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TAGS: KOCI, KVIS, KTIP, PHUM, KFRD  
SUBJECT: FRAUDULENT INTERCOUNTRY ADOPTION DOES NOT  
CONSTITUTE  
TRAFFICKING IN PERSONS

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1. SUMMARY: Fraudulent intercountry adoptions are sometimes mislabeled as child trafficking because of varying international definitions related to the two phenomena. U.S. legislation, however, is clear on the distinction. The Department must be accurate in using both terms when implementing policy and disseminating information to the public to avoid confusion and levy the appropriate resources in each case. The following information, jointly drafted by the Office of Children's Issues (CA/OCS/CI) and the Office to Monitor and Combat Trafficking in Persons (G/TIP), is designed to educate Department employees worldwide on the U.S. definition of trafficking in persons (TIP) and to encourage close cooperation between consular and TIP staff at posts in order to advance U.S. goals effectively.
2. We encourage feedback from posts on this topic, including examples of cases in which intercountry adoption fraud and child trafficking appear to overlap, and ideas on how CA and G/TIP can coordinate to support you as you address these issues. Please share your thoughts with CA/OCS/CI, CA/FPP, and G/TIP by emailing all of the following individuals, using the subject line "Feedback on Trafficking and Adoption Fraud":  
xxxx ([xxx@state.gov](mailto:xxx@state.gov)) and xxx ([xxx@state.gov](mailto:xxx@state.gov)) in CA/OCS/CI; your FPP post liaison officer (listed at <http://intranet.ca.state.gov/offices/fpp/who/4017.aspx>); and the appropriate G/TIP regional POC (listed at

<http://g.state.sbu/tip/Lists/Contacts/Final%20View.aspx>). END SUMMARY.

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WHAT IS TIP?  
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3. Over the past 15 years, TIP and "human trafficking" have been used as umbrella terms to describe situations in which a person obtains or holds another person in compelled service. Compelled service can take the form of slavery, involuntary servitude, debt bondage, forced prostitution (including all third-party prostitution of minors), or forced labor. U.S. legislation defining TIP is found in the 2000 Trafficking Victims Protection Act ("TVPA"), reauthorized in 2008 ("TVPRA"). Under the TVPA, a person may be a TIP victim regardless of whether they once consented, participated in a crime as a direct result of being in a TIP situation, were transported, or were simply born into a state of servitude. At the heart of this definition are the myriad forms of enslavement. Movement (either across an international border or within a country) is not required for the crime of TIP to occur. For example, a child forced to work in a brick kiln in his own village under the threat of harm or physical restraint is a trafficking victim, even though s/he has not moved at all.

4. Sometimes human smuggling is confused with TIP, but these are not interchangeable terms or concepts. Human smuggling requires transporting others to evade immigration laws deliberately, whereas TIP is based on exploitation through force, fraud, or coercion. Individuals who are smuggled may become trafficking victims, however, if they subsequently experience compelled service.

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THE INTENT OF INTERCOUNTRY ADOPTION IS TO PLACE A CHILD IN A LOVING HOME  
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5. Over the past several years, the term "trafficking" has become informal shorthand for any type of inappropriate movement of people across international borders. This is an imprecise and potentially misleading use of the term. Children made eligible for intercountry adoption may fall victim to bad actors engaged in criminal practices and

questionable procedures. In the majority of these cases, however, the persons committing the fraud do not intend to exploit the child for purposes of commercial sex or forced labor.

6. Exploitation is an important distinction between TIP and adoption fraud. In TIP cases, the intent is the ultimate exploitation of the victim through commercial sexual exploitation, involuntary servitude, debt bondage, or slavery. In contrast, the aim of adoption is to place a child in a loving family. Where intercountry adoption is used as a screen for child trafficking - i.e., to force children into slavery, forced labor, or the commercial sex trade - it is clearly not for the purpose of placing a child in a loving home and falls within the definition of trafficking.

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THE U.S. DEFINITION OF CHILD-BUYING OMITTS TRAFFICKING  
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7. The type of adoption fraud most commonly confused with child trafficking is child-buying (see 8 CFR 204.3(i) for non-Hague cases and at 8 CFR 204.304 and 204.309(b)(3) for Hague cases). Because TIP may also involve making a profit by selling another person, many people mischaracterize child-buying for adoption as a form of TIP. Child-buying is an unacceptable, illegal route to adoption, and constitutes adoption fraud. Cases where child-buying for adoption is intended to result in the commercial sexual or labor exploitation of children may be defined both as adoption fraud and child trafficking under U.S. law; however, cases where child-buying for adoption is not intended to result in commercial sexual or labor exploitation do not meet the criteria for trafficking as defined by the TVPA and, under U.S. law, are solely classified as adoption fraud cases. International instruments related to trafficking (e.g., the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery), also omit child-buying for adoption from trafficking definitions.

8. The U.S. government appears to be unique among Hague



contracting states and most of the international adoption community in rejecting the use of the term "trafficking" to refer to illicit adoptions. Experts in the field understand the distinction, but media and foreign counterparts may not fully understand our nuanced stance. This can be especially confusing when reading the text of the Convention on Protection and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), of which the Department is the U.S. Central Authority. (Note: CA/OCS/CI largely fulfills the Department's role of U.S. Central Authority and is the Department's principal POC for intercountry adoptions and The Hague Convention. End Note.) Although the text explicitly refers to the prevention of child trafficking as one of its primary objects (Article 1b), and the Convention entered into force for the United States in 2008, the U.S. government rejects the idea that child-buying for adoption is trafficking.

9. This position is not shared by many of our foreign counterparts. For example, in many African countries, including Ethiopia, Sierra Leone, Liberia, Madagascar, and Lesotho, fraudulent intercountry adoptions are officially referred to as trafficking. In December 2010, Ethiopian officials accused a Minnesota-based ASP of child trafficking for placing children without a birth parent's consent, and subsequently revoked its license.

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#### RESOURCES TO RECOGNIZE AND COMBAT TIP AND ADOPTION FRAUD

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10. The Office of Fraud Prevention Programs (CA/FPP) maintains comprehensive guidance for consular officers assigned to an adoption portfolio, including information on The Hague Adoption Convention as a fraud prevention tool and adoption fraud best practices (available at <http://intranet.ca.state.gov/fraud/resources/AdoptionFraud/25079.aspx>)

11. Consular officers and ARSO-Is can enroll in TIP training tailored to consular work through FSI. PC406 - Combating Trafficking in Persons (available at: <http://fsi.state.gov/admin/reg/default.asp?EventID=PC406>) is a two-hour online course that offers an introduction to TIP and guidance on distinguishing between TIP, human smuggling, and illegal adoption or adoption fraud.

12. Consular officers and LE staff at posts are encouraged to meet regularly with TIP colleagues as well as mission law enforcement entities such as the ARSO-I, LegAtt, and ICE, to share TIP-related trends observed on visa lines, in crisis situations, and in other facets of consular work. Such information may provide valuable insight and specific case studies for G/TIP's annual TIP Report or for the Bureau of Diplomatic Security's investigations of human trafficking crimes overseas in collaboration with other U.S. law enforcement entities. Also consider volunteering for post's TIP committee. Consular officers in Hague Adoption Convention countries might also leverage capabilities of the host country Central Authority in the areas of social services and child welfare to the benefit of post's TIP related mission. Combining expertise and resources in these ways could help tackle difficult adoption and TIP cases and deepen knowledge of the host country's criminal and fraud environment.

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