



Submission No 72

Inquiry into Slavery, Slavery-like conditions and People Trafficking

Organisation: Hagar Australia – Supplementary submission

**JOINT PARLIAMENTARY COMMITTEE ON FOREIGN AFFAIRS, DEFENCE
AND TRADE**

**INQUIRY INTO SLAVERY, SLAVERY-LIKE CONDITIONS AND PEOPLE
TRAFFICKING**

FROM:	Kate Kennedy CEO – Hagar Australia
DATE:	27 th May 2013

HAGAR AUSTRALIA RESPONSES TO QUESTIONS ON NOTICE

(FROM MAY 9TH, 2013)

Question 1

CHAIR: Are you aware of the document Australia-Asia Program to Combat Trafficking in Persons, produced by AusAID recently?

Mrs Kennedy: Yes.

CHAIR: Do you have an overview or comment on that?

Mrs Kennedy: Can I take that question on notice? (p. 4)

Hagar is aware of the document Australia-Asia Program to Combat Trafficking in Persons, produced by AusAID. It is a very solid outline of the design of AusAID's program to combat trafficking. Whilst Hagar believes it is a good program design, we would have concerns that the size of the program is not matched to the enormous problem in our region.

The program design also reflects the absence of focus on remedial justice for survivors through aftercare program.

Question 2

Senator STEPHENS: Another suggestion was that for the upcoming CHOGM meeting in Australia the government should try to organise an NGO forum around some of these key and emerging issues. Do you think that would be a helpful mechanism?

Mrs Kennedy: Could I take that question on notice? (p. 5)

Hagar believes an NGO forum focused on Slavery and the surrounding issues at CHOGM would be very useful. Our belief is that an agenda developed in consultation with lead Trafficking focused NGO's would be most useful and enhance relevant outcomes for the region. It would be another good way to highlight the emergence of the issue in the region.

Questions 3 and 4 and 5

3. Senator STEPHENS: Sure. Regarding your recommendation about protecting the protectors—recommendation 3—I guess one of the challenges about the notion of intervening in a country like Cambodia that does not have a child protection system and does not have provisions for custody and guardianship is: how do we as a country intervene in the sovereignty of that nation in terms of its own legal systems?

Mrs Kennedy: I will first declare that I am not a lawyer. I will answer it to the best of my ability and take the rest on notice. One of the situations that happens is that our staff get charged with trafficking. So there is a misuse of the law there. We are guardians of children, and we have had a situation where a foreign paedophile has influenced the parents of a child to claim that we are holding the child against their will. Thus they use the trafficking laws against our staff. So, to protect the protectors is about that. Quite regularly—I think it has happened four times in the last 18 months—our Cambodian director, who is a mother of three, has sat there overnight waiting to see whether she is going to go to jail. It is awful that somebody working in child protection should have to live through that, even though in one particular case it was alleged that money changed hands between the foreign paedophile and the parents. So I think there has to be an active interest— (p. 5)

4. Senator STEPHENS: Just going back to your submission, to help us a little bit: on one hand you are saying that in Cambodia there is no child protection system, that there are no provisions for custody and guardianship. How, then, do Hagar staff become the guardian of someone who has been—

Mrs Kennedy: Again, I would prefer to take it on notice than answer it halfway. I would prefer to take it on notice and then formally report back. (p. 5)

5. Mrs Kennedy: One point I will make is that the exchange of intellectual capital between Australian legal professionals and the Australian government with the Cambodian government really strengthens some of those things. Alastair Nicholson is really active over there, and that is really changing things. But the guardian laws definitely need to be reviewed, and I will report back on that. (p. 6)

It is inaccurate to say that Cambodia has no child protection laws or provisions allowing for the transfer of custody or guardianship of a child in need of care and protection. The country does, however, lack a comprehensive or consolidated

statute as one would find in Australian jurisdictions.¹ Rather provisions of particular relevance to children and their protection can be found in a 'patchwork' of laws, decrees, guidelines, agreements and a myriad of other documents that have legal or pseudo-legal authority.

