



**Ford Foundation**

**Striking Filipino workers in Brunei:  
Globalisation, migrant workers and migration policy in a  
labour-sending state**

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## 1. Introduction

It is in the apparel industry, perhaps, where the processes of globalisation are most apparent on an everyday level. The processes by which consumers have come to find clothing on display racks around the world have become increasingly complex. Scholars have theorised not only about the dynamics that underpin the organisation of apparel production specifically and globalised production generally, but the new dynamics that shape shop-floor politics. As global production has led to the off-shoring of factories from industrialised countries to newly industrialising and developing countries in the garment and other industries, scholars have discussed the ways in which workers have attempted to cope with and resist the oppressiveness of their working conditions (Bonacich 1994; Lee 1998; Applebaum and Henderson 1992; Mohanty 1997; Ong 1991).

Just as production has been globalised, so too has labour. As factories have off-shored from the industrialised countries, transforming the economic, political and social life of the developing countries to which they relocate, new forms of international labour migration have taken place with workers from the developing world immigrating to the First World (Sassen 1988). Increasingly, however, migrants not only attempt to immigrate to industrialised countries, but they find themselves working as short-term contract workers in newly industrialising countries and sometimes, in other developing countries (Tyner 1999; Constable 1997; Martin 1996; Chang 2000; Chin 1998; Parrenas 2001). The globalisation of labour has given rise to radically different patterns of international migration anticipated by classic 'push-pull' theories of migration, such as that argued by Saskia Sassen. In the garment industry, this means that when a piece of clothing reads 'Made in Brunei', it can no longer be assumed that low-wage Bruneian workers produced that item. Indeed, given the new realities of global production and the globalisation of labour, one finds diverse workforces comprising Filipino, Indonesian, Thai and Bangladeshi workers in garment and other factories located in places such as South Korea, Taiwan and Brunei.

The globalisation of production and the new dynamics of international labour migration have critical implications for our understanding of migrant workers' issues. Worker-employer relations are being complicated as migrant workers must contend, not only with their bosses, but also with their host governments, the private recruiting agencies that helped facilitate their employment and their home, labour-exporting, states. A recent wildcat strike of Filipino workers in Brunei is particularly illustrative of the kinds of challenges now faced by factory workers.

In May 2001, 700 Filipino garment workers, joined by workers of other nationalities at sister garment and textile factories in Brunei, went on strike protesting against low wages, excessive overtime, poor working conditions and other contractual violations. It was, according to reports from Brunei's state-run newspapers, the largest and longest-running labour dispute of its kind in Brunei's history. Brunei's garment industry, a relatively new industry for this oil-rich country, depends on foreign labour (the majority of which is Filipino), as local Bruneians shun low-wage factory work.

What was significant about this strike was not only that it comprised largely foreign, migrant workers, but the kind of role the Philippine state played in attempting to negotiate a settlement between the Filipino workers, their Malaysian-Chinese employers and the Brunei government. Immediately after the strike began, representatives from the Philippine Embassy, together with Brunei's Labour Department and management, were involved in the first round of negotiations with the workers. A few days later, the Vice-President of the Philippines (who was acting Foreign Secretary) went to Brunei to further negotiations and ultimately to facilitate the repatriation of almost 300 migrants — half of the striking workers — who refused to accept management's offer.

How this labour dispute began and was ultimately resolved raises critical questions about the globalisation of labour, migration policy in labour-sending states and their consequences for

migrant workers. How are the patterns of international migration changing as workers migrate to other countries in the new industrialising and developing world as opposed to only the industrialised North? What kinds of roles do labour-sending states play in the globalisation of production and people? What new kinds of challenges do workers face given the new dynamics of the globalisation of labour? These questions are explored by examining the empirical case of Filipino migrant workers employed in the garment industry in Brunei. If the garment industry and other export-oriented industries are emblematic of processes of global production, Filipino migrants, it can be argued, are emblematic of the globalisation of labour. Living and working around the globe in more than 100 countries, the Philippines is considered, by many accounts, to be one of the largest migrant populations in the world (Alegado 1997; Asis 1992; Gonzalez 1998; Ornefreo 1996). This paper attempts to evaluate migration policy from the perspective of the labour-sending state and how it impacts migrants, particularly when they find themselves in critical situations such as those faced by Filipino migrants in Brunei.

## **2. Exporting Filipino workers: the state and Philippine labour migration**

In the Philippines, the expansion of export production has been a major thrust of the government since the 1960s, changing local labour markets much in the way that Saskia Sassen (1988) discusses, in *The Mobility of Labour and Capital*; i.e. traditional rural labour structures have changed as employment in factories has opened up, giving rise to out-migration (Bello and Broad 1987; Enloe 1989; Eviota 1992; Schirmer and Salom 1987). For instance, in Philip Kelly's examination of the effects of globalisation (including the expansion of export production) in the Philippine province of Cavite, he finds not only that 'farmers must compete with other new economic activities for the services of the workforce' (p. 93), but that '[a]s urbanisation and industrialisation proceed, cultural changes have occurred that create a younger generation with very different value orientations, career horizons, and ambitions from their parents' (p. 103), with one consequence being overseas migration (Kelly 2000).

