

Recommended Model Forms for use under the 1993 Adoption Convention



Child

Recommended Model Form No 5

Statement of consent of the child to
the intercountry adoption (Art. 4(d))

Recommended Model Form No 5

**Statement of consent of the child to
the intercountry adoption (Art. 4(d))**

Recommended Model Form No 5

Statement of consent of the child to the intercountry adoption (Art. 4(d))

ARTICLE 4 (d) OF THE 1993 ADOPTION CONVENTION

Article 4(d)

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin - [...]

(d) have ensured, having regard to the age and degree of maturity of the child, that

- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required, [...]*
- (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and*
- (4) such consent has not been induced by payment or compensation of any kind.*

EXPLANATORY SECTION

1. What has been included in this Recommended Model Form?

This Form includes the different aspects of consent as per Article 4(d) of the Convention.

It is designed to document the child's consent when it is required by domestic law. Thus, States may determine a minimum age for consent and the required legal form of consent.

To the extent possible, this Form has been drafted in a child-friendly manner.

States are encouraged to develop guidelines¹ on how to take consent from a child, having regard to their degree of maturity, to ensure that the child is able to consent, to prevent pressure being put on the child to consent, as well as to establish a new life plan in case the child does not want to give their consent.

2. When should this Model Form be used?

This Form should be used to record the child's consent to a specific² adoption once the child has been matched.

Before proceeding, the official attesting the consent should determine, in light of the child's capacity, age and degree of maturity, whether free and informed consent can be obtained.

States may also find it useful to use this Model Form to help inform the child on the legal consequences of consent if the child is sufficiently mature, even if the consent is not yet legally required.

Assistance and communication with the child should be provided in a child-friendly manner, taking into account that some children may be overwhelmed if they have to respond to too many questions.

Competent authorities of the relevant Contracting State should ensure that this form is preserved (see Arts 9(a), 30 and 31 of the Convention).

3. Is the use of this Model Form compulsory?

No, it is only a Recommended Model Form, which may need to be adapted by each State.

¹ States may, in addition to this form, develop detailed guidance in a separate manual or as an annex to the Model Form on how to take the child's statement of consent; the manual or annex may also contain the instructions to the official taking the statement of consent and the witness attesting to the informed consent.

Such a separate manual or annex should also include guidance on how to prepare the child to intercountry adoption, how to ensure that the child understands what an intercountry adoption is and what it entails, including when, for example, the child's consent is not (yet) required by law or when the child is not mature enough to give their consent. Such guidance could also include case scenarios to touch upon different situations.

² Consent should, ideally, be obtained at two stages of the adoption:

- First, **general consent prior to the child being considered for adoption**. It is important that they consent to being adopted generally (*i.e.*, in order for the child to be mentally prepared to the idea of a possible adoption, but also in order to prevent situations where a child is declared adoptable while that child refuses to be adopted).
- Second, **consent to a specific adoption**, after the child has been matched with prospective adoptive parents. Indeed, a general consent does not fulfil the requirement under Art. 4(d)(1) of the Convention, as this requirement for consent must be given in light of the particular prospective adoption. For further information, see G. Parra-Aranguren, Explanatory Report on the 1993 Adoption Convention ("Explanatory Report"), para. 161: "[T]he consent of the child, having regard to his or her age and maturity, shall be given not to the adoption in general, but for the specific adoption in a particular case, since it would be against his or her fundamental rights to have the child adopted without even knowing who the adoptive parents are going to be".

RECOMMENDED MODEL FORM

Statement of consent of the child to the intercountry adoption (Art. 4(d))

A. STATEMENT OF CONSENT OF THE CHILD TO THE INTERCOUNTRY ADOPTION

Instructions for the child:

- **Step 1:** An adult (e.g., a social worker, a lawyer, a professional working in the government) should help you work through and understand what an adoption is, what an adoption means to you and what is this document.
- **Step 2:** Part A will be read aloud to you in a language that you understand. The person reading or taking your statement should make sure that you fully understand everything in this form, answering any questions you may have.
- **Step 3:** Please fill in any empty spaces in the "About me" section (section 1 below) or, if someone else filled it in for you, read it and make sure you agree with what they have written.
- **Step 4:** Read¹ each sentence carefully in sections 2 to 7 below. You will then be asked to explain in your own words what Part A means. If you agree with what has been written, then tick the last box in section 7 to show that you have read and understood it.

If there are two possible options in the text (e.g., "is / was"; "birth parents / legal guardian(s)"), you can cross out the part that does not apply to your situation.
- **Step 5:** Sign this document only if you understand and agree with each sentence.

You do not have to sign this document, and no-one should force, threaten, or in any way pressure you into signing it (i.e., no one should make you feel that you have to sign it if you do not want to). If you feel this is the case, you may wish to contact [add authority / phone number / email] and / or a person you trust.
- **Step 6:** You should receive a copy of the completed version of the document.

¹ Note to official(s) attesting the consent: if the child is illiterate, the instructions for the child under Part A should be read aloud clearly once again, one by one to the child. If the child understands it and is in agreement with it, the child can place their "mark" (e.g., thumbprint) at the end of the Statement instead of their signature.

