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Convergence in Labor Policies in South Korea and the Philippines

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In both South Korea (subsequently referred to as Korea) and the Philippines, labor policies and their administration by the state have an important role in stimulating national economic development.

Both Korea and the Philippines developed their basic labor policies, as well as the structures and mechanisms of administration in the post-war period, from 1950s onward.

Labor policies in both countries were influenced by post-war geopolitics to contain the socialist inroads in the region, by the American adversarial model of labor relations, and by international labor conventions to protect the basic rights of workers. Both countries experienced authoritarian rule, which imposed a system of labor controls geared to promote economic development.

The convergence is particularly shown in current goals to achieve a competitive labor market in terms of a skilled workforce and level of wages. There is a common thrust towards the development of a workplace culture which promotes cooperation between employers and their employees, to replace the adversarial system of labor relations introduced in the 1950s and the 1960s in both countries. Labor laws have been introduced, or revised to conform to international labor standards and practices, promote a flexible labor market, and achieve higher productivity and employment.

There have been changes in the organizational structures of the labor ministry/department in both countries. The adjustments were in response to the needs of the State at each particular historical stage. The main thrusts of the existing labor department and labor ministry in both countries are to support the goals of global competitiveness being promoted by the State.

Both Korea and the Philippines are faced with challenges from a competitive and globalized economy. As a result, government leaders in both countries must provide for employment restructuring, changes in labor laws and policies, and more diversity in work practices.

There are valuable lessons in the area of labor reform which the Philippines could learn from Korea, and vice versa. The reform of labor policies should expand further the field of mutually reinforcing rights, privileges and benefits between labor and management, particularly in such areas as self-organization, collective bargaining negotiations, and dispute settlement. The strategic objective of emerging labor policies is to allow as much freedom, as equitably as possible, to both management and workers so that they can manage and regulate their relations by themselves.

Labor policies must deal with emerging work arrangements which undermine regular jobs and remunerative employment. Forms of flexible work include casuals, labor-only contracts, agency hiring, subcontracting, and the like. The opportunities brought about by globalization also bring along a pressure to change the old system of labor policies, industrial relations, and the structure of labor administration.

Sources of Labor Policy

In both Korea and the Philippines, labor policies originate from the following:

1. the constitution, which is the basic law of the country;
2 various laws enacted by the legislature (Congress or National Assembly), including the amendments to the original laws;
3. administrative rules and regulations issued by the executive branch of the government, to apply the laws enacted by Congress or the National Assembly. These include the International Labor Organizations (ILO) conventions ratified by the legislature;
4. judicial jurisprudence, which are decisions by the courts, especially the Supreme Court, which establish precedence in the resolution of labor disputes.

Constitutional Sources of Labor Policy

The constitutional sources of labor policies in Korea and the Philippines are compared in Table 1.

Table 1
Constitutional Sources of Labor Policy[1]

KOREA	PHILIPPINES
ARTICLE 32, SECTION 1: "All citizens shall have the right to work. The State shall...promote the employment of workers and to guarantee optimum wage..." ARTICLE 32, SECTION 2: "All citizens shall have the duty to work..." ARTICLE 32, SECTION 3: "Standards of working conditions shall be determined by law to guarantee human dignity." ARTICLE 33, SECTION 1: "To enhance working conditions, workers shall have right to independent association, collective bargaining and collective action."	ARTICLE 13, SECTION 3: "The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all." "It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike..." "They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits..."

In both Korea and the Philippines, there are similar goals to provide for the rights of citizens for gainful employment, and the exercise of the right to self-organization, collective bargaining, and concerted action. In Korea, the Constitution provides for the basic right to work for their citizens, whereas this right is not explicitly stated in the Philippine Constitution.

In Korea, Articles 32 and 33 of the Constitution are regarded as the most fundamental legal sources of labor law. The Korean Constitution which was proclaimed with the inauguration of the Republic of Korea in 1948 declared that citizens have the right to work (Article 32, Section 1), with guaranteed standards of employment, and special protection for women and young workers.

The Constitution of the Republic of Korea states, in its preamble, "equal opportunity to all every person and provide for the fullest development of individual capabilities in all fields, including [the] political, economic, civic and cultural life by further strengthening the basic free and democratic order, conducive to private initiative and public harmony".

Articles 32 and 33 of the 1987 Constitution of Korea states:

"ARTICLE 32.
Section 1. *All citizens shall the right to work. The State shall endeavor to promote the employment of workers and to guarantee optimum wages through social and economic means and shall enforce a minimum wage system as prescribed by law.*
Section 2. *All citizens shall have the duty to work. The State shall prescribe by law the extent and conditions of the duty to work in conformity with democratic principles.*
Section 3. *Standards of working conditions shall be determined by law in such a way as to guarantee human dignity.*
Section 4. *Special protection shall be accorded to working women, and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions.*
Section 5. *Special protection shall be accorded to working children.*
Section 6. *The opportunity to work shall be accorded preferentially, as prescribed by law, to those who have given distinguished service to the State, wounded veterans and policemen, and members of the bereaved families of military servicemen and policemen killed in action.*

ARTICLE 33.
Section 1. *To enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action.*
Section 2. *Only those public officials who are designated by law shall have the right to association, collective bargaining and collective action.*
Section 3. *The right to collective action of workers employed by important defense industries maybe either restricted or denied as prescribed by law."*

The provision in Article 32 provides the constitutional basis for legislation concerning employment security including employment exchange policies, unemployment insurance, and vocational training. Section 3 of Article 32 provides the basis for protective labor law in general, by requiring that minimum standards of working conditions shall be determined by law. Section 4 of the same article accords special protection to working women and children.

The Korean Constitution also guaranteed workers the right of association, collective bargaining and collective action (Article 33, Section 1). However, Section 2 of Article 33 restricts or denies these collective rights to public officials or to workers employed by important defense establishments. Also, the right to work, or to organize, bargain and act collectively, also "maybe be restricted by law when necessary for national security, and for the maintenance of law and order or public welfare". Article 37 of the Korean Constitution however provides that "even when such restriction is imposed, no essential aspect of these rights or freedom shall be violated".