These material and ideological dislocations occurring and accelerating since the late 1960s ultimately gave rise to a formal policy of labour export, introduced by President Ferdinand Marcos in 1974. It was the state's intervention in promoting overseas employment that accounts for the significance of labour migration from the Philippines, making it amongst the top labour-exporters in the world. Hence, material and ideological dislocations alone, as Sassen suggests in her work, cannot account for Filipino migration. The state's intervention to cope with the economic and political instability those dislocations gives rise to is more critical. Hence, any consideration of migrant workers' issues necessarily requires a consideration of their labour-sending state's role in migration.

When President Marcos introduced the policy of labour-export in 1974 with Presidential Decree 442, the Philippines was struggling with balance of payment requirements and rising unemployment (Asis 1992; Gonzalez 1998). With the increasing demand for foreign labourers around the globe, labour export proved to be important both economically and politically to the Philippines because of the billions of dollars of foreign exchange remitted by overseas workers and the jobs generated by overseas employment. Today, labour export has become a central feature of Philippine economic development (Alegado 1997).

One purpose of the Philippine state's migration bureaucracy is to provide overseas employment by globalising the market for Filipino workers. Indeed, one Philippine Overseas Employment Administration (POEA) official has described it as 'essentially...an LMI [labour market information] institution, generating various statistical and qualitative data which deal with the temporary migration or contract employment of Filipino human resources around the globe.' (POEA 2000) In Brunei (one of the top ten importers of Filipinos), for instance, the garment industry will be the most lucrative market for Filipino workers, according to the Philippines' Labour Attaché based in

Brunei, who plays a key role in providing market information to the POEA.<sup>1</sup> In fact, the Philippine government has labour attachés deployed throughout the world who, together with embassy and consular offices, monitor foreign labour markets and actively market Filipino workers to prospective foreign employers.<sup>2</sup> Further, the Philippine state has created different government agencies that ensure the smooth transfer of Filipino labourers from the Philippines to over 100 destinations around the world.

Filipinos, however, not only seek employment but demand protection when they are working overseas. One critical way the state ensures workers are protected is through the certification of their employment contracts. All contracts require POEA certification that they conform to Philippine labour standards.<sup>3</sup> The state emphasises the importance of the contract in protecting workers in every step of the bureaucratic process required of migrants prior to their leaving.<sup>4</sup> The contract ensures that the Philippine state can intervene on behalf of workers in the event of a contractual dispute, as it contains provisions that encourage workers to seek help from their embassies when all other attempts to negotiate disputes with their employers have failed. Further, the Philippine state has developed procedures by which workers can file claims against their employers if disputes are not settled prior to their leaving their countries of employment (POEA 1996b). Ultimately, the employment contract not only specifies the kind of relationship workers are to have with their employers, but also that the labour-sending state has a role to play in regulating that relationship.

The relationship the Philippine state must maintain with Filipino workers and foreign states and employers is complex and often contradictory. On one hand, the state exports labour in order to provide employment as well as to benefit economically from the remittances that migrants contribute. Expanding overseas employment means engaging in particular kinds of relationships with foreign states and employers as the Philippine state attempts to capture a major share of the highly competitive global labour market. On the other hand, the state must intervene in protecting its overseas nationals, in response to demands from its citizens both in the Philippines and abroad, against the interests of foreign governments and employers. The Philippine state's negotiations amongst the conflicting interests of Filipino migrants, their foreign host governments and employers, as well as its own interest in expanding overseas employment, often has negative consequences for workers whose rights seem to be negotiated away. This becomes most clearly elaborated in a Filipino workers' struggle in Brunei.

### **3. Methodology**

This research involved interviews and ethnographic work both in the Philippines and Brunei. In the Philippines, I interviewed, both formally and informally, close to 30 repatriated workers and was present as an observer as workers went through the process of filing cases with both the Philippine Overseas Employment Administration (POEA) and the National Labour Relations Commission (NLRC). The POEA handles cases being filed by workers against their Philippine-based recruitment agencies, while the NLRC handles any monetary claims workers have against their employers. In addition to interviewing workers, I interviewed key government officials in the Philippine offices of the POEA, Overseas Workers Welfare Administration (OWWA) and the Department of Foreign Affairs, which assisted in the repatriation process. In Brunei, I was able to observe the living and working conditions in the contested factory. Interviewing of workers was much more difficult in Brunei, given the high level of security at the factory since the strike. I was fortunate enough, however, to interview two women workers, one of whom was a line leader

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<sup>1</sup> Based on interview with Philippine Labour Attaché based in Brunei, 2001.

<sup>2</sup> Interviews with an official in the International Labour Affairs Service and officials at the Philippine Overseas Employment Administration (POEA), 2000-2001.

<sup>3</sup> Based on interviews with officials at the POEA, 2000-2001.

<sup>4</sup> Based on interviews with officials at the POEA and observations at Pre-Departure Orientation Seminar, conducted at the POEA, required for all departing Filipino workers, 2000-2001.

whom I met as they were grocery-shopping at a supermarket just outside the factory compound on a Sunday evening (their only rest period). Finally, I interviewed Philippine government officials who were involved in the negotiations with the management.

