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Global Alliance Against Traffic in Women

Au Pair

Challenges to Safe Migration and Decent Work

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GAATW WORKING PAPER 2013

AU PAIR: Challenges to Safe Migration and Decent Work

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Photo and Layout by: GAATW International Secretariat

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List of abbreviations

AIRB - Anti-Illegal Recruitment Branch

BSP - Bangko Sentral ng Pilipinas

CMA - Center for Migrant Advocacy

CFO - Commission on Filipinos Overseas

CFS - Country Familiarization Seminar

CMM - Danish Centre Against Human Trafficking (Denmark)

DFA - Department of Foreign Affairs

DRC - Danish Refugee Council

DOJ - Department of Justice

FOA - Fag og arbejde (Union, Denmark)

GAATW - Global Alliance Against Traffic in Women

GDP - Gross domestic product

IACAT - Inter-Agency Council Against Trafficking

ILO - International Labour Organization

IOM - International Organization for Migration

MRCI - Migrant Rights Centre Ireland

OFW - Overseas Filipino Worker

OWWA - Overseas Workers Welfare Administration

PDOS - Pre-Departure Registration and Orientation Seminar

PMRW - Philippine Migrants Rights Watch

POEA - Philippine Overseas Employment Administration

SMC - Scalabrini Migration Center

Introduction

The expansion of the definition of trafficking in the 2000 UN Trafficking Protocol has led to much discussion about the sectors of work in which trafficking occurs. Domestic work, for instance, has received attention as a sector prone to the occurrence of trafficking due to its unregulated and often isolated character.¹ Au pair migration shares these characteristics with domestic work. However, the issue of au pair work has received far less attention.

Au pair migration is not a new phenomenon, but conditions of au pair migration have changed immensely since the programme's origins in Europe in the 1960s. In recent years, au pair migration has received attention from media and civil society organisations that have exposed cases of abuse, labour exploitation and risky migration patterns. Exposure of negative cases has brought into question the purported benefits of au pair schemes.

Politically, au pair programmes are undergoing changes. In 2012, the Philippine government lifted a decade-long ban on au pair emigration. This is likely to stimulate a larger outflow of au pair migrants from the Philippines. At the same time in Europe, media exposure and lobbying from civil society groups have put pressure on governments of destination countries to revise au pair schemes.

As a global NGO alliance, the Global Alliance Against Traffic in Women (GAATW) is committed to feeding into political processes as well as academic discussions on migration issues to ensure the facilitation of safe migration routes and the protection of the human rights of migrants – at home, abroad and on the way. This working paper concludes with recommendations for policy makers and service providers involved with au pair migration.

Focus: Filipina Au Pairs in Europe

In GAATW's 2010 Working Paper Series *Beyond Borders*, links between trafficking and migration, labour, gender and security are explored and developed conceptually. This working paper seeks to build on the earlier work by developing a practical understanding of safe migration, with specific reference to a case study on au pair migration.

The term *au pair* (meaning *at par* or *on equal terms*) originated in Europe, where European youth in the 1960s were placed in host families in neighbouring countries to learn the language of the host family and, in exchange for lodging and food, the au pair was expected to take care of the family's children. The nature of au pair migration has undergone many changes since its start in the 1960s. The most significant change that has occurred in Europe is the nationality of the hired au pairs, which now includes a large majority of women from the Global South greatly outnumbering the originally targeted youth from other European countries (see Helle Stenum, 2011). Au pair migrants arrive in many destination countries in Europe and North America and originate from an even broader range of sending countries, including those in Asia, Africa and Eastern Europe. The scope for this research, however, is narrower with a focus on Filipina au pairs in three European countries: Denmark, Norway and the Netherlands, which are the top receivers of au pair migrants from the Philippines.² This working paper provides an overview of the existing policies on au pair migration in these three countries and also includes a case study of the situations and experiences of Filipina au pairs in one country of destination: Denmark.

The Philippines is a labour exporting economy. In 2009 and 2010, the Philippines sent respectively 1.4 and 1.5 million Filipino workers to employment programmes overseas.³ The government estimates a stock of 8.5 million Filipinos currently residing overseas (2009 figures).⁴ As a lower middle income country with a per capita GDP of USD237 (current, 2011)⁵ and the highest unemployment rate in the ASEAN region,⁶ the Philippine workforce is drawn towards overseas labour markets. The Philippine economy is heavily dependent on remittances sent back by Overseas Filipino Workers (OFWs), which in 2011 amounted to a total of USD20 million.⁷ The government has a clear policy on promoting overseas employment through the Philippine Overseas Employment Administration (POEA).⁸ In the 1990s when the Philippines started to send au pair migrants abroad, the au pair scheme, as with other labour export programmes, was regulated under the umbrella of the POEA. However, with the recent lifting of the ban on au pair emigration, the au pair scheme has been transferred to the Commission on Filipinos Overseas (CFO), which underlines the government's vision of the au pair programme as *cultural exchange* rather than *overseas employment*. Despite the change in vision, au pairs continue to send remittances to their relatives in the Philippines.

We use the term *Filipina* (as opposed to Filipino), to reflect the fact that the large majority of au pairs in Europe are women. The feminisation of migration – meaning an increasing share of migrants being women – is an important issue to account for when looking at safe migration. Women tend to migrate into specific sectors, domestic work being the main sector employing women migrants (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Gender*). Characterising care sector work is the low value and recognition (in terms of pay) accorded to household chores and child or elder care, and the reluctance to acknowledge the care as *work* (Lutz, 2008). Hence, we consider gender an important issue when looking at au pair migration.

Though this research study set out with the intention of looking at both au pairs and domestic workers in Europe, it was in the end only able to cover the au pair sector. Our motivation for this original dual scope is the recognition that the same group of migrants (Filipina women migrating to Europe) alternates in and out of these two sectors. For instance, a woman might start as an au pair in Northern Europe and migrate to Southern Europe as a domestic worker for her next step. What determines the sector (au pair, childcare or domestic work) where the migrant will end seems to be largely shaped by the accessibility of schemes and programmes in the destination country. In Northern Europe, the au pair scheme is accessible to Filipina migrants, whereas in Southern Europe domestic work is the more accessible sector.

Au pair and domestic work share characteristics. The workplace is a private household and work is carried out in an *intimate sphere*; the employer of the migrant worker is an individual rather than a private or a public company; the employment relationship between the migrant worker and the employer is *atypical* since it is characterised by a degree of *informality* or even by *personal relations* and the work carried out is a non profit-making activity (OSCE, 2010: 13; Stenum, 2011: 19 and Lutz, 2008: 1-8). Together with the lack of protection to domestic workers and migrants, these shared characteristics lay them open to risks of exploitation. While unfortunately a dual focus on both au pairs and domestic workers proved to be unmanageable within the scope of this paper, we do encourage policy makers to acknowledge and take into account the links between these two migrant sectors when assessing risks, forming migration policies and addressing challenges to safe migration.

Structure of the Working Paper

This paper includes three separate sections of analysis which are summed up in a chapter on recommendations at the end. The first section gives an introduction to safe migration, in particular, to its challenges, and considers how concepts related to safe migration can be linked to au pair migration. The second section presents existing policies and regulations of the country of origin (the Philippines) and the destination countries (Denmark, Norway and the Netherlands). It also presents policies and services affecting au pair migration and looks for accountability and protective measures, as well as challenges and gaps to be addressed. The third section presents the findings of a case study of Filipina au pairs in Denmark. This section draws on material from interviews with au pairs in Denmark, service providers and authorities in Denmark and the Philippines, as well as case material collected for the analysis. The final section of the report seeks to address the challenges identified in the analysis by setting out a range of recommendations to be considered by policy makers.

Methodology

Data collection for this working paper included interviews with au pairs, service providers and authorities in Denmark and in the Philippines. Additional case material was collected from service providers, courts, civil society (including NGOs and a union) and through a media search. A field trip included observation of an orientation seminar for au pair applicants, consultations with migrant rights NGOs and representatives from government offices, as well as a visit to a municipality of origin.⁹

Interviews and Data Collection

For the case study of au pairs in Denmark, nine au pairs were interviewed via phone, Facebook chat or email. Sampling of the informants was through two access points. One point of access was the au pair network organised by the labour union, *Fag og arbejde* (FOA) in Copenhagen and the second was a representative from a network of Filipinas in Esbjerg. The au pairs were asked questions about their personal experiences and their views with respect to their situation and concerns before, during and after their stay as au pairs in Denmark. They were also asked to evaluate the au pair scheme itself and to recommend changes. Quotes and case examples from these interviews are presented in section three to illustrate points and conclusions. Wherever quotes and examples are used, they are presented anonymously to respect the privacy of the informant.

The nine interviews with au pairs in Denmark give insights into a variety of experienced situations of au pair migration. However, in order to evaluate a broader spectrum of challenges within au pair migration, case material has been collected from service providers and authorities too. Initially, police authorities in Denmark were asked to share case material on au pairs. This exercise proved difficult, since police authorities did not register cases in a way that would reveal whether cases of abuse, exploitation or trafficking had connections to au pair migration (for example, cases that involved an au pair as the victim of crime). Courts were also approached with this request. However, court material can only be accessed if a researcher knows the basic details of the specific case to which she wants to gain access. Hence, the second step was a review of Danish web-based news articles for cases involving au pairs. This review showed a number of stories concerning the situation of au pairs. Recognising that media tend to exaggerate or, in some cases, simply misunderstand the concepts of trafficking and exploitation, the courts were approached again in order to obtain the exact court materials from each of the cases mentioned by the media. For a few cases, documents were available. For others, the following conditions applied: (1) the case was never taken to court, (2) the court was closed to the public (because investigations were still ongoing), or (3) the case was not identified by the courts. Where court case material is not present, the media's version is taken into account. Additionally, the Danish Centre Against Human Trafficking (CMM), which is responsible for identifying victims of human trafficking to the Danish Immigration Authorities, was asked for material on identified cases of trafficking into the domestic work sector in Denmark. CMM was helpful with case material on seven cases from 2009-2012 (out of which one concerns an au pair). Lastly, the labour union FOA, which runs a union for au pairs, was asked for material. FOA was helpful with case material concerning eight present cases of breach of contracts and/or labour exploitation.

Furthermore, for the sake of the policy analysis, authorities, service providers and migrant NGOs were consulted on the issue of au pair migration. The following parties contributed their views and sharing of relevant information and data:

Governmental authorities in the Philippines: Representatives from the Commission on Filipinos Overseas (CFO), the Anti-Illegal Recruitment Branch (AIRB) of the Philippine Overseas Employment Administration (POEA) and the Inter-Agency Council Against Trafficking (IACAT) under the Department of Justice (DOJ).

Migrants rights NGOs and international organisations in the Philippines: Representatives from Migrate International, Philippine Migrants Rights Watch (PMRW), IDEALS, Center for Migrant Advocacy (CMA) and Scalabrini Migration Centre (SMC) as well as representatives from the ILO and the IOM in Manila.

Europe based NGOs, authorities and service providers: Representatives from Danish Refugee Council's Au Pair Support (DRC, Denmark), Church Integration Service (KIT, Denmark), the Labour Union FOA (Denmark), Danish Centre Against Human Trafficking (Denmark), RESPECT (the Netherlands), Ban Ying (Germany) and Migrant Rights Centre Ireland (MRCI, Ireland).