The fact that these constitutional provisions guarantee the rights of workers means not only that workers are free from restrictions or interferences from the state, but also that they have the right to apply to the state for legal relief when these rights have been violated by the employers or by the state.

In contrast, the Philippine Constitution[2] enumerates the specific rights of all workers to "security of tenure, humane conditions of work, and a living wage", as well as the right to participate in decision making at the enterprise level. The right to strike in the Philippines is limited by the phrase "in accordance with law", just like all the other protective provisions. Furthermore, the phrase "all workers" implies that the same rights apply to both workers in the private sector, and in the public or government service.

The 1987 Constitution in the Philippines repeats the 1935 and 1973 charters' clear mandates for the State to provide "full protection to labor". The State shall guarantee that the workers "shall be entitled to security of tenure, humane conditions of work, and a living wage".

In the area of labor policy and administration, the Philippine Constitution of 1987 provides a comprehensive set of provisions to protect the rights of Philippine workers.

> *"...The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.*
>
> *[The State] shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as maybe provided by law.*
>
> *The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace".*
> *(Article XIII, Section 3).*

The Philippine constitutional provision shows that the State has a clear mandate to guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike. According to the Constitution, the "State shall promote the principle of shared responsibility between the workers and employers", which is a mandate for industrial democracy, especially the participation of workers in decision making. Furthermore, the State shall encourage the "preferential use of voluntary modes in settling disputes, including conciliation, and enforce their mutual compliance... to foster industrial peace".

Gain-sharing schemes are likewise mandated: "the State shall regulate the relations between workers and employers, recognize the right of labour to its just share in the fruits of production, and the right of enterprises to reasonable returns on investments and to expansion and growth".

In Article III, Section 8, the Philippine Constitution further repeats the guarantees to "the right to form and join unions, associations or societies, for purposes not contrary to the law, to workers in the public and private sectors".

Role of the State in Labor Policy

The State is the political expression of a nation. The State includes the executive, legislative and judicial branches of government and the other instrumentalities (such as the police and the military), including state-owned corporations. The State, by definition, is an expression of the various interests represented in civil society. There are different approaches in analyzing the role of the state in relation to labor policies.[3] At one extreme, the liberal and free market approach views the State as mainly regulating and mediating the interests between labor and capital; government must make sure that there is freedom in the economic forces of supply and demand, in determining the production, pricing and distribution of goods and services. The Marxist approach, on the one hand, views the State as being dominated by, and mainly an instrument of the ruling political and economic elite.

The dependency school, on the other hand, emphasizes the observation that in an open economy, labor policy is shaped by the dominant role of foreign multinational corporations, as well as the international lending institutions such as the Asian Development Bank, the World Bank and the IMF. The corporatist school, in contrast, puts importance upon the "coagulating" function of the State, for the intermediation of the various interests, which comprise civil society.

As a framework for labor policy formulation, corporatism requires the following conditions:that both unions and employers must represent all their sectoral constituencies, and have bilateral monopoly power, with authority to enable their members to comply with their decisions; a political party is in power for a significant time period, with control over government, and with a corporatist framework of decision making. Lastly, the State must have the capacity to mediate the interests of both employers and workers, and not just represent one sector against the other.

Table 2 compares the executive, legislative and judicial branches of government agencies, which are involved in the formulation, and implementation of labor policies.

Labor policies in the Philippines are legislated by a bicameral congress, while in Korea, a unicameral parliament called the National Assembly enacts, the same. In the Philippines, proposed laws related to labor must be heard and approved by the Committee on Labor in both the upper and lower house of Congress.

In the Philippines, the Secretary of Labor and Employment executes

and implements labor laws and policies, while in Korea, the Minister of Labor Employment is tasked with the same function.

"Tripartism" is the prevailing approach in the Philippines, which emphasizes the equal role of the employers, the unions, and the government in the determination of labor policies.[4] Article 275 of the Philippine Labor Code states: "Tripartism in labor relations is hereby declared a State policy. Towards this end, workers and employers shall, as far as practicable, be represented in decision and policy making bodies of the government". The Philippine Secretary of the Department of Labor and Employment is empowered to convene a "tripartite conference of representatives of government, workers and employers, to consider and adopt a voluntary code of principles designed to promote industrial peace based on social justice, or to align labor movement relations with established priorities in economic and

Table 2
Government Agencies Involved in Labor Policies

	KOREA	PHILIPPINES
Legislative	National Assembly (Unicameral)	Congress(bicameral): -Senate Commission on Labor and Employment -Lower House Committee on Labor and Employment -Sectoral representatives from labor organizations
Executive	Ministry of Labor	Department of Labor and Employment
Judicial	Central Labor Relations Commission	-Labor arbiters -National Labor Relations Commission (quasi-judicial)
	Supreme Court	Supreme Court

social development". In calling for a "tripartite conference", the Secretary of Labor and Employment may consult with accredited representatives of workers and employers. The conditions for genuine Tripartism however are not completely present, which assumes a powerful trade union group representing the Philippine workers. There is no single national trade union center, and the accredited representatives of workers, such as the Trade Unions Congress of the Philippines (TUCP) do not have the capacity to mobilize and speak for organized labor in their entirety. In many cases, the position of

the accredited representatives vary with those expressed by the non-accredited, mostly militant groups such as the Kilusang Mayo Uno (KMU) and the Bukluran ng Manggagawang Pilipino (BMP).

In contrast, Korean labor laws do not specifically mention an adherence to tripartism, wherein both employers and unions are consulted by the government. No tripartite bodies among labor, management and government exist in Korea. Instead, the Federation of Korean Trade Unions (FKTU), the Korea Employers Federation (KEF) and organizations representing the public interest established the National Council for Economic and Social Affairs in 1990 in order to promote dialogue between the bilateral parties, at the national level. In 1989, the government proposed the creation of a National Wage Council, but the FKTU opposed the proposal.