#### 4. Filipino migrants on strike

Based on my interviews with the Filipino migrants who went on strike in Brunei, working and living conditions in garment factories are what the literature might call classic 'sweatshop' conditions. Workers work far beyond the ten hours of work (eight hours of regular time and two hours of fixed overtime) specified in their contracts. Workers often work until late into the evening, leaving work at 11:30pm to start early again the next day at 7:30am. They are rarely given time off during the week and during the few times they are actually allowed to have a day off, they are required to work overnight the night before. According to one worker, Josie, 'What happens when there's overnight [work] they lock the door, so no one can go home.'<sup>5</sup> Not only are workers forced to work overtime, in the case of those who went on strike, but they are not paid the overtime wages that are specified in their contracts.

Additionally, workers labour under intolerable conditions as they toil in heat and humidity and as an improperly-ventilated factory floor makes Brunei's tropical weather worse. According to Tessie:

*[T]he person next to me changes up to three times [a day]. Someone else got sick, her body got weak as a result of the heat and because of always having a wet back.*

Matet agrees:

*[O]thers get skin allergies... because of the heat. Their necks are so dark because of the sweat; it doesn't dry...they always have to go to the doctor.<sup>6</sup>*

Furthermore, they are sometimes fed spoiled food during what are already very rushed mealtimes.

Although Brunei's garment factories are classic 'sweatshops', it was not these conditions alone that gave rise to the May 2001 strike of Filipino workers. In early May, when the workers received their pay for the month of April, they were outraged by an underpayment of their wages, given the amount of overtime and overnight work they performed during that month. According to Tessie:

*The workers were very depressed because the wages were so low; we wondered why since last March there wasn't as much overtime yet our salary for [this month of April] was even lower and we worked overnight and there was always overtime.<sup>7</sup>*

The workers ultimately felt that the provisions of their contracts had been violated because they were not being paid their basic monthly wages, neither were they being paid for their overtime work. As a consequence, they decided to stop work.

The workers' struggle over their employment contracts is critically linked to the role the Philippine state plays in the deployment of migrants. How the Philippine state intervened in the process of negotiations suggests that migration policy in the Philippines may require major reform.

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<sup>5</sup> Interview with worker.

<sup>6</sup> Interview with worker.

<sup>7</sup> Interview with worker.

The workers' demands were critically concerned with how their employers did (or did not) fulfill their end of the contract. The following is the set of demands that the workers submitted to the management:

*We, workers of Malaynei Garments and Textiles factory, have united together and requesting about salary increase. Instead of the said salary, we would like to turn in into \$320 (Brunei dollars). Reasons:*

- 1) *We are all aware that factories here in Brunei, workers received B\$320 for their basic.*
- 2) *Bangladeshi workers came here in Brunei were trainee sewers only. Unlike Philippines, they came here for worked, were skilled already. So why is it that they've got same salaries and they've got an salary increase.*

*We have also requests and demands regarding factory:*

- 1) *We already requested to have an orbic fan at the middle of sewing area. Because workers cannot concentrate more in the sewing cause of too much hot that cause skin allergies and got sick.*
- 2) *We wanted also that what contract stated must be applied.*
- 3) *We wanted also to have a copy or we would like to know the computation of our salary.*
- 4) *Why is it that the prices of the dress we sewing instead of increasing it decreased (costs).*
- 5) *Then one thing is overtime, we've noticed that we worked for a long hour of time. But why is it that some of our overtime not yet included in payroll.*
- 6) *About our lending money before we go here (Brunei) we pay 15,000 pesos and B\$1,720 cut every month to the agent, It is obviously very high and besides our salary computation not followed instead of basic (daily) it become dozen rated.*
- 7) *About salaries, we would like to received it every 7<sup>th</sup> day of the month. Not 15<sup>th</sup> day because it stated in contract.*
- 8) *Well this is all about. We are hoping for your kind consideration and granting our request. Thank you very much.*<sup>8</sup>

While their primary demand was for a wage increase, the workers attempted to justify their request for an increase in pay in part by referring to the contracts they had already signed with their employers. For instance, the workers note that because they are required to pay off loans given to them by their Philippine-based recruitment agencies, which are automatically deducted from their monthly wages, they are left with very little money. Had the employers abided by their employment contracts, this would not be an issue. Indeed, while the workers do demand an increase in pay, they also explicitly demand that the employers comply with the existing employment contract. Also, they demand that the employer provide documentation on their computation of salaries because the workers feel the management's computations did not comply with their contracts. Finally, the workers demand an explanation by the management as to why, despite their having worked long overtime hours, they are not paid appropriately. In other words, the workers went on strike not necessarily because they felt that their contracts needed to be changed in their entirety, but that employers needed to comply with particular provisions already existing in their contracts. While they do demand a wage increase, their reasons for doing so, as they state in this list of demands, have to do with the failure of the management to abide by the contracts the workers already hold. Contention over the provisions of the contract, their meanings

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<sup>8</sup> Cited from a copy of the list of demands submitted by the workers to the management on the first day of the strike, provided to me by the workers.

and which of the contracts the workers signed was in fact valid, became a critical aspect of the first round of negotiations.