Section 1: Background – Challenges to Safe Au Pair Migration and Decent Work

When seeking to explain and understand the dynamics of migration, scholars have traditionally resorted to logics of supply and demand in which migration is often reduced to the notion that poor women from the Global South form the supply for a labour market in the Global North with an increasing demand for the import of labour for domestic services. There is a flow across borders which is stimulated by unemployment and low wages in sending countries and the demand for low-paid labour in receiving countries. However, this thinking is challenged by many scholars (Lutz, 2008: 1-8), as well as NGOs like GAATW, who nuance this with arguments that other factors such as gender and globalisation need to be taken into account in order to understand the dynamics of migration. The following questions need to be taken into account:

Migration regimes – how do state policies on migration management shape the space in which the au pair migrant navigates?

Gender regimes – how does a gendered labour market and feminisation of migration affect how we (meaning migrants, employers and policy makers) assess the situation of au pairs and the conditions which apply to their work?

Domestic work – how do the specific conditions of *live-in* domestic work create possibilities and risks which are shared by au pair workers?

Risks – to what extent are risks of labour exploitation and trafficking present in the work carried out by au pair migrants?

Migration Regimes – Governments’ Policies

Safe migration is affected by governments’ migration regimes which limit or expand the space in which migrants navigate. The Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 26 on Women Migrant Workers recognises the nexus between migration management and challenges to safe migration, and notes that “while states parties are entitled to control their borders and regulate migration, they must do so ‘in full compliance’ with their international obligations. Those obligations include ‘the promotion of safe migration procedures and the obligation to respect, protect and fulfil the human rights of women throughout the migration cycle’”¹⁰ Which migration policies, then, have affected Philippine au pair migration?

In general, the Philippines is an active promoter of overseas employment and relies heavily on policies to export migrant workers in an effort to bring in needed foreign reserves through remittances (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Migration*: 9). Destination countries in Europe have experienced an increased demand for cheap domestic labour and, in some cases, the care regimes of welfare states actively support the import of domestic labour to the care sector by providing subsidies for families that employ immigrant workers in their households (see e.g. a three-country case study of home-based childcare in London, Stockholm and Madrid, by Williams and Gavanas in Lutz, 2008: 13ff.). However, opposing this development is the trend of restrictive migration regimes formed with protectionist intentions. These policies focus on restricting movement through increasing border controls or issuing bans on particular forms of migration.

Restrictive migration policies can push migrants through unsafe migration routes, leaving them reliant on third parties (GAATW, 2010 *Beyond Borders: Exploring Links between Trafficking and*

Migration: 11). In 1998 the Philippine government responded to a series of reported cases of abuse and exploitation of Filipino au pairs in Europe by issuing a ban on au pair emigration. The intention behind the ban was to protect Filipino women from migrating as au pairs. European governments responded differently to the ban. While some European countries accepted the ban (Sweden and Switzerland), others (Denmark, the Netherlands, Belgium and Norway) continued to issue au pair visas to an increasing number of Filipino au pair workers (Stenum, 2011: 34). Consequently, Filipino au pairs continued to leave the Philippines as undocumented migrants. Under the ban, au pair migrants were deprived of rights and protection, and would not be protected by the administrative regulations of the Philippines Overseas Employment Administration (POEA). The ban resulted in institutionalised bribes to airport authorities to allow travellers to exit the Philippines on an au pair visa. To avoid paying bribes and to ease the process, alternative migration routes emerged in transit countries such as Hong Kong, SAR and Singapore (Stenum, 2011: 35). All in all, the ban did not have its intended effect of ending migration, but had the unfortunate effect of pushing au pair migrants into unsafe migration routes, illegal status as emigrants and higher fees (bribes) to leave the country.

Discussion on the effects of the ban led to the establishment of bilateral agreements between the Philippines and Denmark, Norway and the Netherlands in 2010 and 2012. In February 2012, this extended to a universal lift of the ban on au pairs to Europe. The Philippine government's premise for lifting the ban was to ensure the cultural exchange element of the au pair scheme. Responsibility for the scheme was transferred from the POEA to the Commission on Filipinos Overseas (CFO) and requirements for documentation were simplified.¹¹ The lifting of the ban can be expected to reduce the opportunities to exploit au pair migrants (through bribes) and will further ease the accessibility to a safe migration route for au pair emigrants leaving the Philippines and strengthen their access to protection by Philippine authorities when abroad.

Gender and Feminisation of Migration

Why is gender an important aspect of au pair migration? Women's migration is often tied to their gendered roles. Their reasons for migrating often have to do with their roles as family caregivers or economic providers for dependants (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Gender*: 13). GAATW's feminist participatory research carried out in 2009-10 showed how women stressed their familial roles as the most important factor determining their migration and labour experiences. For instance, "their familial roles served as the motivation for leaving, and family ideals were sometimes invoked to help women endure exploitation, e.g. thinking of one's children to help one endure an exploitive work environment. Migration was simultaneously perceived as something women did to fulfil their maternal roles, even as it detracted from their ability to mother their children in their home villages" (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Gender*: 14). Similarly, migrant women's employment routes are structured by the intersection of gender and migration. Women migrant workers often find themselves in care work in destination countries. The study showed that most jobs performed by migrant women take place in the informal sector (e.g. domestic work) or in the reproductive sphere (e.g. unpaid care-giving of relatives) or in a combination of both. Gender, class and nationality shape migration routes and women from developing countries tend to migrate to work spheres where the demand is for what is perceived to be 'unskilled' labour (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Gender*: 20).

Gender shapes the realities of migrant women. In her study of care work, Lutz (2008) discusses how the participation of women in labour markets in the Global North has led to an increased

demand for labour from the Global South to carry out *domestic duties* in households. She focuses on the consequences of this *feminized migration process* by looking at the *transnational biographies* of migrant workers and their families dealing with concepts such as the *care chain* (sometimes referred to as *care drain*) and *transnational motherhood*, in which “an immigrant woman (..) mothers her children from a physical distance – across transnational boundaries, creating new meanings and practices of motherhood” (Ozyegin and Pierette in Lutz, 2008: 195ff). This strong tie to the household at home and spending a large share of income for remittances imposes constraints on the migrant worker’s ability to integrate into her host society. The book’s case study of Filipina domestic workers in Rome shows how “Filipinas suffer from being perpetually foreign, stuck in the household in the destination country, not only excluded from a multitude of citizenship rights but also from occupational mobility and civic participation in Italian society” (Lutz, 2008: 1-8). Similarly, in the GAATW study on strawberry pickers in Spain, it was found that labour migration programmes favoured women with children, as it was thought that children in the country of origin were a guarantee that women would not try to settle in the country of destination (GAATW, 2009: *Female Temporary Circular Migration and Rights Protection in the Strawberry Sector in Huelva, Spain*: 17).

A documentary, *Au Pair*, produced by the Danish Film Institute in 2010, documented the realities of a group of Filipina au pairs in Denmark. It revealed how the au pairs carried a primary responsibility as breadwinners in their families, supporting their (extended) families out of their au pair allowance. An important issue raised by the documentary was *transnational motherhood*. Interviews show transnational motherhood as a dedicated way of securing a better future for the next generation at the cost of physical proximity. Another theme is the immense struggle of migrant women to find work after the end of their au pair contract. The documentary shows how these migrants are ready to tolerate compromised working conditions as well as legal status in order to maintain an income to support their families (Danish Film Institute, 2011).¹² The launch of the documentary was noticed by the Danish media. It was considered evidence that the Danish au pair scheme was no longer a suitable framework for cultural exchange, but a way of importing cheap domestic labour from the Global South. It illustrates how gender shapes the reality of au pair migrants.

Domestic work – Characteristics and Vulnerabilities

Challenges to safe migration occur not only in the migration process itself, but particularly upon arrival in the destination country where migrants face certain working conditions and risks. Au pair’ing shares many characteristics with domestic work. While domestic work has recently received much attention from international policy makers (i.e. with the ILO Convention on Decent Work for Domestic Workers, Convention 189), au pairs have received less concern. Looking at the similarities of domestic work and au pair’ing will enable us to apply a critical lens on the conditions in which au pairs work.

Whether domestic work can be characterised as ‘work’ is a much debated subject. Lutz (2008), for instance, argues that the current reality of domestic work is characterised by certain gendered perceptions linked to the *care regime*. For example, a case study of Albanian migrant workers in Greece shows how “domestic service, in particular ‘live-in’ work, has never been and is still not considered ‘normal work’ protected by labour law regulations, but is seen as family business, which leaves its regulation up to individual employers” (Lutz, 2008: 1-8). Migrant domestic work is surrounded by stigma, since “labor migrants typically do jobs no one else is willing to do in most host countries” (Ozyegin and Pierette in Lutz, 2008: 195ff). Common perceptions of *live-in* domestic

work as *non-work* make domestic workers vulnerable to exploitation by depriving them of workers' rights and protections in the regularised labour market.

At an international level as well, this question has been much debated. On 16 June 2011, the International Labour Conference of the ILO adopted the Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention, 2011 No. 189).¹³ The Convention lays down basic rights and principles and requires states to take a series of measures with a view to making decent work a reality for domestic workers. It offers protection concerning basic rights, information and terms of employment, hours of work, remuneration, occupational health and safety, social security, standards concerning child domestic workers, standards concerning live-in domestic workers, standards concerning migrant domestic workers, measures to regulate private employment agencies, measures for dispute settlement and enforcement. Article 1 of the Domestic Workers Convention, 2011 No. 189 offers the following definition of *domestic work*:

“(a) the term **domestic work** means work performed in or for a household or households; (b) the term **domestic worker** means any person engaged in domestic work within an employment relationship; (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.”

While the ILO Convention provides a useful framework for securing the rights of domestic workers (including live-in workers), it does not provide the same protection for au pairs. They are not covered by the final text of the 2011 ILO Convention on Domestic work (Stenum, 2011: 22). In the beginning of the political process leading up to the Convention, NGOs sought to advocate for the inclusion of au pairs during the ILO campaign Decent Work for Domestic Workers, but in the end, neither the ILO Convention nor the international campaigns included au pair work as part of their programme. (Stenum, 2011:22).

Organisations representing au pairs have argued that the au pair sector should be recognised as domestic work. The RESPECT network in Europe campaigned to “ensure that the rights enshrined in this Convention (red. the ILO Convention 2011) are also extended to all domestic workers employed in the private household of diplomats, the au pairs employed as domestic workers and the undocumented migrant domestic workers” (RESPECT, 2011).¹⁴

While au pairs are not covered by the ILO Convention, au pair'ing and domestic work do share many characteristics. The workplace as a private household limits the accessibility of authorities to monitor work conditions. Work typically includes household chores, a traditionally non-profit activity. The line between work (for example, cleaning the house) and free time (much of it also in the house) is a difficult one to draw when the domestic worker *lives in* with her employer. Often, the employment relationship between the au pair and the employer is an *atypical* one, characterised by a degree of informality or even by personal relations between worker and employer, which makes complaints and bargaining measures difficult. The complaint mechanism is further weakened where the visa or residence permit is tied to the employer, since the migrant domestic worker or au pair risks deportation if the employer ends the contract.¹⁵

Risks faced by Migrant Workers

Due to the often weak legal protection of migrant workers, this group can be prone to risks of abuse, exploitation and trafficking when arriving in the country of destination. By definition, an

exploited worker is “a person whose work is used to unfairly benefit the interests of an employer, typically from overwork or underpayment. Often, the working conditions do not comply with existing labour standards and regulations” (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Labour*). The application of labour standards is difficult in a sector not recognised as work, and this leaves au pairs with limited protection of their labour rights.