1. ABOUT ME²

My name is _____ (*full legal name of child*).

I am: male female other (*e.g.*, preferred gender): _____

I was born on _____ (*day*) of _____ (*month*) _____ (*year*) in _____ (*place of birth*).

My current address is: _____

My mother is / was: _____

My father is / was: _____

2. MY PROPOSED ADOPTION AND MY PROSPECTIVE ADOPTIVE PARENTS

- I understand that a plan has been made that I be adopted because (*e.g.*, loss of parents, consent of birth parents, unknown birth parents, termination of parental rights through a court order):

- I know that _____ (*full name of prospective adoptive parent(s)*) would like to adopt me.
- I agree to being adopted by this (these) person(s).
- I understand that being adopted means that my adoptive parent(s) will become my new legal parent(s) and I will be considered to be their child (under law).
- I understand that I may need to go in front of a competent authority (*e.g.*, a judge in a court) to be adopted.

² Note to official(s) attesting the consent: this section may be completed by the child or by the official, as appropriate in light of the child's age and degree of maturity. The information provided in this section should be identical to the information in the child's current identity document.

3. MY LEGAL RELATIONSHIP WITH MY BIRTH PARENTS³

- Section A: For a "Full Adoption":**
- I understand that my proposed adoption is a "full" adoption. I understand that this means that:
- my birth parents / legal guardian(s) _____ (*full name of birth parents / legal guardian(s)*) will no longer be my legal parents and I will no longer be legally their child / will no longer be my legal guardian(s); and
 - my adoptive parents will become my legal parents and I will become their legal child. I understand that they will have parental responsibility (*i.e.*, they will be able to make important decisions about me and my life).
- Section B: For a "Simple Adoption":**
- I understand that my proposed adoption is a "simple" adoption. I understand that this means that:
- my birth parents / legal guardian(s) _____ (*full name of birth parents / legal guardian(s)*) will still be my legal parents / legal guardian(s);
 - my adoptive parents _____ (*full name of adoptive parents*) will also be my legal parents;
 - I will live with my adoptive parents, and they will have parental responsibility (*i.e.*, make important decisions about me and my life).
- I understand that it is possible that (in the future) my simple adoption could become a full adoption. This means that my birth parents would no longer be my legal parents and that I would no longer be legally their child, and that only my adoptive parents would be my legal parents. If this happens, I will be asked whether I agree to this type of adoption.

4. AFTER THE ADOPTION

- I understand that after the adoption I will live with _____ (*full name of prospective adoptive parent(s)*) in their home in _____ (*city, State*).

My given name(s) after the adoption:

- I agree that my given name(s) after the adoption will be _____.

³ Note to official(s) attesting the consent: Select the appropriate Section, A or B, below, and complete that Section only. If only one full adoption is allowed in your State, then the Model Form can be adapted and only include Section A.

Section A: If the consent of a child is sought for a FULL adoption (*i.e.*, an adoption which severs the legal ties between the child and their birth parents or current legal guardian(s)), whether this full adoption is to be made in the State of origin or in the receiving State, use the "Full Adoption" Section only.

Section B: If the consent of the child is sought for a SIMPLE adoption only (*i.e.*, an adoption which does NOT sever the legal ties between the child and their birth parents or current legal guardian(s)), use the "Simple Adoption" Section only.

For further information see: Arts 26 and 27 of the 1993 Adoption Convention and Guide to Good Practice No 1, Chapter 8.8.8.

- I want to keep my current given name(s) after the adoption.
- I know the following about the State I will live in after the adoption: _____ (*description of what the child knows of their receiving State*)

5. THE INFORMATION I HAVE RECEIVED

The name(s) of the person(s) I have spoken with regarding my adoption is / are: _____

I have received this information on: _____ (*date(s)*).

I have been asked what would be important for me if I was adopted. This is what I responded:

The person(s) I have spoken about this adoption with is / are (check all that apply):

- a psychologist (professional person who wonders how I feel)
- a social worker / counsellor (professional person who takes care of my needs)
- an independent lawyer (person who knows about law)
- a government official (person who works in the government)
- other – please specify: _____

This / these person(s) (check all that apply):

- explained what an adoption is and what it will mean for me;
- explained what it means for me to sign this document;
- told me that I may change my mind (*i.e.*, withdrawal of consent) about the adoption until the adoption decision is issued and that after that date I will not be able to change my mind anymore; and
- answered all of my questions.

6. MY CONSENT

- I have not received or been promised any money, gift(s) or anything else (apart from the normal benefits of an adoption, such as a home, friends, material support, etc.) in return for agreeing to this adoption.
- No one has told me or made me feel that I must agree to this adoption. I have not been threatened, forced or in any way pressured into agreeing to this adoption.
- This form was read aloud to me, and I have been asked to explain in my own words what Part A of this form means.

7. COPY OF THIS DOCUMENT

- I have received a copy of this document after I completed it.
- I declare that I have fully understood the above statements and I consent to this adoption.