Prior to leaving the Philippines, workers sign a contract that has been verified by the Philippine Embassy in Brunei (who certifies that the employers named in the contract are legitimate, that the working and living conditions provided by the employer meet a minimum set of requirements as determined by the Department of Labour and Employment in the Philippines, and that the employer signs the contract). Upon verification of the employer and the signing of the contract by the employer through the Philippine Embassy, the employment contract is then sent to the Philippine Overseas Employment Administration (POEA) in the Philippines. The POEA, meanwhile, ensures that the wages specified in the contract conform to Philippine labour standards and that the agency supplying workers to the overseas employer is licensed. Once all of these requirements are met, the worker signs the contract, which specifies working hours, salaries and so on, in the Philippines before leaving for work overseas (Overseas Filipino Workers Handbook, POEA 1996). The purpose of this elaborate process of contract certification is ultimately to ensure that workers are protected from exploitation by their employers. Indeed, the verification of the contract by the POEA is essential to being able to work overseas and the Philippine government has set up structures in order to ensure that workers are in possession of POEA-certified employment contracts. The Overseas Filipino Workers Handbook published by the POEA to provide workers with instructions and guidelines about the process of securing overseas employment states, for instance:

*Many contract workers have been victimised by unfair wages and working conditions as a consequence of not having the right papers. There have also been many workers who have been sent back to the Philippines as a result of incomplete or wrong papers. In order to ensure that documents for overseas employment are correct and complete, workers are required to go through the Labour Assistance Centre (LAC) at the airport. (Overseas Workers Handbook, 1996)*

At the LAC, all workers are required to present an Overseas Employment Certificate (which certifies that the employment contract has been processed by the Employment Contracts Processing Division at the POEA), the agreement they have signed with their recruitment agency, their validated employment contract, passport and airline ticket. The importance of workers possessing an employment contract that has been approved by the POEA is emphasised in the various guidelines published by the POEA for overseas workers, and in the compulsory Pre-Departure Orientation Seminars that workers attend before going overseas (POEA 1996b).<sup>9</sup>

Brunei law, however, regards contracts signed abroad as invalid. Contracts can only be binding between two parties if they are signed in Brunei. Hence, when these workers arrived in Brunei, they were asked to sign another contract, which they assumed would be identical to the one they signed in the Philippines. When I asked the workers whether they had read both of the contracts they signed, the response by Bibay was:

*Yes, we read it when we were in the Philippines but when we got there [in Brunei] we were rushed. We were already there, who had no choice [but to sign it].<sup>10</sup>*

The workers generally did not feel that they had any reason to question the contracts signed in Brunei, and further, felt that they really had no choice anyhow because they had already left the Philippines and were set to work. It became clear only during the negotiations with management, that the provisions of the contracts signed in Brunei were to be differently understood, because ultimately, the contract signed in Brunei was not the same as the one signed in the Philippines.

<sup>9</sup> Based also on observations at Pre-Departure Orientation Seminars at the POEA, 2000-2001.

<sup>10</sup> Interview with worker.

According to Boy, during the negotiations, 'The Brunei Labour [Department] said that any contract signed outside is invalid.'

The following table lists the provisions specified in the two employment contracts:

**Table 1: Comparison of Philippine and Brunei employment contracts**

<b>Contractual provisions</b>	<b>Philippine contract<sup>11</sup></b>	<b>Brunei contract</b>
Basic monthly wages and piece rates	'Piece rate/minimum of B\$10 for 8 hours work plus two (2) hours fixed overtime.'	'The Employee will receive wages at a rate not less than \$260 per month. The Employer undertakes to provide the employee with not less than 6 days work per week. a) If the Employer and the Employee so desire, the Employee may be remunerated by piece rates, which are spelled out in the Schedule to the Contract. Before such an arrangement is effected, the proposal must be notified to and then be approved by the competent authority in Brunei. b) The Employer guarantees that the Employee, if he is remunerated by piece rates, will receive not less than the time-rate of wages as stated [above] subject to his fulfilling the other conditions of this Contract.'
Overtime	'a) for work over regular working hours: 1.5 b) for work on designated rest days and holidays: 2.0'	'If the Employee works more than eight (maximum eight hours per day) on any working day, he will as regards such overtime payment at the rate of time and a half ordinary time.'
Hours of work	'Eight (8) hours'	'Hours of work will be eight (maximum eight hours per day) from Monday to Saturday.'

Both contracts (the one signed in the Philippines and the one signed in Brunei) can be construed as guaranteeing the same amount of wages. For instance, given that the Brunei contract defines the monthly wage as B\$260 and the hours of work as eight hours per day, six days a week, it would correspond with what is specified in the Philippine contract of B\$10 daily (assuming that workers work 26 days a month — the Philippine contract does not define the work week). The following table illustrates this:

**Table 2: Calculation of monthly wages — comparison of Philippine and Brunei contracts**

<b>Philippine contract — monthly wage</b>	<b>Brunei contract — monthly wage</b>
B\$10 per day (assuming workers work 26 days a month, since the Philippine contract does not specify the work week) OR B\$260/month.	B\$260/month for 24 working days OR approximately B\$10 per day.

The critical problem for the workers was the payment of overtime and the calculation of the piece rate. The workers assumed that regardless of production quota requirements, they would be guaranteed the payment of their basic monthly wage of \$260. According to Josie, however:

<sup>11</sup> Cited from copies of both employment contracts provided to me by the workers.