In an EU funded study, Helle Stenum (2011) finds that there is a dividing line between au pairs coming from EU Member States and au pairs coming from non-EU countries. According to EU law, EU citizens employed as au pairs are mobile EU workers, but the same facility is not extended to non-EU au pairs. Considering the situation of au pairs in Germany, Denmark and the Netherlands, she finds that non-EU au pairs are subjected to immigration rules that imply that: 1) Their residence permit is tied to a specific host family, 2) They must stay as “live-in” in a private home, and 3) Their residence permit is not a work permit. She concludes that these three conditions of residence as a young third country national in the EU form a risk of abuse. Coming from outside the EU, an au pair is excluded from protection, as she is dependant for her residence solely on the host family or an agency. In cases of abuse and exploitation, experience shows that it is difficult for the au pair to change and improve her situation because her residence permit is closely tied to the employer and not tied to her as an independent individual (Stenum, 2011:10).

Trafficking is another risk to which migrant workers can be prone. A trafficked person is a person who is “coerced, deceived or forced to move to another place for the purpose of exploitation” (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Labour*: 5). The concepts of exploitation and trafficking are intertwined but distinct: while often trafficked persons do face labour exploitation, not all exploited workers are trafficked. Coercion and deception do not have formally accepted definitions, and it is up to interpretation whether labour exploitation is serious enough to be considered trafficking. Additionally, trafficking can happen outside the labour sector where it is not clear whether work is recognised as work – for instance, in the case of sex work or of domestic work, or relevant for this study, in the case of au pair’ing. In countries where these types of work are not recognised as work, migrant workers employed in these sectors fall outside the protection of national labour laws, including laws about income, social protection and safety. The lack of legal protection leaves migrant workers vulnerable to exploitation and to trafficking (GAATW, 2010: *Beyond Borders: Exploring Links between Trafficking and Labour*: 6-7).

A recent study by the Centre against Human Trafficking (Mygind Korsby, 2010) examines whether elements of human trafficking can be determined in the experiences of a group of 27 au pairs residing in Denmark. It is the vulnerability and susceptibility of au pairs in relation to their recruitment, their stay in Denmark and their subsequent experiences which provides the focus of the report. Applying a list of indicators of trafficking,¹⁶ the overall assessment of the report is “that human trafficking into exploitation through forced labour cannot be said to be present in the situations or experiences of the interviewed au pairs” (Mygind Korsby, 2010: 67). This is due to a significant number of very important indicators of human trafficking being absent in their stories, such as indicators relating to violence or threats of violence, freedom of movement, living conditions and personal documents. However, the report points to conditions which do leave au pair migrants vulnerable to exploitation and risks of trafficking. For example, the recruitment phase, where the migrating women paid considerable amounts of money to unlicensed agencies, leaving them indebted and thus vulnerable to exploitation and after which some women expressed fear from their recruiters residing in Denmark; the relationship to host families, in which some women experienced language used by host family as containing elements of psychological pressure; and the employment situation, in which a widespread lack of respect for the content of the employment contract from the host

family was experienced – this particularly involved overtime work, lack of holiday payment etc. The report concludes that some au pairs to a varying degree were exploited or subjected to unfair working conditions, and “that the au pair’s vulnerability and wish to migrate and work abroad was exploited” (Mygind Korsby, 2010: 67).

SUMMARY: Challenges to Safe Au Pair Migration and Decent Work

In summary, challenges to safe migration derive from many factors. One mechanism which shapes migration processes is governments’ migration policies. The Philippines as a sending country has recently lifted a decade-long ban on au pair emigration. This is expected to remove some of the harmful conditions faced by au pair migrants, such as leaving the Philippines as an undocumented migrant, paying airport bribes, etc. The destination countries in Europe are increasingly dependent on immigrant labour to carry out tasks in the care sector, but at the same time restrictive immigration policies limit the possibilities for immigration to the EU for third country nationals. The au pair programme is one of few openings for Philippine migrants who wish to enter the EU. However, it is not recognised as a programme for *labour* but as one of *cultural exchange*. This label masks the true intentions of (some) host families and exempts au pair migrants from the protection of national labour laws and social protection, which only apply to sectors recognised as work. The au pair sector shares many characteristics with that of domestic work. However, it has received less attention internationally. The feminisation of migration into the care work sector is a reality and raises new issues such as that of *transnational motherhood*. Philippine au pair migrants often function as breadwinners in their families and this role shapes the reality of the au pair. In general, the risk of labour exploitation is present in au pair work as it is in domestic work too.

Section 2: Policies – Protection Gaps and Accountability

This section contains a description of rules and guidelines regulating au pair migration as well as the services provided to au pairs in countries of origin and destination. The analysis is centred on the Philippines as a sending country and Denmark, Norway and the Netherlands¹⁷ as receiving countries. The central question here is: to what extent is accountability towards au pair migrants in terms of rights and protective measures present in the current au pair system of these countries?

Defining the Au Pair: The element of *cultural exchange* and its consequences

Regulation of the au pair programme in Europe initially rests in the European Agreement on “au pair” placement, a Council of Europe Protocol from 1969. The protocol was established in the context of an increasing number of European girls in the age of 17-27 going abroad to be placed as au pairs. Considering the au pairs belonged neither to a student category nor to a worker category, the agreements set out to give the au pair the adequate social protection inspired by the principles laid down in the European Social Charter.¹⁸ However, with few signatories to the agreement (Denmark, France, Italy, Norway and Spain), and with the lack of updating revision, the EU agreement can be considered outdated today, since it does not necessarily reflect the present-day realities of au pair migration (Stenum, 2011: 116). The agreement’s definition of the term au pair is however still often referred to by policy makers and in rules and guidelines. It defines au pair placement as “the temporary reception by families, in exchange for certain services, of young foreigners who come to improve their linguistic and possibly professional knowledge as well as their general culture by acquiring a better knowledge of the country where they are received”. Au pair means “at equal terms” and the categorisation refers to the special category of migrant and the special role that the au pair should fulfil in the family. Since the agreement no longer offers an up-to-date framework of protection for au pair migrants, European receiving countries and Philippines as a sending country have formed specific guidelines regulating au pair immigration.

With the universal lifting of the ban on au pair emigration in 2012, the Philippines issued new guidelines on the au pair scheme. The new guidelines replace the responsibility for the au pair scheme from the Philippines Overseas Employment Administration (POEA) to the Department of Foreign Affairs (DFA) and the Commission on Filipinos Overseas (CFO), thereby emphasising the *cultural exchange* dimension of the scheme. The new guidelines state that “under this scheme, the au pair is placed in an immersion programme in cultural and language learning in the specific European country of destination. He/she shall live with the host family at par (au pair) or on an equal basis with the immediate members of the host family.”

In Denmark, Norway and the Netherlands, au pair guidelines are issued and administered respectively by the Danish Agency for Labour Retention and International Recruitment, the Norwegian Directorate of Immigration and the Immigration and Naturalization Service of the Netherlands. The definition of the au pair migrant as reflected in the guidelines of Norway, Denmark and the Netherlands, similarly emphasises the cultural exchange element. The Embassy of the Netherlands in Manila refers to the original guidelines proposed by the DFA of the Philippines, whereas Norway and Denmark have issued separate guidelines in accordance with those of the Philippine DFA.

For Norway, the purpose of the au pair scheme is cultural exchange. As au pairs, young people can improve their language skills and knowledge by living with a Norwegian family. The Danish guidelines state: “The purpose is for the au pair to improve language and/or professional skills as well as

broaden his/her cultural horizon by becoming more acquainted with Denmark.” On the information sheet for au pairs, it is explicitly stated that the daily chores with the host family are not considered as work. However, this aspect has received much criticism from different stakeholders, who see the au pair scheme being misused as a programme for the import of cheap domestic labour in the guise of cultural exchange, thereby depriving au pairs of protection under national labour standards. This criticism has been raised by unions and NGOs in the past but has recently also been recognised by policy makers. Hence, in connection with its issuance of new guidelines on au pairs in 2012, the Norwegian Directorate of Immigration stated: “It has become clear that many host families and au pairs instead view the au pair scheme as normal paid work. This is the reason why the Ministry sees the need to change the regulations and how they are practiced, so that the cultural exchange aspect becomes stronger and au pairs are not exploited as cheap labour.” Similarly, at the end of 2011 the Danish Minister of Labour, Mette Frederiksen, announced an improvement of the Danish au pair scheme¹⁹ in order to avoid its possible misuse.

One consequence of labelling the au pair programme as one of cultural exchange rather than a work programme is that the type of residence permit issued to au pairs does not form the basis for a work permit or family immigration. In the information material provided for au pairs destined for Denmark, it is made clear that the type of residence permit does not allow the au pair to carry out any chores outside the time limits defined in the guidelines, carry out tasks other than household chores, carry out work outside the host family, or take paid or unpaid work. None of the three countries allow for a prolonged stay in Europe after the 24 months validity of the au pair visa. An au pair can only be an au pair in the same country once, and with the termination of the au pair visa after a maximum period of two years, the au pair is expected to return to her home country (or, as many do, transfer to another receiving country on a new au pair visa). Norway’s guidelines state that “it must be probable that you will return to your home country at the end of your stay in Norway, and the circumstances in your home country must also indicate that you will be able to return”.

Another consequence of the cultural exchange labelling of the au pair programme pertains to the regulations in the sending country. Compared to domestic work, the au pair programme is less regulated by the Philippine authorities. Au pairs are not covered by POEA and Overseas Workers Welfare Administration (OWWA) programmes and services targeted to Overseas Filipino Workers (OFWs). For instance, with regard to insurance, au pairs are not considered workers, and hence cannot be part of OWWA’s health programmes. Instead, the guidelines on au pair placement rest the responsibility of providing insurance with the host family in the receiving country. However, any overseas Filipino national – regardless of immigration status in the country of destination – is entitled to assistance to nationals from the Philippine Department of Foreign Affairs.

As a consequence of the cultural exchange approach *to au pair migration*,²⁰ the au pair is rewarded not with a salary but with a *pocket money allowance*. This allowance varies for the three receiving countries with NKR5000²¹ (684 euros)²² in Norway, DKK3150 (422 euros) in Denmark and 300-340 euros in the Netherlands. For Denmark and the Netherlands, the au pair allowance is significantly lower than minimum wages in comparable sectors of work. The definition of the au pair’s duties as *non-work* results in low remuneration. This has been criticised by, among others, the Danish labour union FOA which has suggested raising the current DKK3150 au pair allowance to a suggested level of DKK5000 (670 euros). Such an increase would bring the au pair allowance to a level which resembles the average national wage for a junior clerk or an apprenticeship (around DKK11000, eq. to 1475 euros) minus the expenses for lodge and board provided by the host family. This would mean rewarding upto 30 hours of household chores performed by au pairs as work, as it is rewarded

in other comparable sectors.