Cambodia is a party to the United Nations Convention on the Rights of the Child, together with other key international covenants that bestow rights upon children and consequential duties upon the Cambodian Government.² The *Constitution of Cambodia* requires the State to give effect to the rights set out therein. Cambodian law recognises the rights of the child to be free from abuse and exploitation.³ More specifically, *The Law on the Prevention of Domestic Violence and The Protection of Victims* imposes a duty on authorities to intervene where domestic violence has occurred or is likely to occur:⁴

The nearest authorities in charge have the duty to urgently intervene in case domestic violence occurs or is likely to occur in order to prevent and protect the victims.

...⁵

and provides authorities with a broad power to make administrative decisions and take temporary measures in order to protect the security of victims which includes:

...

*Taking other legitimate measures that are necessary to protect the safety of the victims and the household members or the persons involved.*⁶

The *Civil Code of Cambodia* empowers legal authorities to separate the child from their parent(s) in circumstances where a parent is abusive and/or so neglectful as to expose their child to abuse. The Court may suspend parental rights until a further assessment:

*If a father or mother exercising parental power abuses his or her rights or neglects his or her obligations, the court, upon the application by a relative of the child up to the 4th degree of relationship, a commune or sangkat head, the head of public child welfare institute or a public prosecutor, may order the suspension or divestment of the authority of the parental power holder.*⁷

¹ See e.g. Children Youth and Families Act 2005 (Vic).

² See eg United Nations International Covenant on Civil and Political Rights, United Nations Covenant on Social, Cultural and Economic Rights.

³ Cambodia has ratified the United Nations Convention on the Rights of the Child ('CRC'). Art 48 of the Constitution of Cambodia stipulates that the State shall protect the rights of children as stipulated in the CRC with specific reference being made to a number of rights including to be free from sexual exploitation. It is, however, important to note that the rights set out in the Constitution are stated as 'The Rights and Obligations of Khmer Citizens.'

⁴ The Law on the Prevention of Domestic Violence and The Protection of Victims defines domestic violence as violence that happens and could happen toward husband or wife, dependent children, persons living under the roof of the house and who are dependent of the households (Article 2) and 'violence' includes acts affecting life or physical integrity, tortures or cruel acts and sexual aggression.

⁵ Article 9

⁶ Article 13

⁷ Article 1048

The *Civil Code* also contains provision as to the appointment of guardian following the suspension of parental power.⁸

Prior to Civil Code coming into effect, the *Law on Marriage and Families* spoke directly to the issue of guardianship:

[C]ourts are required to revoke parental power and transfer such power to “any organization or relative by blood” provided that the parents:

(1) “fail to educate their child”

(2) “use improper power in violation of the child rights or forcing him to commit crimes or acts against society”,

(3) “treat badly their children”; or

(4) “behave against the moral standards which have a bad influence over their children”⁹

It is unclear whether the provisions of the *Law on Marriage and Families* remain in effect or have been superseded by those found in the *Civil Code*.

In addition, the *Inter-ministerial Agreement for Practices and Cooperation on Cases of Human Trafficking, a non-binding instrument*, confirms court has the authority to remove parental authority or guardianship from individuals charged with trafficking offenses.¹⁰ The *Inter-ministerial Agreement* also recognises the need for shelters to have guardianship of underage trafficking victims:

‘[s]helters registered in compliance with article 61 of this agreement shall guardianship responsibility for the victims in their care. The right bestows decision-making authority upon shelters concerning such victims in their care. However, this right is based on the principle of the best interests of the victim with consideration given to the views and opinions of the victim.’¹¹

The *Agreement* does not expressly grant guardian rights, the language ‘guardian responsibility’ when read in conjunction with the *Civil Code* should be interpreted to allow courts to transfer guardianship to shelters.

Whilst the rights and powers required to intervene and protect children are theoretically part of Cambodian Law no system exists for the implementation of rights and the enforcement of laws in circumstances of family neglect and abuse. Cambodia has no effective child protection system and no guidance has been offered as to how the laws are to be applied in practice. The absence of a specialised judicial system and an established Governmental Department focused solely on the identification, intervention and support of children and families in risk coupled with a culture which, due to its history, prioritises the maintenance of the family unit authorities are reluctant if not unwilling to intervene. The Ministry of Social Affairs, Veteran and Youth Rehabilitation

⁸ See Article 1068

⁹ Article 119

¹⁰ Article 14

¹¹ Article 62

(MoSAVY) officials and other relevant authorities will not remove children from clearly abusive situations without the parent's and/or child's consent and NGOs working within the child protection sphere remain unclear as to the extent they are lawful entitled to intervene. Further, temporary care providers have been sued by families for the unlawful removal of children and on occasions charged with trafficking related offences.