*One time I was called into the office by the production manager, they said, once you can't make the quota, the B\$10, you won't be able to get the \$10 if you can't make the quota.*<sup>12</sup>

Hence, the workers had to work overtime in order to meet the quota. Without meeting the quota they would not earn the basic daily wage of B\$10 that they expected to earn, neither would they get their overtime pay. Working an average of five hours of overtime every day, six days a week, the workers expected to be paid B\$243.00 a month on top of their B\$260 minimum monthly wage, or at least a total of B\$503 a month as per their own calculations, and even the calculation of the Brunei Labour Department (see Table 3). This was not the case and management refused to accept these calculations.

**Table 3: Calculation of overtime pay (by the workers and Brunei Labour Department)<sup>13</sup>**

Monthly basic wage:	<b>B\$260</b>
Daily wage:	$B\$260/26 \text{ days per month} =$ <b>B\$10</b>
Hourly wage:	$B\$10/8 \text{ hours per day} =$ <b>B\$1.25</b>
Overtime wage:	$B\$1.25 \times 1.5 =$ <b>B\$1.87</b>
Average daily overtime wage:	$B\$1.87 \times 5 \text{ hours average daily overtime} =$ <b>B\$9.37</b>
Average monthly overtime wage:	$B\$9.37 \times 26 \text{ days per month} =$ <b>B\$243.00</b>
<b>Total monthly wage:</b>	$B\$260 \text{ (monthly basic wage)} + B\$243.00 \text{ (average monthly overtime wage)} =$ <b>B\$503.00</b>

Ultimately, the workers were being paid piece rates. The problem, however, had to do with the calculation of the 'piece rate'. Presumably, the payment of piece-rate wages operates as an incentive for workers to meet or exceed production quotas in order to earn above the B\$10 daily minimum and overtime pay. While the workers did not dispute the payment of a 'piece rate' *per se*, they did dispute the computation of the 'piece rate'. The workers assumed that 'piece rate' referred to payment for each sewing operation they performed — a standard that many were familiar with given prior experience as sewers in the Philippines. However, management, supported by the Brunei government, contended that in Brunei 'piece rate' refers to every dozen sewing operations performed. This point became non-negotiable on the part of management.

The difference for the workers, however, between calculations of the piece rate at a single operation versus a dozen sewing operations is significant in terms of the pace of work performed and in terms of salaries. For instance, for the production of a t-shirt, the work quota for the sewing of t-shirt pockets is 600 every two hours.<sup>14</sup> The workers understood that they had to first meet the quota of 600 and then they could earn additional money for every single sewing operation they performed above the 600. To produce above the quota would require a faster pace of work within a two-hour time period. Yet, when the workers produced 120 t-shirt pockets over and above the 600, believing they would earn money for each of the 120 t-shirt pockets they sewed, in fact, they

<sup>12</sup> Interview with worker.

<sup>13</sup> Cited from a copy of the calculation of the overtime wages performed by a representative of the Brunei Labour Department, given to me by the workers.

<sup>14</sup> Taken from copies of price lists for different items of clothing that list the prices for specific sewing operation for U.S. buyers and the quota for that particular sewing operation for two hours of work, provided to me by the workers.

were only paid for ten. Since the workers' salaries are automatically deducted on a monthly basis to pay their Philippine-based recruitment agencies an average of \$B150-200 a month, the workers feel forced to work beyond their quotas in order to earn additional income. According to Eddie:

*I went to Brunei with debts, I worked in Brunei with debts, and I left Brunei, still in debt.*<sup>15</sup>

Indeed, they often work overnight and on their few rest days, yet, according to Tessie:

*We don't mind overnight work, as long as we're paid.*<sup>16</sup>

Although they were ultimately forced to work extended hours, the reality is that the workers worked overtime and excessive hours because of the 'incentive' of additional earnings. Yet, in the final calculations of their salaries, they failed to earn the income they had been led to believe that they should earn.

For employers, on the other hand, piece rates are important in encouraging workers to produce above-factory quotas. The calculation of the piece rate per dozen sewing operations versus one sewing operation means critical savings and ultimately, more profit. Indeed, with the intense global competition faced by garment manufacturers, keeping costs down is important to maintaining profit levels. For the owners of the factories where the strikes took place, this was true. In a press statement during the course of negotiations, a management representative stated:

*There are always two sides to the story. The factory has obligations to the bank and to the importers in the United States and elsewhere. The prices the importers paid were subjected to terrific worldwide competition. We will have to survive this challenge. Any indiscriminate rise in cost like the unreasonable demands by the workers would cause the factory to close down.* (Stephen 2001a)

Struggles over the employment contract highlight the contradictions that are inherent in the Philippine state's role in regulating migration. The employment contract guaranteed by the Philippine state is supposed to ensure that workers are being protected from exploitation, yet in practice, they are not legitimate agreements when asserted in a different national context. Indeed, the contracts that bind workers to their employers are more favourable to management. Workers are unknowingly stripped of any protection as soon as they leave the Philippines and are forced to accept new terms of employment that the Philippine state has neither the power, nor the interest (as we see below), to dispute.

