _____ (cell) _____

EMPLOYER: _____

EMPLOYER'S ADDRESS: _____

10. Explain why you want the responsibility of being the child's custodian/guardian.

11. I swear or affirm that all the information on this form is true and correct, to the best of my knowledge.

SIGNATURE OR MARK: _____ **DATE:** _____

PLACE: _____

COMMISSIONER OF OATHS: _____

FORM CS 11
(Regulation 10)

COMPLAINT AGAINST GUARDIAN: SECTION 21(12) OF THE ACT

Any person with an interest in the child’s well-being can make a complaint to the children’s court if the appointed guardian is failing to act in the child’s best interests.

To the Commissioner of Child Welfare

.....
.....

I,, (name of complainant may be omitted, if complainant so wishes in line with regulation 10(2))

Relationship to the child, if any

hereby lodge a complaint in respect of (name of child).....
born on

in the custody of (name of custodian),

Due to the following reasons:

.....
.....
.....

.....
Signature of Applicant

.....
Date

.....
Place

FORM CS 12
(Regulation 11)

REPORT BY SOCIAL WORKER: SECTION 21(13) OF THE ACT

**COMPLAINT INTO THE CIRCUMSTANCES WHEN A GUARDIAN IS NOT ACTING
IN THE BEST INTEREST OF A CHILD**

Report on the investigation of guardian not acting in the best interest of the child must be requested by the court following a thorough investigation by a Social Worker.

The purpose of the report is to provide information to the children’s/magistrate court that would assist the court to make a decision after complaints that the guardian is not acting in the best interest of the child.

**SUBMITTED TO: THE MAGISTRATE/CHILDREN’S COURT, PRIVATE BAG,
.....**

FORMAT OF THE REPORT:

1. INTRODUCTION

2. FAMILY CIRCUMSTANCES

2.1 Family Composition

2.1.1 Father: DOB:
Date of death (if applicable): Residential address:
.....
Contact details (Tel):

2.1.2 Mother: DOB:
Date of death (if applicable): Residential address:
Contact details (Tel)

2.1.3 Children..... DOB: Sex: (F)..... (M)

2.2 Family Background/History
.....

2.3 Details of guardian appointed through will

Name of guardian: DOB
Address of the guardian:
Contact Details:

2.4 Name of guardian appointed by court:

Name of guardian: DOB
Address of the guardian:
Contact Details:

3. Information regarding the complaint received
.....

- 4. Future care of child/ren (Give details about the investigation, information received from informants- focus on needs of the child)
.....
- 5. Choice/preference of the Child/ren on guardianship (if applicable)
.....
- 6. Reasons for recommendation of guardian by social worker
.....
- 7. Identifying details of proposed guardian
 Name of guardian: DOB
 Address of the guardian:
 Contact Details:
 Family Circumstances:
 Family composition:

 Family background:

 Employment history and financial position:

 Housing Circumstances

 Socio-cultural aspects and interpersonal relationships (sense of belonging, etc)
 Physical and psychological aspects
- 8. Any other important information:
.....
- 9. Evaluation
.....
- 10. Recommendation
.....
- 11. Resources consulted in investigation
.....

_____ **Signature)**

_____ **(Initials and Surname)**

SOCIAL WORKER

DATE:

PLACE:

⁴ Attention needs to be given on continuity in terms of the school of the child, care; guidance and discipline; provision of emotional security; which guardian is having insight in the child in general, referring to needs of the child; and healthy family unit

FORM CS 13
(Regulation 13(a))

CONSENT FOR ADOPTION BY BOTH PARENTS: SECTION 13(7)(a) OF THE ACT

I, as the biological mother/father hereby give consent for the adoption of (name of child/ren) born on
.....
.....

Parent Signature: Parent Signature:
Date: Date:

Place:.....

Signature:
COMMISSIONER OF CHILD WELFARE

FORM CS 14
(Regulation 13(b))

**CONSENT TO DEPARTURE OF CHILD FROM NAMIBIA:
SECTION 13(7) (b) OF THE ACT**

I as (capacity) hereby give consent for the removal of (name of child/ren) born on of whom the parents are mother father from Namibia by (person removing the child) for a period of

Reasons of taking the child out of the country:

Date of departure: Date of Return:

Address during period of absence:

.....

Name of Country outside Namibia:

Residential Address:

House/flat number or hotel:

Street name:..... Name of suburb:

City/Town: Telephone numbers:

Parent Signature: Parent Signature:

Date: Date:

Place:

Signature:

COMMISSIONER OF CHILD WELFARE

FORM CS 15
(Regulation 14)

CERTIFICATE OF GUARDIANSHIP: SECTION 13(5) OF THE ACT

Reference No:

In the Children's Court (name of court) the order of
guardianship is hereby granted to (full name),
ID No: over the following child(ren)

.....
.....
.....
.....

Granted on this day of 20

.....
COMMISSIONER OF CHILD WELFARE

.....
DATE