Previous nationwide labor disputes as well as the 1997 labor policy reforms, however, show that the exclusion of organized labor in the decision making process led to unrest and instability. Under the democratic reforms of 1987, Korea attempted a neo-corporatist approach to labor policy, which involved a "National Economic and Social Council" with representatives from the unions, the employers, and the non-government sector. The council was organized in 1990, and dealt with policies on employment, anti-trust, workers welfare, wages, prices and taxes. The government was excluded in the Council, which limited its effectivity. This "neo-corporatist" experiment however failed, since conditions were not sufficient to ensure the implementation of its recommendations. According to one analyst, Korean unions were weak and fragmented. The recognized or accredited government union, which is the Federation of Korean Trade Unions (FKTU) did not have the exclusive power to represent the workers. The political party, which claimed to represent workers' interests, was irrelevant. Workers were not assured that restraint in their wage demands would be compensated in the future by favorable employment, welfare and growth policies. There is no reason to expect that the Korean State will act as the agent of collective interests of both capital and labor. In Western corporatism, the State has the capacity and autonomy not to serve as the agent of the capitalist class, but as the agent of universal rationality.[5]

LEGISLATIVE SOURCES

Table 3 provides a comparative outline of key labor laws in Korea in the Philippines. Interestingly, most of the important labor laws were enacted in the 1950s. Additional laws, as well as revisions and amendments, were enacted from the 1960s up to the 1990s. It could be seen that the legislative sources of labor policy respond to historical changes in each country.

Labor Laws in Korea

In Korea, most of the major labor laws were enacted during the Korean War, and amended or supplemented in the early 1960s and in the 1980s. In 1997, a massive labor unrest again brought new amendments to improve further the collective rights of Korean workers. Labor laws enacted started in 1953, and included the following: Trade Union Act, Labor Dispute Adjustment Act, Labor Relations Commission Act, and the Labor Standards Act. These are known as the "Four Labor Laws" in Korea. These laws were amended in the 1960s. Furthermore, Employment Security and Promotion Act of 1967, Industrial Accident Compensation Insurance Act of 1963, and Vocational Training Act of 1963 were introduced during this period.

The Korean government used labor legislation as a means to improve labor standards and working conditions. Most of the Korean labor laws were enacted during the Korean war.

Like the Philippines, the Korean government policy relies upon the administration and implementation of labor laws. Korean government officials argued that through labor laws, there could be a coordination between the speed of improvement in labor standards and labor productivity.[6]

Accordingly, the Korean government enacted several important labor laws, which started in the 1950s. As early as 1953, the Korean government enacted the Fair Labor Standards Act. In 1963, the Industrial Accident Insurance and Compensation Act was enacted. To improve labor standards, the coverage of these two pieces of legislation has been expanded over time, through amendments.

In 1980, the four major labor laws of Korea underwent further major amendments. The Labor-Management Council Act was enacted to promote harmonious cooperation of capital and labor through communication and mutual understanding. An Industrial Safety and Health Act was enacted in 1981, which accommodated workers' concerns about the safety of their working environment. The Basic Vocational Training Act in 1981 amended the basic law on vocational training. A Minimum Wage Act was passed in 1986.

While protecting the rights of individual employees, the Korean government did not fully guarantee the collective rights of workers through unionization. For example, trade union activities were not promoted or encouraged by the Korean government because of fears that trade unions might harm the country's sustained economic growth by pushing wages above market value.

Following the military coups in the early 1960s and the early 1980s, trade union activities were prohibited. In the 1970s, union activities were not

Table 3
Comparison of Key Labor Laws

KOREA		PHILIPPINES	
1953	Fair Labor Standards Act	1951	Minimum Wage Act
1963	Labor Dispute Adjustment	1953	Industrial Peace Act (Magna Carta of Labor)
		1953	Arbitration Law
		1954	Social Security Act
1963	Industrial Accident Insurance and Compensation Act	1955	Workmen's Compensation Act
		1959	Civil Service Act
		1969	Medical Care Act
1963	Trade Union Act	1974	Philippine Labor Code (P.D. 442)
1963	Labor Relations Commission Act		
1980	Labor Management Council	1977	Revised Government Service Insurance Act (P.D. 1146)
1981	Industrial Safety and Health Act	1978	Revised Medical Care Act (P.D. 1519)
1981	Vocational Training Act	1986	Executive Order 180 (public sector labor relations)
1986	Minimum Wage Act		
1988	Equal Employment Act Employment of the Disabled Act	1989	Wage Rationalization Act (Amendments to Labor Code)
1990	Industrial Safety and Health Act	1989	Anti-discrimination Against Employment of Women Act 1990Productivity Incentives Act
1992	Employment Promotion Act for the Aged	1992	Magna Carta for Public Act Health (hospital) Workers Act
1992	Employee Welfare Fund Act	1992	Protection Against Child Abuse
1993	Basic Employment Policy	1992	Prohibition of Employment of Children below 15 Years
1993	Employment Insurance Act	1994	Dual Training System Act
1994	Employment Security Act	1994	Technical Education and Skills Development Act
1997	Amendments to employment security and labor law	1995	Anti-Sexual Harassment Act
		1995	National Health Insurance Act
		1996	Migrant Workers Act

Sources: C.A. Azucena (1995), Philippine Labor Law Handbook; Ministry of Labor of Korea (1994), Labor Laws of Korea; News reports from Korea and the Philippines.

allowed in foreign owned firms. In all industries, compulsory arbitration was enforced. In 1982, all establishments with 49 or more workers were required to establish a labor-management council whose main function was to replace union activities.[7]

In 1993, Korea enacted two significant laws related to employment and the stabilization of labor market policies, the Basic Employment Act, and the Employment Insurance Act. Other laws enacted previously addressed the protection of employment for vulnerable groups, Gender Equal Employment Act (1988), Act Related to the Employment of the Disabled (1992), and Employment Promotion Act for the Aged (1992).[8]

The early part of 1997 witnessed international headlines on the labor unrest in Korea. The unrest was triggered by what workers perceived as unfavorable terms in the labor law reform initiated by Korean lawmakers and employers.