## **5. The Philippine state as labour representative and negotiator**

What was perhaps the most significant aspect of the negotiations between the workers and management was the role of the Philippine state. It was the Philippine state's actions during the deadlock in negotiations that would be the most decisive in 'settling' the dispute. The 'settlement' is perhaps the clearest example of how, despite its claims to the contrary, the state has little interest in protecting its workers overseas.

The Philippine Embassy was summoned by the Filipino workers to participate in the first round of negotiations that included the workers, management and representatives of the Brunei Labour Department. The workers felt that the Philippine Embassy could best represent their interests in

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<sup>15</sup> Interview with worker.

<sup>16</sup> Interview with worker.

Brunei and indeed, their contracts state that they should turn to the Philippine Embassy should all other negotiations with their employers fail. The Philippine Employment Contract states:

*All claims and complaints relative to the employment contract of the employee shall be settled in accordance with the company's policies, rules and regulations. In case the Employee contests the decision of the Employer, the matter shall be settled amicably with the participation of the Labour Attaché or any authorised representative of the Philippine Embassy/Consulate nearest to the site of employment.*<sup>17</sup> (author's emphasis)

Further, the Philippine state is clear that it must intervene in the affairs of its nationals overseas when their interests appear to be threatened. According to Republic Act 8042, an important piece of legislation signed into law in 1995 for the purpose of better protecting overseas workers, the Overseas Welfare Workers Administration (OWWA):

*shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals [employers]. In the performance of this function, he shall make representation and may call on the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling the complaints. (POEA 1996a)*

During the second round of negotiations, however, the workers learned that the Philippine Embassy was barred from attending the meeting. Officials from Brunei had indicated that the negotiations could only be, according to Brunei law, tripartite, involving only the Brunei government, the workers and management. The workers, however, insisted that they were all already bound by the previous day's agreement to resume talks and that the Philippine Embassy should be present to represent their interests. According to Josie:

*One reason why we have embassies in different countries is because they are supposed to intercede for Filipinos, to meet with employers.*<sup>18</sup>

The Philippine Embassy also believed that they had a right to be present at the negotiations because it was standard for them to participate in labour problems as the workers' representatives, according to an embassy representative:

*That is what we are here for, to look after the well being of our nationals, and settle problems. The action to shut us off puzzles me. (Stephen 2001b)*

After registering a formal complaint at the Ministry of Foreign Affairs, the Philippine Embassy was finally allowed to participate in the meetings.

The negotiations, involving all four parties, stopped after the second day of the strike, yet later resumed without the workers being present. Embassy officials, ostensibly representing the workers, met with management, officials from the Labour Department and officials from the Home Affairs Ministry (which oversees both the Labour Department and the Immigration Department) to attempt to draw up some kind of compromise proposal. Indeed, as a result of these discussions, management conceded to either a B\$10 monthly increase for workers, depending on their length of tenure with the company (B\$10 for each year of their employment in the company up to B\$20) or an across the board raise of B\$10 for all workers, regardless of length of employment.<sup>19</sup>

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<sup>17</sup> Cited from the Philippine Employment Contract.

<sup>18</sup> Interview with worker.

<sup>19</sup> Based on interviews with OWWA officials in Brunei and the Philippines.

Rather than insisting on the validity of the workers' interpretation of the contract signed in the Philippines (i.e. terms of the question of 'piece rate'), the Philippine government accepted management's proposal, encouraging workers to accept the offer. A top official at OWWA stated:

*They have no more reason to come home unless they're really homesick. They should re-think their decision to come home. (Burgonio 2001)*

Even the Vice-President of the Philippines, visiting Brunei to officially prepare for the newly-inducted Philippine President Arroyo's first foreign state visit, requested a meeting with the workers after several days of deadlock, in a last attempt to convince the workers to accept management's proposal and return to work, stating, 'Filipino workers should respect the local laws.' (Fabian 2001)

In the days following the Vice-President's meeting with the workers, management officials and indeed, representatives from the workers' Philippine-based recruitment agencies attempted to convince workers to accept the company's proposal and to return to work. Eventually, half of the striking workers accepted the proposed salary increase and returned to work, while the other half requested to be removed from the premises of the factory and ultimately to return back to the Philippines.

The repatriation of the workers required the critical intervention of the Philippine state. Those workers who refused to accept management's offer and opted to return to the Philippines were essentially consenting to the premature termination of their contracts. Further, by participating in a strike, the workers had violated Brunei law and should have been jailed. Philippine Embassy staff engaged in their own negotiations with the Brunei government to prevent the workers from being jailed and instead to have them housed at Philippine government-owned sites (including the Ambassador's residence and a Workers' Welfare Centre run by the Embassy) until travel arrangements could be made. According to an OWWA official based in Brunei:

*The repatriated workers should have been penalised for striking but the Embassy intervened to prevent their jailing. The Embassy housed the workers at OWWA centre and even at the Ambassador's house [...] Under Brunei law, the employer should pay the flight tickets when the worker leaves, but, rather than have workers jailed, it was a concession, on the part of the Embassy to take responsibility of the tickets. It could have been a major problem diplomatically.<sup>20</sup>*

Hence, the Philippine government used its own funds to fly the workers back to the Philippines, when in fact, employers are supposed to cover the cost of repatriation in the event of a pre-terminated contract.