It is clear that the cultural exchange label on au pair migration has negative consequences in terms of protection, residence status (visa and mobility) and remuneration. At the same time, the cultural exchange approach is not consistent throughout. For example, the Danish guidelines state that “whereas taxation is concerned, the relationship between you and your host family is regarded an employer/employee relationship”. This inconsistency means that the au pair allowance will be subjected to Danish taxation laws on the same premises as accounts for work sectors. Similarly in Norway, the au pair is liable to tax for her pocket money and lodge and board.²³

Eligibility Requirements and Actual Au Pair Profiles

The cultural exchange label of the au pair programme has been criticised for being a charade behind which the import of cheap domestic labour takes place.²⁴ Governments have sought to secure the cultural exchange element of the au pair programme by, among other things, having the programme targeted to applicants whose social/life situations fit the label. The target group of the au pair programme is limited to applicants within the age of 18-30 years, 18-25 years and 17-29 years in Norway, the Netherlands and Denmark respectively. With regard to education and employment, Danish guidelines state that the “au pair stay must have a natural connection to your life so far, including your educational background and employment history”. In practice, this means a requirement of at least 8-9 years of completed school, but not more than a certain level of education and work experience. This rests on an individual assessment: “Based on an individual evaluation of your case, the Danish Agency for Labour Retention and International Recruitment may decide that an au pair stay would not have a natural connection to your life so far, if you have completed further education and have worked for several years.”

The documentary *Au Pair* by the Danish Film Institute in 2010²⁵ highlighted the remittance dependency faced by a group of au pairs who sent back majority of their allowance to family members in the Philippines. This was considered problematic due to the low pocket money allowance given to au pairs under the label of cultural exchange. Governments have sought to address remittance dependency by setting requirements to the marital status of the au pair applicant. For example, the applicant must not be married, or have children (in Norway this requirement was added in 2012). According to the guidelines of the Netherlands, the au pair additionally cannot have other dependants: “You must not have a duty of care or be responsible for the actual care of your own family members (children or parents, for instance).” In the case of Denmark, the requirements on marital status expands to the situation during the au pair stay, where a marriage or pregnancy will result in a termination of the au pair contract and a cancellation of the visa. The collected data from the CFO on the background of au pair applicants (Table 1) hold no information on the number of children of applicants, but interviews done for this report show that some au pairs do have children to support. In some (individual) cases, this has been accepted by the visa-issuing country, and in other cases the applicant has hidden this information from authorities in order to obtain the au pair visa (falsifying documents is one example).

In summary, the eligibility requirements for au pair applicants limit the target group to youth, with no children or dependent family and with limited educational background and work experience. The rationale is to ensure that the au pair programme – as an intended programme of *cultural exchange* – will have a *natural* connection to the au pair applicant’s life. Data in Table 1 show the actual profiles of au pair applicants (*new hires*). With regard to age and marital status, the au pair

profiles do seem to reflect the eligibility requirements set by governments. However, with regard to educational background, 22 per cent of the newly hired au pairs have reached tertiary level of education and 45 per cent are college graduates. On the other hand, few have professional work experience and the majority have reported being unemployed (67 per cent) prior to the au pair recruitment. With college graduates such as nurses and teachers engaging in the au pair programme, the risk of skill-spill is present. College graduates go abroad and do domestic chores for two years only to return to the Philippines with limited relevant job experience and no use for their newly acquired cultural knowledge (Danish, Norwegian or Dutch language skills, for example). The Philippines offers no reintegration through bridging programmes for Filipinas who have returned from an au pair stay(s) in Europe. It is clear from the interview data collected for this report that au pair applicants perceive the au pair contract to lead to a more permanent condition in Europe, contrary to the governments' intentions. Interviews show that many au pairs do two or more au pair stays in different European countries until they reach the age limit. The data collected by the CFO show the profiles of new hires but no data exist on the profiles of re-hires. Re-hires include au pairs who have already completed one au pair programme, and applicants who have applied through a transit country. The last category forms a large group of au pairs who, after completing a position as domestic worker overseas (primarily in Singapore and Hong Kong), apply for the au pair programme in Europe. Interviews show that this forms a significant group. Data needs to be collected on re-hires. An interesting aspect to consider would be: how many au pairs come from a background as domestic workers in Hong Kong and Singapore?

Table 1: Au pair participants since March 2012 (7 months)		Total: 1.379
Receiving countries		Denmark: 42% Norway: 44% Netherlands: 8% Switzerland: 3% Germany: 2% Other: 1% *Respondents: 1.379
Gender		Women: 96 % Men: 4 % *Respondents: 1.380
Age (years)		15-19: 3% 20-24: 42% 25-29: 49% 30-34: 6% *Respondents: 1.379
Civil status		Single/Never Married: 98% Married: 2% *Respondents: 1.379
Education background		High school: 3% High school graduate: 17% Vocational: 2% Vocational graduate: 11% College: 22% College graduate: 45% *Respondents: 1.378
Occupation prior to migration		Professional, teacher and related: 4% Clerical: 4% Sales: 2% Service: 4% Production, transport, laborers: 16% Unemployed: 67% Housewives: 1% Students: 1% Others: 1% *Respondents: 1.020
Regions (top 5 regions of origin)		Region 7 (Bohol, Cebu, Negros Oriental): 18% National Capital Region: 15% Region 4 (Batangas, Cavite, Laguna, Quezon, Rizal.): 13% Region 11 (Davao, South Cotabato, Sarangani.): 9% Region 6 (Aklan, Antique, Capiz, Iloilo, Negros Oc.): 9% Other regions: 36% *Respondents: 1.379

Strict eligibility requirements cannot be considered an effective way of ensuring that au pair applicants have a cultural exchange scheme in mind when applying for the au pair stay. Rather, the au pair programme seems to be one of the career possibilities for Filipinas with various educational backgrounds for which jobs in the Philippines are limited.

Table 1 shows the characteristics of participants in the Country Familiarization Seminars since March 2012 (as pr. October 2012). It is based on the data from the Commission on Filipinos Overseas on *new hires*.

*The numbers reflect participants in Country Familiarization Seminars held by the CFO from March 2012 to October 2012. These numbers only show new hires in the reported period, and not Filipina au pair migrants who embark from other countries such as within Europe (transfer from one au pair stay to another) or from transit countries such as Singapore or Hong Kong. A potential source of error in the collected data is the notion of *social desirability*. To be admitted in the

programme, applicants must fulfil the eligibility requirements, and therefore applicants' answers to the CFO will reflect the eligibility requirements. Data reflect what au pair participants have reported to the CFO and data might have errors stemming from participants wanting to live up to the eligibility requirements for au pairs.

Recruitment and Au Pair Visa

The guidelines do not state that the motivation of the host family for hiring an au pair is cultural exchange rather than a demand for domestic help in the household. And since the au pair scheme is no longer placed under the umbrella of the POEA, neither POEA staff nor labour attaches are involved in authenticating employer contracts, as would be the case with a regular OFW. However, the conditions under which the au pair shall live and work are regularised in the guidelines.²⁶ Some groups, e.g. diplomats' households, are exempted from hosting au pairs.²⁷ A protective mechanism which has been established is the blacklisting of host families who have misused the au pair scheme. Such families cannot become sponsors for an au pair again. In Norway, the suggested possible changes to the law which are to be implemented in 2012 include quarantining host families who abuse the au pair scheme. This means that a host family could be banned from having an au pair for a certain period of time. Such a mechanism is already in place in Denmark, where the host family can be given a penalty period for abusing the au pair scheme, during which time they cannot be approved to host an au pair. The concrete periods of quarantine are ten years for violence against an au pair, five years for illegal employment, and two years for other abuses of the au pair scheme, such as disregarding the limitations on an au pair's tasks and duties, maximum work hours, accommodation, and minimum allowance. Such a step could function as an important protective mechanism leading to accountability of host families. However, in Denmark where this mechanism has been in place for some years now, only three host families were blacklisted in the period 2007–2011 (Stenum, 2011: 46). Danish NGOs who have participated in this report believe that the mechanism has not been effectively enforced.

In Norway and Denmark, the au pair visa is tied to the employer. The visa is granted for the duration of the au pair contract and expires with the termination of the contract. Such a system, where the visa is tied to the employer, has proved to be damaging to the protection of the migrant in most forms of domestic work (see OSCE, 2010: 13; Stenum, 2011: 19 and Lutz, 2008: 1-8). In recognition of this, a mechanism has been established which enables au pairs to change their host family and, in the event of a sudden termination of the contract, an au pair will be given 14 days²⁸ to find a new host family, in which case she must apply for a new residence permit too. The au pair is allowed to stay as a guest with the new host family while awaiting the reply from the immigration service. The immigration authorities will take into account the reasons for changing the host family when issuing the new residence permit. Decisions made by the immigration service can be appealed (Danish guidelines). NGOs participating in this study report that 14 days is too short a time for finding a new host family. Interviews similarly show that the uncertainty on whether the immigration authorities will accommodate the application can make an au pair reluctant to apply for a new host family, even if she finds her relationship to the current host family unacceptable. The rights of the au pair could be better safeguarded by removing the risk of deportation in events where changing of the host family is necessary. A system which ties the au pair visa to the employer – as is the case with the au pair programme in Norway and Denmark – is known to make migrants vulnerable to exploitation.

In the Netherlands, a new system of sponsorship has been implemented under which the official sponsor of the au pair is the au pair agency (rather than the host family). Under the *Modern Migration Policy Act*, the au pair agency is given a key role as the au pair's recognised sponsor and host families can only submit the residence application through an au pair agency that has been licensed by the Immigration and Naturalization Service (IND). The initiative was implemented in

order to “prevent abuses”. The agreements between the IND and the agencies include a pledge by the agencies to closely monitor the welfare of au pairs and report to the IND. In practice, this implicates the au pair agency as accountable for any breaches of contract or exploitation by the host family. In May 2011, the IND intensified its monitoring of seven of the twenty au pair agencies with which it had cooperation activities after its own inspections and reporting from other parties uncovered abuses and shortcomings in the agencies’ monitoring of foreign au pairs living with Dutch families. The IND received reports that some agencies had been lax in monitoring whether au pairs were forced to work more than the agreed number of hours. This led to the termination of cooperation with one agency and intensified control with others.

The Netherlands approach (in theory) creates an element of accountability in the process of au pair employment, where government licensed au pair agencies are to be held accountable to au pairs and to the immigration service. But this accountability is undermined by conflicting rules in the Philippines. The policy of the Philippines government on limiting the use of agents, agencies and brokers is clear. The amendment to the *Republic Act on Migration* (Amendment RA10022) provides higher penalties for illegal agents and agencies. The POEA’s Anti-Illegal Recruitment Branch is responsible for licensing and regulating employment agencies, and investigating and preventing the use of illegal recruiters. There are no licensed au pair agencies in the Philippines, as au pair applicants have to find their host family through *direct hire*. This approach conflicts with that of the Netherlands, as in practice it means that Philippine-based partner-agencies and counterparts of the Netherlands-based au pair recruitment agencies are considered illegal by the Philippine authorities. In Denmark, a civil society organisation, KIT (Churches’ Integration Service), which runs government sponsored au pair support, announced the establishment of a non-profit contact service between host families and au pair applicants. Whether any accountability measures are integrated in this service is not clear. However, the aim is to spare the au pairs from going through unlicensed (and expensive) recruiters and brokers.

Contract and Working Conditions

Working conditions of au pairs are regulated by an employment contract which states the rights and contractual obligations of the au pair and the host family. In Denmark, this contract is a standard format issued by the Danish Agency for Labour Retention and International Recruitment. A signed contract is a requirement for issuing the visa to au pair applicants. The procedure does not allow the authorities in the Philippines, in this case the CFO, to review the contract before the visa is issued by the receiving country. The CFO reports that in some cases au pair visa has been issued by the receiving countries²⁹ even though the contract does not follow the guidelines on working conditions.