On March 13, 1997, the Korean National Assembly finally passed the revisions, which repealed the old provisions in Korean labor laws.[9] These new laws were agreed upon by both the ruling and opposition parties.

In summary, the revisions allowed for multiple trade unions at the industrial and national levels. For the year 2002 and beyond, multiple trade unions at the enterprise level shall be allowed after the introduction of methods and procedures of collective bargaining such as single bargaining representation.

The provision of the "ban" on employers' wage payment for workers who participated in industrial action shall be changed to specify that an employer shall have "no obligation" to pay wages to workers who participated in industrial action. A trade union shall be prohibited to take industrial action to demand such wage payment.

Employment adjustments (such as dismissals due to redundancy) shall be allowed only when there are urgent management reasons, through the consultation between labor and management. This provision takes effect after a grace period of two years.

Specifically, the most important areas affected by the 1997 labor law reform are in the following:

1. Reforms in Multiple Trade Unions

The new law allows multiple trade unions, which enhances the basic rights of workers by allowing them to join the trade union of their choice. By deleting the provision that prohibits more than one labor union at the workplace, the revised labor laws guarantee workers the right to freely organize more than one trade union at a workplace and to choose which one to join. This enhances the workers' basic rights in Korea, which was previously subjected to international criticism.

However, to avoid unnecessary confusion, such as conflicts among trade unions over bargaining rights due to sweeping changes in the current negotiation practices, and to allow time for preparation, multiple unions at the industrial and national levels will be allowed immediately. Multiple unions at the company level will be allowed starting the year 2002.

2. Third party intervention

The ban on third party intervention was lifted. The law defines the people and organizations from which labor and management can seek assistance in connection with collective bargaining and strikes. These would include the umbrella organizations of either labor or management, and those whom either party will report to the Labor Minister as needed to provide assistance.

Under the new law, trade unions will be able to seek professional help from a third party such as an umbrella organization of lawyers concerned with wage and other negotiations with management. Those who do not have authority in law are not allowed to intervene in, manipulate or instigate a collective agreement or industrial action. The purpose is to secure autonomy in labor-management relations and to promote a stable industrial society.

Among the essential public services to which compulsory arbitration may apply, banking services (except for the Bank of Korea, which is the central bank) and inner-city bus services shall not be considered as essential public services after the year 2001.

3. Political Activities by Trade Unions

The new laws discarded the prohibition for trade unions to engage in political activities. Accordingly, unions like other social organizations will be subject only to the relevant provisions of the laws on political activities and elections.

In the revised labor laws, a trade union is disqualified if its main purpose is to pursue "political or social activities". The National Assembly removed the phrase "social activities" from the revised proposal.

4. No work, No Pay Policy

Under the "no work, no pay" rule, employers have no obligation to pay back wages for workers who engaged in strike activities. Article 44 of the laws promulgated on March 13, 1997 prohibits "the demands of wage payments during a period of industrial action", i.e., strike. The law further provides that trade unions shall not take industrial action in order to demand and achieve wage payment for a period of industrial action. Violators maybe punished by imprisonment up to two years, or by a fine of up to twenty million won.

5. Replacement of Striking Workers

Previously, union members stage sit-ins and strikes, demanding revocation of an already concluded agreement between union leaders and management. The revised laws prohibit such unauthorized sit-ins and strikes. The revisions rule out the abuse of labor disputes by limiting strikes of unions only in case of disputes from union negotiations with management.

Employers shall be allowed to replace strikers only with other workers of the business concerned, during a period of industrial action. The clause, which allows replacement by outside workers who are not related to the business concerned, was removed, and new subcontracting during a period of industrial strike action is prohibited.

The new law recognizes the right of employers to run their businesses without interruption as a counterweight to the right of workers to strike. The law thus allows replacement of striking workers. If there is a union shop agreement and no worker is available in the company concerned, and if serious financial loss and managerial disruptions result due to a strike, employers are allowed to hire outside workers for a specified period without the approval of the Labor Relations Commission. This specific provision will have a grace period of two years.

6. Flexible working hours and labor market flexibility.

In the implementation of the flexible working hours system, work hours shall be limited to 12 hours per day.

In view of the changing industrial structure that calls for varied and flexible types of employment, the revised labor laws include a new provision which protects part time employees in principle in relation to their working hours. Workers can also choose which hours to work, so that he or she may run errands, engage more conveniently in recreational activity, and take care of household chores. This provision helps housewives most especially.

In addition, employers may work out an arrangement to help make up for any decline in the wages or their employees if such a decline becomes inevitable. The introduction of flexible work hours on a bi-weekly basis provides workers with more time for recreation and other leisurely activity. Business managers could also rationalize their human resource management, depending on business conditions and work volume.

7. Dismissal of employees due to management reasons.

There is a major controversy over the right of employers to dismiss workers, if necessary to reduce the size of the company. The revised labor law calls on employers to do their best to avoid dismissals of employees. There is now a clear procedure to be followed before employees could be

dismissed due to business reasons. The employer must apply fairly the rules for dismissal, notify employees of their dismissal 60 days in advance, and discuss with the trade union or worker representative before an employee is dismissed.

8. Reform in the Labor Relations Commission

The new provisions are intended to ensure fairness and trust in the arbitration of labor disputes. The revised laws revamped the provisions concerning the composition and functions of the Labor Relations Commission. Members of the commission fall into two categories: those responsible for ruling on the disputes, and those responsible for arbitration. Committee members are elected by representatives of both labor and management from among those recommended by labor organizations and employers' associations. It is now possible to allow a challenge of a committee member.

Disputes in the public sector may be referred for arbitration. Previous laws on the commencement of arbitration provide that the Labor Relations Commission may decide to refer a dispute in public services for arbitration upon the request of the administrative authorities, or ex officio (Article 30 of the Labor Dispute Adjustment Act). In the revised law in 1997, the Labor Relations Commission may decide to refer a dispute in essential public services for arbitration, upon the recommendation of the Special Mediation Committee.