While the Philippine Embassy in Brunei recommended that the employer be black-listed by the POEA (i.e. blocked from being able to secure workers from the Philippines), they did make clear publicly that officially, the Philippine government acknowledged the positive efforts of the employer to negotiate in good faith with the workers, providing food and housing for them even when they stopped working. Indeed, the Philippine government declared that given the employer's positive efforts, there was a possibility that the employer would be cleared from 'black-listing' (Yahya 2001). Ultimately, the Philippine government declared that an amicable settlement had been reached, as half of the workers did return to work after accepting management's salary increase proposal.<sup>21</sup>

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<sup>20</sup> Based on interview with OWWA official in Brunei.

<sup>21</sup> Based on interviews with OWWA and Department of Foreign Affairs Officials in the Philippines.

Further, while diplomatic relations were strained during the duration of the strike, they resumed normalcy almost immediately after the strike's resolution, with the President making a state visit only a few months later and leaving Brunei with new potentials for trade.<sup>22</sup>

The Philippine government's role during the negotiations clearly illustrates how the policy of protecting workers is critically flawed, particularly in the event of crisis situations such as this labour struggle. First, the state insisted that it operate as the workers' official representative during the negotiations. Indeed, the workers agreed that the state should play that role as it was also a provision of their contracts. Yet, during the course of the negotiations, workers' demands were not complied with, as the state acquiesced in accepting management's offer and took on the role of trying to convince the workers to accept the offer and return to work. Further, by accepting management's proposal, the state failed to assert the validity of the contracts it certifies.

Second, the Philippine government spared employers a protracted labour dispute by repatriating those workers who continued to refuse to accept their counteroffer. In fact, the Philippine government even spared the employer the cost of having to repatriate the workers.

Third, the Philippine state failed to sanction the employer for its bad labour practices. Despite recommendations from Embassy staff, the final position of the Philippine government was to acknowledge the positive efforts of the employer towards improving relations with workers. In effect, the Philippine state participated in negotiating away the rights of Filipino workers. Although the workers were protected from imprisonment as a consequence of 'breaching' their contracts, the employers were absolved of all wrongdoing.

Finally, the Philippine state benefited from the intervention as diplomatic relations returned to normal, with the Philippine President making a state visit and securing key trade agreements only months after the labour dispute.

It is in the final resolution of the dispute that occurred once the workers had returned to the Philippines, where it becomes clear that workers' struggles have become increasingly complex as they struggle not only against their employer but against their recruitment agencies and ultimately their own government.

## **6. New challenges to migrant workers**

For the close to 300 Filipino workers who were repatriated to the Philippines after the month-long strike, their struggle was only to begin again. Despite their having cut short their contracts and abandoned bargaining with their employers, the workers do have mechanisms in the Philippines, through the Department of Labour and Employment, by which they can make claims against their employers for back or unpaid wages, as part of the 'protection' the state guarantees to migrants. Although they are unable to file directly against their overseas employers, they are able to file claims against the Philippine-based recruitment agencies, jointly liable with the employers, that deployed them. Further, workers are able to file claims directly against their recruitment agencies, for instance, claiming that the agencies had charged them exorbitant fees. Monetary claims against employers are handled by the National Labour Relations Commission, which arbitrates between workers and the agencies (who act as the local representatives of employers). Claims against the recruitment agencies are made at the POEA.

The workers immediately set about filing monetary claims against their employer to claim back-wages and overtime pay owed to them. Ultimately, the claims that the workers filed in the Philippines were no different than the demands made in Brunei: that the employer had the responsibility of complying with the employment contract. They also filed claims against their agencies. Hence, the workers filed cases at both the NLRC and the POEA.

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<sup>22</sup> Based on observations of a presidential address by Philippine President Arroyo in Brunei.

More than two months after their return to the Philippines, the workers' cases continued to be postponed and they struggled to maintain the unity that had made their strike so dramatic. First, the processes for filing claims confused workers. On one hand, they had to file claims at the POEA against their agencies, while on the other hand, they were required to file claims against their employers through the NLRC.

Second, because claims at the NLRC are usually filed on an individual basis, it was difficult for workers to reconnect with former co-workers, who were now spread throughout the Philippines, to coordinate their claims into a single claim. Indeed, lawyers for the agencies representing both the interests of the agencies and the employer made appeals to the NLRC to reject the consolidation of the cases, claiming that workers in fact had highly individualised claims. According to one worker, 'They're trying to divide us, we're losing our fire.'<sup>23</sup> Indeed, as the hearings dragged on, with the workers spending more and more time and money to attend hearings, some were having second thoughts about whether to continue to file jointly or whether each individual worker should have the right to accept whatever settlement the agency, jointly liable with the employer, was willing to offer.