The basis of the contractual arrangement is that the au pair receives board and lodging in exchange of services such as *light household chores* and childcare in the host family. Maximum working hours are regulated to 30 hours a week in Denmark and Norway, with a daily maximum of five hours and at least one full day off per week. In the Netherlands, the maximum is eight hours daily and a requirement of two full days off per week. What is to be included in the term *light household chores* lacks a clear definition. In au pair guidelines, *light household chores* is described as, for example, “to contribute to the household by carrying out chores related to the family’s daily housekeeping, such as babysitting, cleaning and washing clothes” (Denmark) and in Norway looking after pets too. Other duties such as taking on responsibilities related to personal care or sick care of adult family members, any work for the host family which exceeds five hours per day, six days a week, carrying out tasks other than household chores, or any work for others, for

example, tending a shop owned by the host family (Denmark) are exempted from the scope of au pair work. However, material collected for this report shows evidence of work carried out by au pairs that far exceeds the definition of light domestic chores, including taking care of farm animals, tending to shops, cleaning in more than one household, and performing extensive gardening tasks. Case material additionally shows evidence of more than 30 hours of work per week. The labour union FOA reports overtime work as one of the more frequent breaches of the au pair contract. The definition of light household chores stated in the guidelines and in the au pair contract is too weak and further mechanisms for controlling the working conditions within the household of the host family are needed. The enforcement of contractual obligations needs to be further strengthened.

Pre-Departure Information

Pre-departure programmes are acknowledged to be important tools for the protection of migrant workers (Asis and Agunias, 2012). Effectiveness of the pre-departure programme in limiting risks relies on the quality of the information. With the new au pair guidelines issued by the government, a requirement for emigrating as an au pair from the Philippines is attendance in a Country Familiarization Seminar (CFS)³⁰ facilitated by the CFO. The CFS shall “prepare the au pairs for immersion in cultural and language learning in the specific European country”. The seminars are half day (2-5 hours) with between 2 and 40 participants per session. The CFO considers the seminar vital for the au pairs as it equips them with adequate information on topics such as settlement concerns, values, cultural and social realities in the host countries, health and safety issues, airport and travel procedures and support networks. These seminars have replaced the former pre-departure orientation seminars held by the OWWA, which in the past were mandatory for au pairs. But these were not targeted to au pairs exclusively and received criticism by the Babaylan (Filipina network) for being irrelevant and for “supporting a domestic worker agenda” (Stenum, 2011: 59). The CFO seminars are targeted exclusively to au pairs and include country specific information on destination countries, in addition to sessions on the role of the CFO, information on the au pair stay, the au pair contract, travel documents, health and safety, risks and annoyances, remittances, culture and values.

Evaluation of the Country Familiarization Seminar

One Country Familiarization Seminar, held in September 2012, was observed by the author with the permission of the CFO. The seminar lasted around three hours and had two participating au pair applicants destined for Denmark.

A cultural exchange approach: It is the cultural exchange approach that defines the information shared in the CFO seminars. Throughout the session, the facilitator emphasises the element of cultural exchange by outlining how the au pair scheme differs from a domestic work programme (salary/pocket money, working hours, visa and employment status etc.). According to the CFO staff, potential discrepancies between au pair applicants’ ideas of and motivations for engaging in an au pair stay and the *purpose* (as stated in the guidelines) are addressed by “*changing the mindset*” of the au pair applicant: making her aware of the *cultural* purpose of the programme. It is crucial to study whether this shift to a heavy emphasis on cultural exchange reflects a shift in the *actual circumstances* faced by au pairs in the receiving countries, or merely a shift in the *intended policies* of the Philippine government. Pre-departure information should prepare an au pair to respond to realities she will meet at the destination, rather than educating her in the policy-intentions behind the programme. Most importantly, pre-departure information should avoid nurturing false expectations in applicants. In the attended seminar, a case example was mentioned in

which, upon end of contract, the au pair succeeded in transferring to a student visa with the assistance of her host family. As such examples are in reality extremely rare, facilitators should be careful not to nurture false expectations, and must provide accurate information of other opportunities upon end of contract and au pair stay.

Focus on remittance management: According to a CFO staff, majority of applicants intend to be able to send back remittances from their pocket money allowance. In the CFS, this issue is addressed. Au pair applicants are discouraged from sending back (a high level of) remittances. Applicants are explained how the low allowance and the high cost of living in receiving countries do not allow for high remittances. They are advised to create a small saving in order to prepare themselves for the time after the au pair stay. Participants are further encouraged to take CFO offered courses in financial management. Remittance management is an important topic to address, since many au pairs come from a social background where they are expected to contribute economically to the education of siblings and welfare of extended families. Applicants should be fully informed on the economic situation associated to being an au pair.

Outlining contractual rights and obligations: In the seminar, the au pair contract is presented and explained to applicants. Since some elements of the contract are poorly defined, such as the term *light household chores*, it is important to make applicants aware of the kind of tasks and duties mentioned in the contract. The facilitator presented concrete examples of tasks which would not fall under *light household chores* (for example, doing heavy gardening, tending to the shop of the host family etc). Au pairs were encouraged to study the terms of the contract and to stand up to host families that require duties beyond the contract. Since exploitation in terms of overtime work is one of the more often reported breaches of contract, information on how to handle such instances of labour exploitation and on where to seek assistance is crucial curriculum for a pre-departure seminar.

Addressing risks and annoyances: Further, risks in terms of exploitation, abuse and trafficking are addressed in the seminars. Applicants are informed about where to seek assistance and provided with contact information to embassies and NGOs. They are also informed about the possibility to change the host family. In the attended seminar, the risk of trafficking for the purpose of sexual exploitation was briefly mentioned but nothing about trafficking for labour exploitation. This would probably be more relevant to au pairs. This study has found risks connected to unsafe recruitment procedures (through unlicensed agents) present in au pair migration. This issue should be made part of the curriculum for future pre-departure seminars. Addressing risks and annoyances is an important topic of pre-departure seminars. However, many au pair applicants do attend the seminar only a few days before departure when some risks (risk of trafficking, risks connected to illegal recruitment and debt bondage) will already have occurred. There is a need for sharing of information earlier than immediately prior to departure.

Country specific information: The seminars offer country specific sessions, introducing applicants to the culture and practicalities of the destination country. Such country specific information could be of high value to au pair applicants. However in the attended seminar, quality of the information suffered from presenters having never been to the destination countries. To address this gap in information, CFO has recently sent a study mission to countries of destination. Seminars could benefit from having such study missions feeding into the seminar curriculum. Inviting experienced au pairs to facilitate sessions could similarly be expected to improve the quality of information.

Pre-departure information is relevant and an important prerequisite for a safe migration process. The CFS can be an arena for providing the necessary information to au pair migrants. However, the seminars only target au pair applicants who migrate from the Philippines (new hires) and not those Filipina au pairs who migrate through other countries, for example, from Singapore or Hong Kong. Both groups could utilise information on safe migration procedures, such as how to migrate using trusted channels and network groups. Most applicants participate in the seminars close to their date of departure, but in order to effectively address risks of trafficking and unsafe recruitment, intervention needs to take place earlier in the application process. An important issue is the forming of *expectations* for the au pair placement. The information provided at the CFS seminars should clearly reflect the *realities* of the au pair employment rather than the *definitions* presented in the guidelines and policies (*cultural exchange*) which, according to the interviews and case material collected for this report, in many cases do not match the realities of au pair work (*household chores*).

Civil Society

Once in the country of destination, service providers and NGOs offer a range of services to au pairs. Civil society can be crucial in eliminating risks in destination countries. It seems to be the most developed on the au pair issue in Denmark, where the government has funded activities run by civil society groups. The Danish Refugee Council (DRC), KIT (Church Integration Service) and the FOA (Union) provide services, advice and information seminars on government funded activities for au pairs. The DRC runs an au pair support with legal and personal counseling for au pairs and host families, as well as mediation activities in conflict situations. The Au pair network (run by KIT) offers information seminars, social activities and services related to acute crisis management (shelter etc.). The FOA has been involved in the political lobbying on the au pair issue, and on a practical level a union for au pairs has been established under its guidance. The union provides guidance and legal assistance in labour cases and has recently appointed its first official *au pair spokesperson*. In Norway, the Directorate of Immigration is “planning to set up an information phone line which will answer questions from au pairs and host families” and the UDI itself will arrange “regular open information meetings” to better inform au pairs and host families. In Netherlands, a similar hotline is run by the IND. In addition to government and NGO-organised protective measures, there are strong Filipino networks such as self-organised networks connected to religious communities.

SUMMARY: Protective Measures under the Au Pair Scheme

In summary, the *cultural exchange* approach dominates au pair guidelines of the Philippines and the three destination countries. This approach has consequences: the au pair programme is less regulated by Philippine authorities than, for example, the domestic workers programme, but is also easier to access for applicants. The categorisation of the au pair sector as cultural exchange weakens the protection of au pair migrants in destination countries in that it has consequences for remuneration (a pocket money allowance which is lower than minimum wages in comparable work sectors), for residence status (temporary visa tied to the au pair contract) and for protection (limited control with the employer/host family and working environment/household). In general, the term *light household chores*, which are to be performed by the au pair under the cultural exchange programme, is weakly defined, laying the au pair scheme open to exploitation for the import of cheap domestic labour. Some positive measures initiated include the blacklisting of host families and the possibility for au pairs to transfer to a new host family. Implementation of these and other protective

measures needs to be strengthened. The Netherlands approach to hold licensed au pair agencies accountable to the immigration service and to au pairs should be reviewed to see if this approach will help better in safeguarding the au pairs against exploitative employment situations. In terms of addressing risks connected to au pair migration, pre-departure information is crucial. Unfortunately, current Country Familiarization Seminars are provided only shortly before departure, where some risks (illegal recruitment, debt bondage) might have already occurred. It is important to continue improving the quality, relevance and timing of pre-departure information. The Danish approach for funding civil society's au pair networks and counseling services is a positive development.

Section 3: Case Study – Filipina Au Pairs in Denmark

A migration route comprises different phases distinguished by the changing context surrounding the migrant. A safe migration route ensures protection of the rights of the migrant during each phase: when still in the country of origin, along the way to the destination route, during the stay in the host country and after the end of the contract.

In the first phases of a migration route, protection of the migrant relates to safe recruitment procedures and safe migration channels to access the destination country. When in the country of destination, protection of the migrant encompasses *decent work* and absence of labour exploitation. Upon the end of the contract, protection of the migrant relates to mobility when returning to the country of origin or when transferring to a new country of destination.

In the following, the challenges to safe migration and decent work are identified for each migration phase. The analysis is based on a case study of Filipina au pairs in Denmark. It draws upon interviews, collected case material and contributions from NGOs.

At Home: Recruitment procedures

According to the Philippines' regulations, an au pair placement should not involve the use of agents, agencies and brokers. However, the case study shows a different reality. The degree of involvement of middlemen varies. At one end of the spectrum is the limited use of agents. The internet has opened up opportunities for direct contact between the au pair and host families through web-based au pair agencies such as easypair.com, aupairagency.com and many more. Agencies show and match profiles of host families with au pairs in exchange for a service fee (in some cases, only host families are charged, whereas the au pair can enter the site for free). Additionally, it is common that au pairs circumvent middlemen by finding a host family through their personal network, often by replacing a friend or a family member in her host family. These two options resemble a system of *direct hire*, which has the advantage of low fees, direct contact between employer and employee, and affirmation of the working conditions if the host family is recommended by a personal relation. In this sense, direct hire can be considered a relatively safe recruitment option for au pairs.