9. Right of teachers and government employees to unionize.

Teachers and government employees are not allowed to unionize in Korea. An explanation on why this is so, by the Ministry of Labor of Korea states:[10]

> **Why trade unions for teachers are not acknowledged --**
>
> *School teachers are workers in a normal sense since they are engaged in the guidance and education of students and they live on income derived from their jobs. At the same time, teaching is given a special social responsibility as well... there is no disparity based on whether they teach at public or private schools.*
>
> *"School teachers' working conditions cannot be treated in the same manner as those of general workers because of the need to effectively ensure the people's right to education, which is guaranteed in the Constitution, and also the need to preserve the essence of the educational system, which contributes directly to the public welfare.*
>
> *Korean society has a traditional notion derived from Confucian thinking that the king, the teacher, and the father are all one. Educators have long been respected at the societal level... Given this social environment, it is considered unimaginable ...that teachers would form trade unions or engage in strikes in order to achieve higher wages. [Thus,] school teachers are prohibited from organizing trade unions in Korea...*

Despite the restrictions...[some] teachers organized the so-called "National Trade Union for Teachers' in 1989. However, they have been criticized by those who believe that they were engaging in radical political activities rather than labour activities, since they pushed for the reorganization of the educational system, ideology, and issues related to textbook contents, instead of focusing on the improvement of the treatment of teachers on their working environment.

The Constitutional Court...[in 1991] ruled that [the prohibition] for private school teachers to participate in trade union activities does not violate the Constitution which guarantees the three privileges to workers [to unionize, bargain collectively, and engage in concerted action].

In the same manner, the Ministry of Labor explains why public officials or government employees are prohibited from participating in trade unions. According to the Ministry of Labor, "Korea is the only divided nation in the world that is still confronted by the cold war.... Korean public officials have been at the vortex of rebuilding efforts, playing a crucial role in nation building. The Korean (bureaucracy) is perceived as the future of the nation. Based on such tradition, Korean public officials are perceived as perennial servicemen".

The labor rights of teachers and public servants (or government employees) are protected under both the old and new law. The government considered it necessary "to hold further discussion and extensive efforts to ascertain public opinion before making decisions on what changes should be made, who will be affected, and when the changes will take place -- considering the special circumstances of the Korean Peninsula" (or specifically, relations with North Korea).

The proposal to revise the Special Act on Teachers' Status, which seeks to grant the right to organize unions among multiple associations at the metropolitan and provincial level beginning the year 1999 was not submitted to the National Assembly because the government considered it necessary "to carry out further review and build up a nation-wide consensus".

In the 1997 revisions of Korea's labor laws, disputes in the public sector maybe referred by the authorities for arbitration, upon the recommendation of the Special Mediation Committee. This is in cases where the authorities may consider mediation not possible in a dispute involving essential public services.

Labor Laws in the Philippines

Labor laws are divided into two broad categories in the Philippines:[11]

1. Social legislation, which provides protection for the worker with regard to the conditions work, health and safety, and minimum labor standards deemed by the State to ensure the worker of fair wages, security in employment and post-employment protection; and

2. Labor relations, which deals with the relationship between the individual worker and his employer, and the relationship between legitimate organizations of workers and employers principally for purposes of collective bargaining and dispute settlement.

Philippine labor legislation was heavily influenced by the U.S. Both the Minimum Wage Act in 1951 and the Industrial Peace Act (Magna Carta for Labor) in 1953, were patterned after equivalent U.S. labor laws, upon the recommendations of U.S. economic advisers to the Philippine government.[12]

Before the declaration of martial law in 1972, the following labor laws existed: Minimum Wage Law, Eight-Hour Labor law, Blue Sunday law, Women and Child Labor law, National Apprentice Act, National Employment Service Law, Termination of Employment Act, Employers' Liability Act, Workmen's Compensation Law, Social Security Act, Government Service Insurance Act, and the pertinent provisions of the Civil Code on Labor Standards.

There were also special laws on tenure relations pertaining to agricultural workers such as the Agricultural Tenancy Act, and the Sugar Act of 1952 for sugar plantation workers.

After martial law was declared in 1972, labor legislation in the Philippines underwent an extensive revision, prior to its consolidation into a "Labor Code". In 1974, President Ferdinand Marcos issued Presidential Decree Number 442 (P.D. 442), known as "The Labor Code of the Philippines". This Code covered every aspect of the working life of the worker. According to the Minister of Labor, the Labor Code was designed "... to be a legal as well as a socio-economic instrument designed to advance both social justice and economic development. At the same time, the Labor Code was intended to be a dynamic and living body of laws, highly responsive and adaptable to the needs and experiences of a society undergoing unprecedented, rapid change".[13]

The Labor Code of the Philippines was enacted in 1974 through a presidential decree under the martial law regime. The Labor Code was designed to combine into just one document all the pertinent legal provisions on working conditions, terms of employment, human resource development, labor standards, social security, and labor administration. It has been amended many times since then, the most significant of which was in 1989 (Republic Act 6715) and the Wage Rationalization Act of 1989 which decentralized wage determination through regional wage boards.

The Labor Code of the Philippines includes numerous provisions which protect workers and establish standards or norms. These include standards on minimum compensation, hours of work, number of workdays, overtime

pay, vacation and sick leave, social security, and the right to organize and concerted action. There are also protective clauses related to health and safety at the workplace. The security of tenure is established as a right of regular workers, and there are certain conditions before a worker can be terminated.