Done at _____ on _____

City, State

Date

Signature or mark of the child: _____

B. DECLARATION OF WITNESS(ES)⁴ (where required by domestic law)

To be completed if the witness is also in charge of counselling the child about the adoption and duly informing the child of the effects of the adoption and their consent (Art. 4(d)(1) 1993 Adoption Convention)

I _____ (full name) of _____ (full address) hereby declare and certify that:

1. I am:
- a licensed psychologist / social worker / counsellor (please specify) _____
 - a member of the bar of _____ (city, State)
 - a government official (please specify your title) _____
 - other (please specify) _____

⁴ States may specify in advance in their law or regulations who can act as a witness in such circumstances.

2. I am not acting for any other person in this adoption case and I have no known connection with any other party in this case.
3. I have seen the following document(s) _____ (*name documents*) and I am satisfied as to the identity of the child providing their consent to this adoption.
4. I have explained to _____ (*child's full name*):
- the nature and effect of adoption under the law of the State of origin and the law of the receiving State;
 - the nature and effect of their consent to the adoption;
 - the circumstances under which the consent may be withdrawn before it becomes irrevocable; and
 - the date upon which their consent will become irrevocable.
 - I am satisfied that the child understands this information.
5. I am satisfied that the child:
- has received appropriate and sufficient counselling and information about this adoption; and
 - has had ample opportunity to read (or to be read) and ask questions about the "Statement of Consent" (Part A above) and any accompanying information.
6. I am not aware of any mental, emotional or physical unfitness of the child to give consent.
7. I have asked the child whether they had received or had been promised any money, gift(s) or anything else in return for agreeing to this adoption (apart from the normal benefits of an adoption, such as a home, friends, material support, etc.) and the child said no.
8. I have asked the child whether there had been any attempt to threaten, force or in any way pressure them into providing their consent to this adoption and the child said no.
9. **On _____ (*date*) at _____ (*city, State*), I witnessed that _____ (*child's full name*):**
- read** [or was read to the child],⁵ **the "Statement of Consent" (Part A above);**
 - received an explanation on the "Statement of Consent" (Part A above) and understood it, and**
 - signed** [or placed their mark],⁶ **and thereby gave their consent to this adoption.**

Done at _____ on _____

City, State

Date

⁵ If the child is illiterate - amend as appropriate.

⁶ If the child is illiterate - amend as appropriate.

Signature of witness: _____

For any other witness(es)

I _____ (full name) of _____ (full address) hereby declare and certify that:

- I have no known connection with any party in this case;
- I have seen the following document(s) _____ (name documents) and I am satisfied as to the identity of the child providing their consent to this adoption.

1. With regard to _____ (child's full name) I am not aware of:

- any mental, emotional or physical unfitness of the child to give consent;
- any promise of money, gift(s) or anything else in return for the child's consent to this adoption (apart from the normal benefits of an adoption, such as a home, friends, material support, etc.);
- any attempt to threaten, force or in any way pressure the child into providing their consent to this adoption.

2. On _____ (date) at _____ (city, State), I witnessed that _____ (child's full name):

- read** [or was read to the child],⁷ **the "Statement of Consent" (Part A above);**
- received an explanation on the "Statement of Consent" (Part A above) and understood it, and**
- signed** [or placed their mark],⁸ **and thereby gave their consent to this adoption.**

Done at _____ on _____

City, State

Date

Signature of witness(es): _____

⁷ If the child is illiterate – amend as appropriate.

⁸ If the child is illiterate – amend as appropriate.

C. CERTIFICATION OF THE AUTHORITY / PERSON AUTHORISED TO ATTEST THE CONSENT

Name: _____

Title: _____

Authority: _____

1. I hereby certify that _____ (*child's full name*) appeared before me on this date and that I read aloud the "Statement of Consent" (Part A above) to the child. I have witnessed any questions of the child being answered, and the child has explained in their own words what Part A of this form means. The child then read⁹ and signed¹⁰ the "Statement of Consent" in my presence.
2. I hereby certify that the witness(es) named above appeared before me on this date, witnessed my reading aloud to the child of the "Statement of Consent", witnessed any questions of the child being answered, witnessed the child fully explaining in their own words what Part A of this form means, witnessed the child reading themselves the "Statement of Consent",¹¹ witnessed the signature¹² of the child, and signed the "Declaration of Witness(es)" document (Part B above) in my presence. (*If not applicable, please delete.*)
3. I hereby certify that I am not the same person who assisted the child to provide consent for their adoption.

Done at _____ on _____

City, State

Date

Signature / Seal: _____

⁹ If the child has the capacity to read.

¹⁰ Or placed their mark (if the child is illiterate).

¹¹ If the child has the capacity to read.

¹² Or placed their mark (if the child is illiterate).

HCCH - Permanent Bureau

Churchillplein 6b
2517 JW The Hague
Netherlands

Tel.: +31 70 363 3303
Fax: +31 70 360 4867
secretariat@hcch.net
www.hcch.net



Hague Conference on Private International Law
Conférence de La Haye de droit internationa privé
Conferencia de La Haya de Derecho Internacional Privado