At the other end, common recruitment procedure involves brokers or agents. In legal terms (according to the Republic Act 10022 of the Philippines) these agents are illegal recruiters. They are Filipinos based in the Philippines, in the transit country or in the receiving country. In some cases, the broker or agent may also be an extended family member residing in the country of destination. In such cases, the line between direct hire and agent hire is thin. In others, she is a professional with no personal relationship to the applicant. The agent facilitates the hiring of the au pair by establishing and nurturing contact between the au pair applicant and the host family/employer. This involves the use of au pair agency websites from which she contacts several host families. The agent corresponds with the future host family *on behalf of the au pair* by impersonating the au pair in email correspondences (and even phone calls). The host family is under the impression that they are interviewing their *real* future au pair. This service saves the applicant time and is a feasible option for those without internet access.

At first, while still in the Philippines, it was new to me to hear about au pair work. I had never heard about it before. I applied through an agent. I think it is illegal to have an agent. I paid the agent around DKK10,000 (...) Unfortunately, the agent is not allowed in the Philippines, so when we go to the embassy we say that it's a direct hire, that we found the host family on the internet. (...) The agent takes the money and looks for a host family on the internet. They pay to access the information of the host family. For me, I come from a community where you need to go to the city to access the internet, so it's more convenient to go to an agent. The agent has an office and can do it at night and she provides the information on the procedures. She also has my identity. She calls my hosts on the phone, she mimics my voice. When I arrived, my host family said: you once called us before, and I said no, I just met you. They think they talked to me, but no, it was my agent. So when I arrived here, I had no exact information on them – this information lies with my agent. My agent gave me the emails and said: read those and memorize them, and I did this. My agent is selling me as if I am a domestic helper. You know, how you can sell a person: I am a very good cook...I felt like, NO this is not me... she is just a very good novelist. (...) So this is the process, and it would be really bad if an au pair is being sold as a domestic helper and then when she arrives, she is shocked that her work is as a domestic helper, and the host family is very expectant as well. (B, Filipina au pair in Denmark)

The involvement of an unlicensed agent carries with it some risks. First, there is no guarantee that the agent will act in the best interest of the au pair. The agent is interested in *selling the job* to the au pair and in *selling the au pair* to the host family, in some cases even promising longer working hours to the host family (than what is stated in the contract) or outbidding other candidates to secure the job for her. This creates false expectations in both the au pair and the host family and leaves the au pair in a weak bargaining situation upon arrival.

The one who helped me to find a host family is an agent. She lived in Denmark. I would communicate with her through email. She would post our application on the internet but she was the only one who knew the password to the internet sites where she posted all the applications. She would inform us if there was a family that would like to do an interview. She taught us what kind of questions we needed to ask and also how to answer the questions properly. Also, she would guide us on how to apply for the visa, where to send all the application forms, how to fill out the applications, etc. The host family didn't know that there was a person between us. (C, Filipina au pair in Denmark)

Second, the placement fee paid to the agent is not fixed as the agents are not regulated. The fee paid by au pair applicants varies from one to two months' allowance (often with a deposit in advance) or even upto the equivalent of three to six months' allowance. Such (relatively) large placement fees open up the risk of indebtedness and debt bondage. However, for the au pair applicant, the use of an unlicensed agent can be a calculated risk. The agent may be considered a guarantor for the host family, and the placement fee worth the extra knowledge and the sense of security that comes with applying through a trusted agent.

I did not have any idea of what an au pair was, but thought I would give it a try. A woman offered to help me for a 100,000 pesos. I didn't know anyone in Denmark, but I had another friend who was going to Denmark, paying only 25000 pesos. My recruiter was not a typical agent – I would be replacing her as an au pair. She did not hire a lot of people. I didn't want the contract offered by the other Filipina for 25000 pesos because I didn't know anyone there. I thought it risky. Instead, I accepted this because I figured she knew the host family. I thought I was secure. However, when I arrived in Denmark, I realized that the host was not what I had imagined (...) (D, Filipina au pair in Denmark)

The use of agents shows that au pair placement through legal channels is not easily accessible to many applicants. This issue is not addressed by governments, who expect the au pairs to be able to find host families without agents.

The use of unlicensed recruiters can leave au pairs vulnerable to exploitation and abuse. Whereas in Denmark, the Netherlands and Norway, the term *au pair* refers to a government regulated job description, in other EU States (such as Ireland), the au pair sector is more informal and less regulated. In European countries with no regulated au pair programme, the *au pair* category is particularly open to abuse by traffickers who can recruit women into exploitation for domestic work in the guise of a false *au pair* stay. Media and court cases collected for this case study revealed examples of traffickers using the au pair category as a facade for recruiting women into the sex industry in Denmark (cases involved women from African countries³¹) and into domestic work in Southern Europe (the case involved Filipina women smuggled to Spain³²). The Anti-Illegal Recruitment Branch (AIRB) within the POEA believes that the possibility of illegal recruiters misusing the au pair category for purposes of trafficking has been minimised after lifting the ban on au pair emigration from the Philippines. The lifting of the ban makes it possible to enter the au pair sector through formalised routes.

Case: Danish media reported on the imprisonment of a Danish couple in Spain on charges of human smuggling involving Filipina migrants. A group of Filipinas were allegedly told they would work as caregivers for children in Denmark. Instead, they were housed in a room in Spain, their passports were withheld, and they were told to work as cleaners or domestic workers in Spain until they had repaid their debt to the recruiters. They were allegedly earning 600-700 euros a month, out of which 500 euros were withheld by the recruiters as repayment for their residence permits – an amount that exceeded the actual expense. (Source: Go News)

On the Way: Access to safe migration routes

The recent lifting of the ban by the Philippines has resulted in improved safety for Filipina au pairs on their way to Europe by allowing access to a formalised migration route when leaving the Philippines. There are few formal routes for third country nationals to access the EU labour market as migrant workers. In the case of Denmark, the au pair scheme is one of the very few accessible avenues for Filipinas to enter. At the same time, the care economy of the welfare state (childcare, domestic work, elder care) has experienced an increased demand for private childcare. The strict immigration regime however leaves little room to meet this demand for domestic work. The au pair scheme then becomes a channel through which this demand of importing cheap domestic labour can be

met. With the expansion of the European Union, some EU governments expected the Eastern European countries to meet the necessary demands for domestic work. The expansion of the European Union was followed by closing the borders to third-country nationals. It affected sectors like domestic work and the informal au pair sector. Closing the front door can push migrants through informal migration channels. Case material for this report involves one case of smuggling of a large number of Filipina migrants to Denmark (see textbox). Smuggled migrants are in greater risk of exploitation upon arrival due to their undocumented situation and the risk of deportation. They further risk debt bondage (the fees paid to the smuggler might be financed by unfavourable loans) and trafficking.

Case: In September 2012, a court case against a Filipina woman residing in Denmark was initiated based on suspicions of smuggling Filipina migrants to Denmark. After initial court hearings, the case was closed to the public for further investigation. IACAT confirmed cooperating with Danish authorities on case investigations, in which a Filipina agent was held in custody for the alleged smuggling of 1049 Filipina migrants to Denmark and other Schengen countries over a three-year period. Danish police confirmed to Danish media that they were investigating possible links to a larger international human smuggling network from the Philippines to the Schengen countries. An additional 87 Filipinas in Denmark have been held in custody for their involvement in the case. The Danish Immigration Service confirmed that family visit visas had been fraudulently used to facilitate the entrance to Denmark through a travel agency run by the agent. Danish media reported that the business run by the suspected smuggler allegedly looked like a facilitation service for au pairs to Denmark. In February 2013, the offender was convicted for *human smuggling* of 493 Filipinas to Denmark and other Schengen countries (transfer through Denmark). The smuggled migrants paid up to 600,000 pesos for visa, tickets etc. The visas were family visit visas which the agent fraudulently obtained by organising fake family-guarantors. The offender was sentenced to six years of prison and to a conditional deportation from Denmark. (Source: BT.dk, DR.dk, The Court in Holstebro)

Governments have imposed strict eligibility criteria regarding age and marital status in order to target *youth without dependents* for the au pair programme. Material for this report shows that eligibility requirements, rather than refraining applicants from applying, make applicants use desperate measures to meet the imposed requirements. A concern identified is the falsification of papers (withholding information on children or falsifying papers documenting the age of the applicant) in order to live up to the eligibility criteria of the au pair scheme. Such measures compromise the safety of the au pair migrant later on, where she risks deportation or even detention/imprisonment for falsifying documents on which her residence permit relies.

Abroad: Challenges and working conditions

The au pair scheme is labelled a programme for cultural exchange and this is reflected in the duties of the au pair who shall perform only light household chores and receive a pocket money allowance of DKK3150 per month. Interview material for the case study shows how the cultural exchange dimension is fully fulfilled in some cases and in others, the au pair is exploited for domestic work exceeding what is covered by the contract. Quotes below show how differently the au pair stay is experienced.

It's nice because I am not abused and cultural exchange really happens. It is what I expected. The only thing I don't like is when I go out on weekends, the bus fare is too expensive (...) I do baby-sitting and light household chores. If one of my host parents is there, I normally work three hours from Monday to Friday afternoon and then I am free until Sunday. (E, Filipina au pair in Denmark)

We can't compare au pairs to domestic workers coz au pairs would be treated as part of the family and not as slaves and would learn Danish culture and language. But as far as my experience goes, there was no difference. I did all the house work, gardening, baby sitting and even picking up the three kids from school. I even called my host as ma'am and sir. (A, Filipina au pair in Denmark)

The host family is fine. It's just a family. They give me my salary and they don't hit me. The working hours are more than five hours. I work seven hours a day. I work with the kids, prepare them for school, tidy the rooms, cook and clean. (...) If the host family knows? I don't know, we didn't talk about it. They like me, that is fine. Hong Kong was terrible. There I worked the whole day, had overtime work and a small salary. I would rather go to Europe. (F, Filipina au pair in Denmark)

Since I didn't mind the rules, I always worked long hours. A lot of clothes to iron, cooking dinner, going to do the grocery, looking after the pet animals, watering plants in the garden, preparing breakfast and lunch boxes for kids, picking up kids from school and sometimes walking them to school, cleaning the whole house and also even on Saturdays and Sundays since I just stayed at home during my holidays. I was also asked to clean big windows outside. I'm not complaining and they also didn't inform me that they were not going to pay my overtime work. They became more demanding. I was not allowed to go out during daytime. I was also told that it was not necessary for me to attend a language school. It was just a waste of time for them. My relationship with my host family was not really good. During their holidays I had to stay at home to work and look after their house (...) They also wanted me to do work which was not included in the contract, like washing the car, cutting grass in the garden, cleaning the roofs of the garage, cleaning big windows where I needed to stand on a tall ladder. I told them that it was not part of the contract and they got mad at me. (C, Filipina au pair in Denmark)

The Union FOA has focused attention on the working conditions of au pairs in Denmark by organising au pairs under the labour union. Now the au pairs have their first official spokesperson too. FOA assists au pairs on legal issues in labour-related cases. The eight cases below (material provided by FOA) illustrate the character of the au pair cases handled by FOA. It additionally runs an au pair network with KIT, where dialogue with au pairs takes place. It reports on encountered cases, where host families have maltreated the au pairs. There are stories where the room they

have been assigned is poorly kept, stories where au pairs have to sleep in the same room as the children and stories where au pairs are obliged to perform tasks beyond the scope of normal household chores.