The Labor Code provided for an elaborate set-up in the settlement of labor disputes, and a machinery for the exercise of the rights to organize a union, collective bargaining, and concerted action such as strikes and pickets. At the same time, it also provided for a system of settling labor disputes through conciliation, mediation and compulsory arbitration. Subsequent amendments in 1989 later emphasized the role of voluntary arbitration. As a matter of labor administration, these procedures and mechanisms are under the scope of authority of the Department of Labor and Employment. While conciliation and mediation are undertaken in the Bureau of Labor Relations, compulsory arbitration is undertaken by the autonomous National Labor Relations Commission (NLRC). The NLRC was established with quasi-judicial powers to settle disputes between the employers and their workers organized through a union. Like the authoritarian rule in Korea, martial law in the Philippines restricted the exercise of trade union rights in the 1970s up to the 1980s. Labor repression was motivated not only by "the imperatives of economic development", but also to enhance or stabilize authoritarian rule. In the words of the Minister of Labor Blas Ople: "the Philippine Labor Code was a legal as well as a socio-economic instrument designed to advance both social justice and economic development".[14]

The Philippine government is committed to the principle of tripartism. This is reflected in the participation of the representatives of organized labor and employers in the policy-making bodies of a number of government institutions such as the National Wages and Productivity Commission, and the state corporations which administer workers' pension funds such as the Social Security System (SSS) and the Government Service Insurance System (GSIS).

Discussions with experts, officials and lawmakers resulted in the identification of the following set of proposed changes in labor policy in the Philippines. These policy changes are in the following areas: labor law reforms with respect to casuals and agency or contract workers, social security, protection for the vulnerable workers such as women, child workers and the disabled and reforms in wage policy.[15]

Social security

The policy of the State with respect to social security is to "establish, develop, promote and perfect a sound and viable tax-exempt social security system suitable to the needs of the people throughout the Philippines, which shall pro-

mote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden".

The amended law on social security (Republic Act 8282) was signed into law on May 1, 1997.[16] The amendments expanded the coverage of social security to the self-employed, farmers, fisherfolk, household helpers, overseas workers, and household managers. At the same time, the law increased pension and death benefits, including the benefits due to disability. The minimum monthly pension was increased to P2,400. At the same time, the Government Service Insurance System (GSIS) which manages the social security funds for government workers also increased coverage to all employees irrespective of employment status (temporary or regular), increased the maximum monthly pension to P9,000, and introduced an unemployment benefit equivalent to 50 percent of the average monthly compensation.[17]

Increased protection for the vulnerable workers

The Philippines has not yet ratified key ILO conventions on homeworkers and child labor. These conventions provide a direction for the further development of specific, vulnerable sectors in the workforce. These ILO conventions also provide a benchmark for ideal employment standards.

Reforms in wage policy

Trade unions always demand for mandated or legislated wage increases due to increases in prices. Employers always oppose these demands, on the grounds that any legislated increase is not related to productivity, and will tend to fuel inflation. The employers argue that wage increases constitute higher production costs, which manufacturers pass on to consumers in terms of higher prices. Employers also argue that the minimum wage benefit only a minority of those already employed, and organized -- which number about 3.5 million, against a labor force of 29 million. Wage increases do not benefit the 9 million self-employed, the 4 million unpaid family labor, and those who are unskilled and unorganized. Another argument is wage increases will increase the number of those who are unemployed. In the manufacturing sector where organized labor is most concentrated, small and medium scale companies have very limited options for coping with the heavy burden of compulsory wage hikes. They may freeze hiring, retrench or fold up, according to the employers' position.

Public sector industrial relations

The rights to unionization, collective bargaining and concerted action in the Philippine public sector must be fully restored, possibly at the same level

of enjoyment of these same rights in the private sector. There is also the need to improve the wage and non-wage benefits of government employees. Future policies to increase compensation in the public sector must consider the need to attract the right people in the bureaucracy, and motivate them for a higher level of honest service and higher productivity and performance.

Protection to overseas workers

The government enacted the Migrant Workers Act and the Overseas Filipino Workers Act of 1995 (Republic Act 8042). There is a need for concrete mechanisms in the Department of Labor and Employment in order to implement this act. An important problem is the reabsorption or reintegration into the mainstream of returning overseas Filipino workers (OFWs). Existing efforts must be sustained to generate more opportunities and assist returning OFWs.

Reorganization and restructuring of the DOLE

Both houses of the Philippine Congress adopted a joint resolution to establish a Congressional Commission on Labor, tasked to reorganize and restructure the Department of Labor and Employment (DOLE), among others. The Commission will also re-examine the government's labor policies, especially with respect to labor-management relations; it will also review the Labor Code of the Philippines (Presidential Decree 442). The Commission will review labor policies in the context of the "emerging world economic order, which has spawned structural changes in the global economies; trade liberalization, deregulation, privatization, and market integration... which have fundamentally altered the work environment particularly in the Philippines". [18]

Administrative and International Sources

Labor policies may also come from administrative and international sources. The administrative sources of labor policy include the following:

1. Policy instructions issued by the President or Prime Minister's Office, for implementation by the Agency Heads, Directors and Administrators;
2. Rules and regulations as provided for by labor laws which authorizes the President or Prime Minister to define, clarify and specify details related to the implementation of the law.

In both Korea and the Philippines, the administrative sources of labor policy are established when the Ministry/Department of Labor or the Ministry/Department of Justice express their official opinions on the outline of labor administration or the interpretation of labor law to subordinate offices in the form of notes or instructions. For example, the Minister of Labor

may provide policy instructions on how to interpret certain provisions in the Labor Standards Act, in response to a request by subordinates or by the public. These policy instructions however may also be questioned before the Courts. In Korea, there is an argument as to whether or not an administrative interpretation is a source of labor law. However, these policy instructions have an important effect upon labor administration as well as upon the judgement to be rendered by the Courts.[19]

The international sources of labor policy are from the conventions and recommendations of the International Labor Organization (ILO). The Ministry/Department of Labor, through the International Affairs Division, coordinates with the ILO in the ratification and administration of international labor standards. The ILO started the international standardization of labor policies and laws as early as the end of the 19th century. As member states of the ILO, both Korea and the Philippines adhere to the conventions and recommendations which their legislative bodies have ratified. The ratified conventions have the same legal effect as the domestic laws in both Korea and the Philippines. ILO Conventions No. 87 and 98 pertain to the recognition of the freedom of association, collective bargaining, and concerted action, which were ratified by most member states of the ILO. ILO Convention Nos. 29 and 105 are about the prohibition of forced labor, including the forced labor of children. ILO Convention Nos. 100 and 111 are about equality of treatment and non-discrimination, while ILO Convention No. 138 is on the minimum age of employment. These conventions, upon ratification by a country, assures universal respect of the fundamental human rights of workers. These conventions are acknowledged to be of particular relevance to globalization, as they are the instruments, which enable workers to claim their fair share of the economic progress generated by the liberalization of trade. The 85th International Labor Conference held in Geneva in June 1997 emphasized the role of labor standards in relation to globalization.[20]

Although the ratification of ILO Conventions is voluntary, as in the case of any treaty, not everything is contingent upon the goodwill of the member-countries. The ILO Constitution requires that member-countries regularly report on the status or observance of the ratified ILO conventions. The ILO Governing Body requests explanations from member-countries who have not ratified these conventions.