A family has filed a civil complaint against Hagar Cambodia and two criminal complaints directly against the Organisation's County Director.¹² To date the complainant's have not actively pursued any of the three (3) cases before Cambodian Court. Thus, no determination of liability has been made on the first and the innocence or otherwise of the Country Director has not been ruled upon the charges remain pending and action could be taken at any time to advance the prosecution. The complaints have been filed notwithstanding Hagar Cambodia works within the parameters set by MoSAVY; only taking children into its residential shelters upon the completion of a Family Assessment by MoSAVY or with parental consent. To our knowledge this is the approach currently adopted by all NGOs operating residential shelters within Cambodia.

QUESTION 6

Mrs Kennedy: The US Department of Justice funded Hagar last year to do a research project around a number of vulnerable areas, but the trends that we are seeing as we move through that are that Afghanistan is becoming a source country for boys to be traded for labour. For example, that may be boys being coerced into go into Pakistan to work in a brick factory in the same way as a domestic service arrangement works in Cambodia. That is happening. The emergence and prevalence of this dancing-boy phenomena continues to grow and be concerning. So we will release a report which we are happy to provide to you but this is one of the cases that has come out of that. But it is a real problem.

Senator STEPHENS: It would be helpful, Chair, if we had that report, given that we are trying to finalise our report, if that is possible. (p. 6)

Hagar was recently funded by the US Department of Justice to look at impacts on boys sourced for trafficking in Afghanistan. This research is currently being finalized. We intend to present the report to AusAID when it is final. The research will lead to focus aftercare work for boys in Afghanistan.

QUESTION 7: HOW HAGAR OPERATES IN CAMBODIA

Senator PARRY: Thank you for your submission. Case examples are always handy for us. They help us become more informed. I was going to follow where Senator Stephens went, in relation to recommendation 3. What is the arrangement in the country? How are you entitled to do what you do in Cambodia? You have quoted the country director of Hagar. Without going into those details how do you do what you do? Is it just by the good will of the government? Is it the police that support you or sponsor you? How does that work?

Mrs Kennedy: Again, because we have entered a legal territory I would prefer to provide my answer in writing. (p. 6)

Hagar operates in Cambodia pursuant to a Memorandum of Understanding ('MoU') with the Royal Government of Cambodia. The Memorandum was first entered into on the 16th January 2002 for a period of three (3) years, and has been extended on three (3) occasions since; mostly recently on the 16th January 2011 for a further three (3) year period. The MoU authorizes Hagar to conduct humanitarian activities and to implement approved projects in Cambodia.

A Project Agreement also exists between Ministry of Social Affairs, Veterans and Youth Rehabilitation. The Agreement allows Hagar to carry out its Education and Employment, Programs, Disability Program, Client Care and Case Management Programs. The agreement came into effect on the 21 February 2012 and currently expires on 21 February 2015.

Hagar Cambodia also has MoUs with other government ministries for specific project purposes. For example, Hagar's project to support women and children living in prison is made possible by a five (5) year MoU with the Ministry of Interior's General Department of Prisons.

Hagar Cambodia has a strong relation with the Anti-trafficking police and receives referrals directly from the police and MoSAVY as well as from other NGOs. Every child within Hagar Cambodia's residential program, in the absence of parental consent, is referred directly from MoSAVY. The referral documents including a Family Assessment including the family history, protection concerns and recommendations as to the likelihood of family reintegration.

In Cambodia, the Ministry of Foreign Affairs and International Co-operation agrees to a Memorandum of Understanding (MOU) with international NGOs. There is also a requirement for INGOs to sign separate MoUs with the various ministries that relate to an international NGO's sphere of work. Similar to Hagar Vietnam, Hagar International is registered in Cambodia as an international NGO and it has a MOU with the Cambodian Government.