Cases: FOA is currently assisting au pair members in the following eight cases:

1. Failure to pay salary will be taken to court as of December 2012. It is the first au pair case which FOA will represent in court. (An out-of-court settlement is still being pursued.)
2. Failure to pay the salary when the contract was terminated, and deducting salary to cover entry expenses to Denmark, contradicting an earlier agreement for the host family to cover expenses.
3. Extensive overtime working hours for a period of almost a year, deducting salary for a holiday which was not announced according to the Danish holiday rules, and deducting salary for a flight ticket.
4. Failure to pay salary, insurance, etc. FOA has sent a letter of notice to the host family in this case. The host family has submitted objections.
5. and 6. Failure to pay salary. FOA has sent a letter of notice to the host families. In both cases, host families have submitted objections.
- 7 and 8: Paternity disputes. These two cases are out of FOA's usual area of work, but the Union is providing advice. (Source: FOA)

According to the guidelines, au pairs can change to a new host family by terminating the contract and applying for a new residence permit with a new host family (which she has to find herself or with support from NGOs). In some of the cases (see FOA's cases mentioned in the box above), au pairs have applied for new host families in Denmark. This process however takes time, which means that during the settlement of the case au pairs reside in Denmark as undocumented migrants. FOA reports that some host families exploit this situation in negotiations for case settlements. This demonstrates how tying the visa to the au pair contract weakens the protection and bargaining power of the au pair in situations where exploitation or breach of contract has occurred. The renewal of the residence permit is dependent on the immigration service accepting the grounds for termination with the original host family. The interviews show that the risk of deportation is a factor in deciding whether to leave an exploitative employment situation.

When I told them that I wanted to leave, the host mom told me that I won't get any host family anymore because she knows I'm a single mom, and it is not allowed in Denmark to have a child if you want to be an au pair. I got scared because I really needed a job to support my family. (C, Filipina au pair in Denmark)

Interviews further show that remittances are an important issue to consider when evaluating the au pair scheme. Many au pairs do send back a large share of their salary as remittances to family and extended family in the Philippines. As much as the possibility of supporting one's family by securing the household at home and providing a better future for one's children is empowering, the au pair scheme is not well structured for this purpose (given the low salary/pocket money allowance). For some au pairs, the low salary and the dependency on remittances at home can encourage engaging in an extra job. This would often include cleaning duties in other households, which is illegal under the

au pair scheme. Au pairs run the risk of deportation by working illegally next to the au pair stay. However, some are willing to take on this risk to support their dependants in the Philippines. FOA has suggested an increase of the DKK3150 salary to a level of DKK5000, which will resemble the average national wage for a junior clerk (around DKK11000) minus the expenses for lodge and board provided by the host family.

My salary is just only around 3000 kroner a month and almost all of this I send back to the Philippines. This salary is quite small if you spend something on your food, clip cards (transport) and personal necessities. I don't have the chance to go to a language school and learn Danish Language. For more than a year of working, I still don't have savings for myself. I admit that I work in other houses too, just to add money for myself and for my family back in the Philippines. It is really a great help because on salary alone I can't survive. (A, Filipina au pair in Denmark)

The case and interview material collected for this report do show that the au pair scheme is open to exploitation in terms of overtime work and work chores. Additionally, the visa tied to the employer limits the au pair's bargaining power in situations of exploitation. The same accounts for the remittance dependency which puts pressure on au pairs. Another related issue which has been looked into in this report is that of trafficking. The Danish Centre against Human Trafficking, established in 2009, has to date identified only seven cases of trafficking into domestic servitude in Denmark (not all on au pair visas). Of these cases, the majority of victims are from African countries, and one case involves a victim from the Philippines on an au pair contract (see next subsection). NGOs have reported cases of host families withholding the personal documents of au pairs.

This is absurd. We still receive complaints that host families keep the au pair's passport. Remember, IT IS ILLEGAL TO HOLD OR KEEP SOMEBODY'S PASSPORT. It is your personal property, it is your identity, NOBODY can use it as collateral or to keep you from leaving your host family. Without it, you are invisible. (Update on *Filipina Au Pair Network*, Facebook)

Upon End of Contract: Mobility and its implications

The au pair stay is a short-term arrangement, with a maximum stay in Denmark for two years. An au pair cannot apply for an additional au pair stay in Denmark upon the two-year period, but the rules do not limit her from applying for an au pair position in another country. There is a tendency of transfer between Norway and Denmark where the language and culture differences are small. Transfer between the Netherlands and the Scandinavian countries is common as well.

After my contract in Denmark, I plan to work as an au pair in Norway and after that I don't know. After Norway, I am not qualified anymore because of my age. (A, Filipina au pair in Denmark)

Others transfer to Southern Europe (Spain and Italy) to find employment as domestic workers and some return to the Philippines. Interviews collected for this case study show that the au pair stay is considered an opening to the EU labour market. In reality, however, the strict immigration rules of the EU leave few possibilities for au pairs to transfer into a more permanent residence (work) situation at the end of the contract. NGOs have reported a few exceptions where host families have helped their au pair to transfer to a student visa upon end of the contract, but this requires language skills and the capacity to pay tuition fees.

I want to stay and study afterwards, but it is not possible for au pairs. You need many documents to stay here legally. After the contract I have to exit. (G, Filipina au pair in Denmark)

In theory, the au pair programme is organised as a cultural exchange programme where au pairs have the chance to learn the language and culture of the receiving country, as well as slowly build a network. Such a programme would be a useful stepping stone to a rewarding migration and integration process, particularly given the social and educational background of au pairs, many of whom hold college degrees. The lack of an integration programme (in the receiving country) or a reintegration programme (in the Philippines) makes the au pair career unsustainable: with limited mobility upon end of the contract, the au pair can spend years transferring between Norway, the Netherlands and Denmark on short term au pair visas until she reaches the age limit of the scheme and needs to return to the Philippines. When college graduates spend six years performing *light household* chores and learning the culture and language of a country in which they are not given the possibility to apply for a job afterwards, the au pair programme becomes unsustainable.

The Danish class is irrelevant now since I can't use it. If they had a rule that made it possible to stay longer, I would like to study, but since I have to end the contract, what is the use of it. It's a waste of money and waste of time. (H, Filipina au pair in Denmark)

Au pairs want to go to school and study when they are an au pair. I don't know if I can go to university, but if it's possible I want to go. I don't know what to do. If you are an au pair, it's not good enough to go to university. We learn the language for nothing. Many are highly skilled, but there are not many possibilities. (F, Filipina au pair in Denmark)

Another issue that became clear from interviews and case material was *marriage migration*. Marriage to a Danish man upon ending the au pair contract is not a rarity. While transnational marriage in itself does not constitute a concern, it is important to ensure that limited mobility does not push migrants into marriage as an option to obtain a residence permit. The free choice of the migrant woman to marry at the time she and her partner prefer should be protected throughout the migration process.

Limited mobility after the contract has ended can put pressure on au pairs, especially those who have dependants to support in the Philippines. NGOs report cases of au pairs overstaying their visa to become irregular migrants in Europe. As the case below illustrates, irregular migrants can be vulnerable to the risk of trafficking.

Case: A woman of Filipina origin completed her au pair contract in Denmark after two years. Upon expiration of the visa, she migrated to another European country to look for job opportunities. Her Danish boyfriend convinced her to come back to Denmark as an undocumented migrant, arranged her bus fare and lodged her in his house. She undertook domestic chores eight hours a day, including cooking, cleaning, massage and childcare. She also worked on weekends outside of the household. She didn't receive any salary. She was not allowed to use the phone and her ID papers were withheld. She did not feel able to refuse and was afraid. She was forced to have sex with an acquaintance of the man. When she wanted to go back to the Philippines, she was forced to stay until she was replaced with a new woman from a third country. When she refused to clean, she was punished with violence and threatened at gunpoint. She was forced to sleep outside the house. The woman explained to the authorities how at first she saw the connection as a personal relationship but became increasingly aware that she was used for labour exploitation. The woman was identified a victim of trafficking for forced labour in the domestic sphere and received a prepared repatriation. No charges were raised against the offender. (Source: Danish Centre against Human Trafficking)

In summary, an au pair contract is often followed by a situation of limited mobility that restricts residence and job possibilities. This problem has not been addressed by receiving or sending countries, and no bridging or reintegration programmes exist. Limited mobility can push au pair migrants into vulnerable situations after the end of a contract, including labour exploitation and trafficking.

SUMMARY: Challenges to Safe Au Pair Migration and Decent Work

The case study of Filipina au pairs in Denmark demonstrates that within the government regulated au pair cultural exchange programme, certain protections gaps are present throughout the migration process.

In the initial phase of the migration process, common recruitment procedures with the involvement of unlicensed agents place au pair migrants at risk of debt bondage as they have to pay large and unregulated recruitment fees. There is also risk of misinformation and deceit during and after recruitment, which weakens the bargaining position of those au pairs who end up in exploitative working conditions. A safe migration process for au pairs should involve better regulated, easily accessible and more transparent recruitment procedures where agents or recruiters can be held accountable to the au pair.

In the second phase of the migration process, the effects of governments' migration regimes can be observed. While the lifting of the ban on au pair emigration has improved the access to safe migration routes for Filipina au pairs, the continuing strict migration regime of the EU pushes some Filipina migrants through the back door, thereby nurturing the business of human smugglers. As the au pair programme to Denmark is one of the few accessible migration routes for migrants

from developing countries, it risks becoming a channel through which the increasing demand for domestic labour for private childcare can be met. However, imposing stricter eligibility requirements on au pair applicants does not necessarily counter this tendency. In fact, it only encourages applicants to withhold information on maternity.

Safe migration has to do with decent working conditions and protection of migrant labour. The au pair scheme is labelled as a programme of cultural exchange and intends for a positive and safe form of migration. The duties and chores (light household chores) of au pair and host family are regulated through a contract. However, the weak definition of the chores to be performed by the au pair and limited control over the employment situation leave the programme open to labour exploitation. Lack of salary, overtime work and work duties which extend the contract are not unseen in the Danish au pair system. In cases of labour exploitation, the protection of the au pair migrant is weakened by the visa being tied to the contract with the host family. The possibility to change the host family is a positive initiative, but the 14-day period permitted for this change and the dependence on authorities for approval can prevent the au pair from changing the host family. Deportation should never be a possible alternative to enduring exploitative working conditions. Another factor which puts pressure on au pairs is remittance dependency. The relatively low pocket money allowance, which is a consequence of the cultural exchange vision, leaves au pairs with limited disposable income. The implications of adopting the cultural exchange approach should be seriously reconsidered by policy makers, including its consequences for protection, labour standards and salary. The civil society and government-funded activities accessible to au pairs in Denmark is a strong contributor to the strengthened protection of au pair migrants.

Upon end of the contract (and especially when reaching the age limit for au pairs), au pair migrants face severe constraints on their mobility to enter the EU and the Philippines labour market. Limited mobility combined with remittance dependency adds pressure to au pair migrants. For some, overstaying the visa and becoming an irregular migrant can seem to be a solution. Such irregular migrants are in great risk of exploitation and trafficking. The sustainability of the au pair programme needs to be reconsidered in terms of access to other sectors of work upon end of the au pair contract.