Judicial and Quasi-Judicial Sources

Judicial sources of labor policy include the decisions of the Supreme Court which establish precedence over certain labor disputes, where there is ambiguity for administrative action. These also include the decisions by the

Labor Relations Commission and the labor arbiters over certain cases between labor and management, which are not appealed or questioned before the higher courts including the Supreme Court.

The settlement of labor disputes through a quasi-judicial body is similar in both Korea and the Philippines -- through the Central Labor Relations Commission in Korea, and the National Labor Relations Commission in the Philippines. These labor commissions are "quasi-judicial" agencies in the sense that they are vested with the authority to pass judgment on labor disputes and cases based upon available evidence, but they are under the administration by the Ministry/Department of Labor.

Judicial power in Korea is vested in the courts, constitutionally an independent branch of the government. The court system functions on three levels -- the Supreme Court, appellate courts, and the district courts.[21] According to Article 104 of the Korean Constitution, a judge is bound only by the Constitution and the law, and he is free to decide independently in accordance with his conscience. Unlike in the Philippines, case law and the doctrine of judicial precedents is not used in Korea. Under the Korean legal system, a case such as those involving labor disputes is not a legal source. Due to the short or recent history of most labor laws in Korea, very little case law has been established. Analysts however foresee that case law would become more important because legislation tends to be rather abstract, prescribing only fundamental rules. It is very hard to change a judicial decision of the Supreme Court, for it requires a collegial judgment by the whole Court.[22]

Decisions by the Korean Supreme Court had invariably strengthened existing policies of labor administration. An example of a major judicial precedent was the decision issued by the Korean Supreme Court in May 1989 regarding the law on dismissals of workers due to economic or technical reasons as invoked by management. This judicial precedent is the basis for restricting mass retrenchment. The Korean Supreme Court ruled that the dismissal of workers due to business reasons could be justified only in the following instances:[23]

1. There is an urgent necessity for management to survive the business to overcome the danger of bankruptcy by laying off workers.
2. Management had undertaken efforts to avoid mass dismissal by rationalizing work practices or patterns, suspension of recruitment for new employees, and the use of temporary leaves or voluntary retirement.
3. The employees to be retrenched or dismissed were chosen based upon objective and fair criteria.

4. There were efforts to dialogue with the trade union or the employee representatives before the dismissal.

However, a new 1991 decision by the Korean Supreme Court overturned or reversed the 1989 decision. The 1991 decision defined the conditions for justifiable dismissals due to redundancy. These included the "measures undertaken by management for the reduction of the workforce on economic grounds, brought about by the worsening of the business, changes in work patterns brought about by efforts to improve productivity, recover or strengthen competitiveness, or the introduction of new technology". The 1991 decision effectively removed all restrictions on dismissals due to redundancy, and exposed the job security of workers to the mercy of management.[24]

In Korea, even the regional courts could decide over cases brought about by government actions over labor strikes. On January 16, 1997, a judge at the Changwon Regional Court presided over the application for injunction on the January 1997 series of strikes to protest the anti-labor provisions of the labor law reforms. The judge requested an adjudication by the Constitutional Court on the December 26, 1996 passage of the revised labor laws, before deciding on the legitimacy of the strike action. As a result, managers have to wait for the opinion of the Constitutional Court before they can request for a stop or injunction of the strike of their workers.

In the Philippines, a quasi-judicial body, called the National Labor Relations Commission (NLRC) is tasked to settle labor disputes in the Philippines, with the Supreme Court having the final judgment on appealed cases. However, a key labor policy in the Philippines is to encourage voluntary modes of settlement of labor disputes such as conciliation, mediation and arbitration. In Korea, labor disputes are settled by the Central Labor Relations Commission (CLRC) and 13 Local Labor Relations Commissions, with one Special Commission, whose decisions could also be appealed to the Supreme Court.

The Philippine Supreme Court is the ultimate arbiter in labor disputes - decisions by labor officials maybe confirmed, or reversed. The only way that a case involving a labor dispute could reach the Supreme Court is through a petition for "certiorari", wherein the petitioners must clearly show, among other things, that the National Labor Relations Commission (NLRC) acted without or in excess of jurisdiction over the case, or gravely abused its discretion.

In the resolution of labor disputes, there might be areas of ambiguity. Article 4 of the Philippine Labor Code specifically is biased in favor of labor: "all doubts in the implementation and interpretation of the provisions of (the Labor Code), including its implementing rules and regulations shall be resolved in favor of labor."

CONCLUSION

A common pattern in Korea and the Philippines is that many labor policies were first enacted in both countries in the 1950s. Subsequent amendments improved or updated upon the basic labor laws, to respond to changing national circumstances and international conventions and recommendations. In both Korea and the Philippines, labor policies originate from the constitution, legislative sources, administrative rules and procedures, international conventions and recommendations, and judicial as well as quasi-judicial rulings.

In both Korea and the Philippines, the common goals of labor policies supportive of global competition are the following:

1. Relevant labor policies to respond to structural adjustment brought about by intensifying global competition;
2. Stabilization and provision for more job opportunities;
3. Human resource development, through the enhancement of the vocational and technical skills of the workforce;
4. Protection of vulnerable groups such as women, young workers, the disabled and the elderly;
5. Provision of labor standards; and
6. Protection of workers' basic rights.