Third, because the processes by which cases are handled in the POEA are different from those in the NLRC, they had the effect of further breaking down worker solidarity. It became evident, in the course of interviews with the workers as they were filing cases against their recruitment agencies at the POEA, that the workers were divided into 'batches'. Although the workers had been deployed by the same agency and had the same kind of claim, they were being divided into groups of five to seven workers each. The agency's attorneys would offer different settlements to different batches of workers. For one batch, workers were offered 7,000 pesos, another batch was offered 10,000 pesos, while another group was offered new employment overseas. These differing settlements served to create divisions and tensions amongst the workers, as different batches believed that different settlement offers were a consequence of a lack of unity amongst the workers, as opposed to tactics of 'divide and conquer' on the part of the agency. Some workers even found themselves the respondents to counterclaims made by their agencies, who accused the workers of violating the terms of their contracts and sought to have the workers 'watch-listed' and prevented from future overseas deployment. A counterclaim filed by one of the deploying recruitment agencies states:

*Complainants maliciously and capriciously filed the instant complaint against respondent agency despite having been assisted/helped in their overseas employment opportunity; to hide or cover their abuse or conceal their stubborn thrust to embarrass respondent agency and to destroy the goodwill earned by respondent agency with Principal/Employer as shown by way of STRIKE and to PRETERMINATE their signed contracts of employment, contrary to the terms and conditions of their contract with Principal/Employer for a term of two (2) years...for their undisciplined acts, same OFWs who are complainants in the instant case...are subject of DISCIPLINARY ACTION.<sup>24</sup>*

The way in which the Philippine government attempts to resolve disputes between workers and their agencies or employers appears to work against the workers. At a POEA hearing between one 'batch' of workers and their agencies over the claim on the part of the workers that the agency had charged them excessive fees, the POEA arbitrator was less than sympathetic to workers, and was indeed, quite hostile:

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<sup>23</sup> Interview with worker.

<sup>24</sup> Cited from copy of counterclaim filed by one of the Philippine-based recruitment agencies deploying garment workers to Brunei, received by the workers.

POEA: *What's important is you say the truth. Don't lie. You need the name [of the person you were giving fees to monthly] that's what I'm asking—my head is aching already. Whoever I ask keeps saying the name is Boyette.*

Worker: *We're the victim here; we're not lying; it's like you don't care.*

POEA: *That's why I'm saying just settle the problem — we can help you to settle, in a settlement no one wins, no one loses, everyone just gets along. It should be like that.*<sup>25</sup> (author's emphasis)

The suggestion that the workers settle so that 'everyone just gets along' and the almost hostile stand towards the workers, suggest that the Philippine state is positioned less to advocate on behalf of workers for their protection and more to protect the interests of agencies and the employers they represent.<sup>26</sup>

Even before returning to the Philippines, however, many factors served to undermine the workers' unity and solidarity while in Brunei. First, the workers were unable to represent themselves in negotiations with their bosses because the Philippine state asserts itself as the legitimate representative of workers' interests. Second, since they lived in dormitories located just above the factories, they felt threatened by what they believed were intimidation tactics on the part of management. According to Katrina:

*In the early morning a car was circling the factory very slowly. Someone inside had binoculars.*<sup>27</sup>

The workers believed that management had them under surveillance. More frightening still, the workers noticed on the day of the strike that management had pits dug along the side of the factory wall. When asked what they thought the purpose of the pits was, they said they believed they could be for the bodies of workers that management might target to be killed. According to Boy, 'In the past, other leaders — they would disappear.'<sup>28</sup> Josie elaborated:

*There was a situation where [workers were going to strike] but it didn't happen because supposedly there was torture [of leaders]...so [the strike] didn't happen.*<sup>29</sup>

Third, the workers were being pressured by very powerful parties to accept management's counterproposal, including representatives of their Embassy, their Vice-President, representatives from management and their recruitment agencies. In the face of this level of pressure, it is hardly surprising that many workers decided to accept the proposal and continue to work.

The increasing mobility of labour and the labour-sending state's role in facilitating the mobility of labour have made workers' struggles increasingly complex. Although the Philippine state offers 'protection' to workers in the form of a certified contract and processes by which workers can file claims against their employers, this 'protection' in fact operates in favour of employers, as is evidenced in the Brunei case. While the Philippine state claims to represent the interests of workers (by guaranteeing employment opportunities and negotiating labour disputes), instead it plays the role of 'broker', marketing cheap migrant Filipinos worldwide and ensuring that they are compliant workers in its bid to continue to reap the benefits of the migration of its workers. Workers must not only struggle against their employers, but the recruitment agencies that deployed them, their host states and even their home government. Labour struggles become

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<sup>25</sup> Based on observations at the POEA 2001.

<sup>26</sup> By September 2001 (two months after the strike), the workers' claims had still not been settled.

<sup>27</sup> Interview with worker.

<sup>28</sup> Interview with worker.

<sup>29</sup> Interview with worker.

transnational as workers' disputes take place in their country of employment and are resolved at 'home'.

## **7. Conclusion**

This strike of Filipino migrant workers in Brunei is a critical case study in understanding the contemporary dynamics of the globalisation of labour and offers insight into how migration policy in the Philippines impacts the lives of migrant workers, even when they are overseas. While the state attempts to ensure that workers are 'protected', the very mechanisms by which they are 'protected' (such as the employment contract and the procedures for filing claims against their bosses), become a means by which employers benefit from cheap labour while themselves being protected from workers' claims. As various actors are ultimately involved in the employer-employee relationship, including the recruitment agents, the host and the home state, migrant workers' struggles become increasingly difficult.

The most important contribution this case study makes is to suggest that migration policy in the Philippines must be critically reviewed and reformed. While labour migration may indeed be important to the Philippine economy, the Philippine government must reconcile this interest with its purported interest in 'protecting' its nationals.

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