Gaps and challenges identified above reflect what was found in a case study of Filipina au pairs in Denmark. However, tendencies are likely to be the same in Norway, the Netherlands and in other receiving countries. In the following section, we offer our recommendations on how to address gaps and challenges to make au pair migration safer.

Recommendations: Addressing Gaps and Challenges in Au Pair Migration

The following recommendations seek to address the gaps and challenges to safe au pair migration and decent work identified in this report.

- **Address risks in recruitment procedures and develop a mechanism to evaluate the effectiveness of having licensed agencies:** In the present reality of au pair migration, agents and agencies play a role in the recruitment of au pairs. As agents are illegal (or informal), the charge of placement fees is high and unregulated. An approach piloted by the Netherlands includes the licensing of au pair agencies, but whether this approach will support a more regulated, transparent and accountable recruitment system should be further looked into. The Philippines however has no licensed or legal au pair agencies, but encourages a system of *direct hire*. If this is the preferred policy, access to transparent and safe recruitment contacts between au pairs and host families should be eased.
- **Strengthen the relevance of pre-departure seminars:** The Country Familiarization Seminars held by the CFO (the Philippines) are an important source of information and education of Filipina au pair applicants. However, the seminars should be made more applicable to lived realities of au pairs rather than educating au pairs on the policy expectations of authorities. The information seminars are currently held a few days before departure and therefore fail to address problems related to the recruitment phase, such as informing applicants on how to find a host family without paying placement fees to unlicensed agents, etc. The seminars would benefit from inputs from former au pair migrants who could share their experiential knowledge and give a realistic introduction in terms of discrepancies between policy and lived realities of au pairs. Sessions on rights, legal aspects, protection, risks and where to seek help should continue forming the basis of the seminars.
- **Ease access to formal migration routes:** Restrictive migration regimes push migrants through unsafe migration routes. The lifting of the Philippine ban on au pair migration is a positive step. The strict immigration regimes of destination countries however have harmful effects, leaving prospective au pair applicants dependent on their unlicensed agents/recruitment agencies in origin countries. With few accessible migration routes to Europe, the au pair programme risks becoming a channel through which the demand for cheap domestic work in the destination countries can be met. Governments should cooperate on easing safe migration routes and address the demand for exploitative labour practices in destination countries.
- **Address exploitation and misuse of the au pair scheme by creating a mechanism to evaluate and monitor the programme:** The au pair scheme shares similar risks with domestic work, such as isolation, vulnerability to exploitative conditions, visa tied to the employment contract etc. Au pair duties are not recognised as work, but are performed under a programme for *cultural exchange*. Much effort is needed to ensure protection under the au pair programme in terms of labour rights and decent working conditions. This raises some questions: How to control the employer, when the employer is a *host family*? How to monitor working conditions when the workplace is a *home*? Au pairs are not covered by the ILO Convention on Decent Work for Domestic Workers. However, inspiration can be

found in the Convention on how to ensure the rights of workers in the domestic sphere.³³ The responsibility must be placed with governments of origin and destination countries. Some initiatives exist, for example the blacklisting of host families. Other concrete suggestions could include: embassy staff performing regular checks on au pairs upon arrival; authorities performing labour inspections in the household; and a mechanism to follow up on au pair complaints.

- **National and international labour standards should be taken into account when reforming the au pair scheme:** The au pair guidelines and requirements for the au pair contract should reflect national and international labour standards. The term *cultural exchange* should not limit policy makers from applying national labour standards to the au pair sector. The working hours under the au pair scheme (light household chores 3-5 or 6 hours a day, 6 or 5 days a week) should be awarded with at least the minimum wage in comparable sectors of work in destination countries. The allowance or pocket money should resemble the salary in comparable sectors to avoid making au pair migrants a group of second class workers.
- **Engage civil society and organise au pairs:** A positive development is the union of au pairs (Denmark), which can provide the necessary political pressure to ensure their rights. Unions and networks form important platforms for rights awareness, advocacy and influence.³⁴ Au pairs should be included in shaping the rules and regulations that affect them and strong self-organised groups and unions could function as channels for a more consultative process.
- **Strengthen mobility and offer reintegration programmes for au pair migrants upon end of contract:** Few options are available for au pairs upon end of contract. Some au pairs become irregular migrants. Though this group is presumably small, they do face increased risk of exploitation and trafficking. Governments of sending and receiving countries should address mobility issues by offering bridging programmes in destination countries that allow transfer to other types of visas and/or reintegration programmes in the Philippines.

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Endnotes

- ¹ See OSCE (2010) *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*.
- ² Data on au pairs registered with the CFO since March 2012.
- ³ POEA: Overseas Employment Statistics, 2010. http://www.poea.gov.ph/stats/2010_Stats.pdf
- ⁴ CFO: Stock Estimate of Overseas Filipinos, 2009. <http://www.poea.gov.ph/stats/Stock%20Estimate%202009.pdf>
- ⁵ World Bank, World Development Indicators
- ⁶ Inquirer Business: Despite High Economic Growth, PH has highest unemployment in Asean. <http://business.inquirer.net/80138/despite-high-economic-growth-ph-has-highest-unemployment-rate-in-asean>
- ⁷ BSP: Overseas Filipino's Cash Remittances, 2012. <http://www.bsp.gov.ph/statistics/keystat/ofw.htm>
- ⁸ POEA: Executive Order No. 797, Reorganizing the ministry of labor and employment, creating the Philippines overseas employment administration, and for other purposes: <http://www.poea.gov.ph/rules/eo797.pdf>
- ⁹ The municipality visited for the purpose of this research was Mabini, Batangas, in the Philippines. It has a high proportion of community members employed overseas. The majority of migrants from the area are in Italy in domestic work and only few, if any, abroad as au pairs. Hence, this municipality was found not to be a representative sending municipality for au pairs as otherwise intended.
- ¹⁰ <http://www.iwraw-ap.org/convention/details26.htm>
- ¹¹ <http://globalnation.inquirer.net/26557/government-lifts-%E2%80%98au-pair%E2%80%99-ban-to-europe>
- ¹² Danish Film Institute: *Au Pair*, 2011. <http://www.youtube.com/watch?v=57NM2uSsqRg>
- ¹³ http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-travail/documents/publication/wcms_161104.pdf
- ¹⁴ http://www.eu-china.net/web/cms/upload/pdf/materialien/2011_FeJusay_Towards_strong_human_right_based_ILO.pdf
- ¹⁵ For further on the characteristics of domestic work, see OSCE, 2010: 13; Stenum, 2011: 19 and Lutz, 2008: 1-8.
- ¹⁶ The list of indicators used by the Danish Centre against Human Trafficking has been compiled on the basis of the indicator list of the British NGO Anti-Slavery International (Anti-Slavery International 2005), and encompasses six main themes: recruitment, personal documents and property, freedom of movement, violence or threats of violence, working conditions and living conditions (Mygind Korsby, 2010: 63).
- ¹⁷ For an assessment of the au pair situation in other destination countries, see the report *Au Pair - Part of the Family* by MRCI (Ireland): <http://www.mrci.ie/resources/publications/leaflets-reports/part-of-the-family-experiences-of-au-pairs-in-ireland/>
- ¹⁸ <http://conventions.coe.int/Treaty/en/Treaties/Html/068.htm>
- ¹⁹ http://www.ugebreveta4.dk/2011/201144/Torsdag/regeringen_vil_stoppe_misbrug_af_au_pairs.aspx

²⁰ As for the government of the sending country, in 2011 the Philippine government implemented the *Household Service Workers (HSW) policy reform package*, which sets a minimum wage of USD400 (eq. to 304 euros) for Household Service Workers. But au pairs as cultural exchange migrants are not covered under this policy act. However, the current levels of au pair allowances in the three European countries do exceed this determined minimum wage.

²¹ According to the scheme, the au pair is entitled to free time to participate in language courses and in cultural activities. In Norway the expense of the language course is to be covered by the host family (minimum NKR 7500 per year eq. to 1025 euros), whereas in Denmark and the Netherlands the expenses will be covered by the au pair herself. In Denmark, the au pair must allocate money to cover the language classes from her monthly allowance. In many cities free language classes are offered by municipalities or NGOs.

²² All currencies are estimated on the basis of January 2013 exchange rates.

²³ On the positive end, it also means, that au pairs will be subjected to Danish holiday acts.

²⁴ See for example: <http://www.humanrights.ie/index.php/2013/01/07/au-pair-cultural-exchange-programme-or-cheap-domestic-labour/>

²⁵ Danish Film Institute, 2011: *Au Pair*. Documentary produced by the Danish Film Institute, weblink: <http://www.youtube.com/watch?v=57NM2uSsqRg>

²⁶ Requirements for host families in au pair programmes include their status, the economic situation of the household and the physical conditions of the home. The host family will function as the employer of the au pair and is required to have a certain income level and not be dependent on public support as their primary source of income. The host family has to have at least one child under the age of 18, who lives in the household. The host family cannot be of same nationality as the au pair, and/or they must be closely tied to the host country and be able to speak the language of the host country. The house must have a room for every two persons living in the household, and the au pair must be granted her own room at a certain standard. It is a requirement that the au pair *live-in* with the host family. The host family cannot hold more than one au pair at a time except during an overlapping training period between two au pairs. The host family must provide free lodging and board and pocket money/monthly allowance for the au pair. The au pair is not allowed to perform any duties for the host families outside of the domestic sphere, i.e. tending the shop of the host family, etc. (Danish guidelines). In Denmark and in Norway, host families are responsible for insurance covering industrial injuries, leisure time injuries and accidents, and the cost of return in case of serious illness, death or accident. It is the obligation of the host family to pay the expenses for the return ticket.

²⁷ The guidelines issued by the DFA of the Philippines exempt diplomats from the possibility of hosting an au pair. Issues concerning domestic workers in diplomats' households have recently been raised by civil society in European countries and internationally too. The Berlin-based NGO Ban Ying has formed an alliance with other NGOs to advocate for justice for this group of domestic workers. Together with Fairwork (Amsterdam), CCEM (Paris), Kalayaan (London), Lefo (Vienna), Migrants Rights Centre Ireland (Dublin) and PAG-ASA (Brussels), Ban Ying has developed a policy paper containing Recommendations on the Situation of Domestic Workers who Work for Diplomats. The recommendations address the gaps in the field of prosecution by requiring states to fulfill their obligations under human rights and anti-trafficking treaties (see www.ban-ying.de).

²⁸ The au pair contract can be terminated within 14 days' notice from both parties, or immediately in cases of serious misconduct (Danish guidelines).

²⁹ The cases mentioned did not consider the three destination countries analysed in this report.

³⁰ http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1646:for-filipinos-leaving-the-country-with-an-immigrant-visa&catid=139:pre-departure-orientation-seminar

³¹ <http://jyllands-posten.dk/indland/krimi/article2156034.ece> and <http://www.advokatsamfundet.dk/Service/Publikationer/Tidligere%20artikler/2012/Advokaten%203/Politiets%20blinde%20oejne.aspx>

³² <http://gonews.dk.msn.com/krimi/to-danskere-f%C3%A6ngslet-i-spanien-for-menneskesmugling>

³³ http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-travail/documents/publication/wcms_161104.pdf

³⁴ GAATW, 2007: **Respect and Relevance: Supporting self-organising as a strategy for empowerment and social change.** Global Alliance Against Traffic in Women.

HUMAN RIGHTS

at home, abroad and on the way



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