In the area of wage and compensation policies, both countries implemented measures to control and inhibit rapid wage growth and to maintain competitive wage levels.

Labor policies in both Korea and the Philippines recognize that there is a need to harmonize or enhance the interests of the employers, the workers, and the government in industrial relations. Failure to harmonize these interests could lead to disruption of production and services, low productivity, and even instability of the social order. Labor policies must promote industrial peace based on justice, goals which are indispensable to the development effort.

Policies on labor standards define the borderline of human dignity below which conditions and terms of employment should not fall. Non-observance of these standards would lead to exploitation, low productivity and social instability. Labor policies are designed to promote the continuing commitment of the government to enforce fair labor standards and improve the working and living environment of the workers as a basic development objective.

The major differences in labor policy between Korea and the Philip-

pines are in the following areas: policies which emphasize employment creation to mitigate the high level of unemployment in the Philippines, whereas in Korea, the emphasis is upon labor market stability; reliance upon overseas employment in the Philippines and labor (skills) shortages in Korea. There is unemployment insurance for the unemployed and displaced employees in Korea, while in the Philippines, such "safety nets" have yet to be enacted into law.

The provision of labor standards and the protection of workers' basic rights motivated the development of labor laws and the related administrative machineries in both countries. In Korea however, union groups continue to criticize the lack of adequate guarantees for the rights to association, collective bargaining and concerted action among teachers and government employees.

Labor policies in both Korea and the Philippines have been undergoing constant changes. These labor policy reforms were influenced by the prevailing socio-economic and political regimes. In the authoritarian period in both Korea and the Philippines, labor policies emphasized control. The existing thrusts and content of labor policies in both countries focus upon the need to promote a competitive labor market, through employment flexibility, skills formation, and wage moderation.

Footnotes

[1] A copy of the Constitution of the Korea is found in the Korea Annual 1994, pp.331-344. The Constitution took effect in 1988. The first Constitution in Korea was promulgated in 1948. It was amended several times, due to changes in the political leadership. Fundamental amendments were made October 1987, due to the democratization movement in Korea.

A pamphlet on the 1987 Philippine Constitution was distributed by the Constitutional Commission of the Philippines, prior to its ratification in the same year.

[2] The Philippine Constitution currently in force was enacted in 1987, when President Corazon C. Aquino assumed power after the EDSA revolution. She appointed a Constitutional Commission which drafted the Constitution

[3] V. A. Teodosio examines the role of the State in Philippine labor policy, in her Ph.D.dissertation, Tripartism and the Imperatives of Development: The case of the Philippines with Special reference to the Minimum wages policy, presented to the Faculty of Economics, University of Sydney, 1987.

[4] Article 275, Philippine Labor Code. Useful notes are found in C.A. Azucena, Jr., LaborLaw Handbook (Manila: Rex Book Store, 1995).

[5] According to Im Hyug(Baeg, the Korean state has always been procapital. See Im Hyug(Baeg, "State, Labor and Capital in the Consolidation of Democracy....", in Lee Hong(Yung andChang Dal-Joong (eds.), Political Authority and Economic Exchange in Korea (Seoul: Oruem Pub-lishing House), pp.131-162.

[6] Lee Joseph and Park Young(Bum, "Employment, Labor Standards and Economic Development in Korea and Taiwan" Labour: Review of Labor Economics and Industrial Relations Special Issue 1995, p. S334

[7] Ibid., p.S235

[8] Ministry of Labor, Labor Laws of Korea, 1994

[9] The Ministry of Labor of Korea and the Korea Employers' Federation published these labor law changes. See New Labor Related Laws (Seoul: Ministry of Labor, 1997).

[10] Ministry of Labor of Korea, Industrial Relations in Korea (Seoul: Ministry of Labor, 1992), pp.23-24.

[11] Ramon T. Jimenez et. al., "Philippines", Kluwer Encyclopedia of Labor Law (The Hague: Kluwer, 1987)

[12] A concise presentation of labor laws in Korea is given by the Ministry of Labor, Industrial Relations in Korea (Seoul: Ministry of Labor, 1992/1993)

[13] A good commentary on Philippine labor laws is found in Cesario A. Azucena Jr., Philippine Labor Law Handbook (Manila: Rex BookStore,1995). See also Jimenez, op. cit.

[14] Jimenez, op. cit., p.47

[15] The author is grateful to Filipino resource persons who were interviewed on their views and assessments of changes in Philippine labor policy, most especially Dr. Maragtas S.V. Amante, Associate Professor in U.P. SOLAIR. This section integrates the discussions with these experts, and their views also form part of the policy recommendations (Chapter 8).

[16] A copy of the amended Social Security Law (RA8282) was published in the PhilippineDaily Inquirer, May 8, 1997.

[17] A new GSIS act was signed into law by President Ramos on May 30, 1997.

[18] The author attended the Philippine Senate Committee on Labor hearing on May 20, 1997 at the GSIS Building in Roxas Boulevard and was able to solicit the views of the following committee members: Senators Marcelo B. Fernan, Blas F. Ople, Ramon B. Magsaysay Jr. This section integrates the views expressed during the Senate hearing.

[19] The ILO, Standard setting and globalization Report of the ILO Director General, 85th Session(June 1997) of the International Labor Conference, Geneva.

[20] Kim Chi(Sun, "Korea", Kluwer Encyclopedia of Labor Law (The Hague: Kluwer), pp.21-22.

[21] Korean Overseas Information Service/Republic of Korea, A Handbook of Korea (Seoul: Korea Overseas Information Service, 1990), p.280

[22] Kim Chi(Sun, op. cit., p. 20.

[23] Case number 87-DA-KA-2132, from an Internet source of the "Strugglefor Labor Law Reforms" Korean Confederation of Trade Union News, dated July 15, 1996.

[24] Also from the same Internet source of the "Struggle for Labor Law Reforms" Korean Confederation of Trade Union News, dated July 20, 1996.

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