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"Protection of Fundamental Labor Rights of Civil Servants"

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I. Introduction - Topic Presentation

The incumbent government, inaugurated in February of 1998, faced numerous internal and external problems as it steered through the IMF bail-out program. As in other sectors, policy attempts were made to resolve restructuring, unemployment and other tasks in the labor sector, but controversy continues as reduction in labor hours, privatization of the public sector, guarantee of the basic labor rights of public servants and other issues remain unsettled. Ensuring the fundamental labor rights of public officials, in particular, was one of the campaign promises of the current president, yet still shows no clear sign of resolution.

The ILO and the OECD, as well as labor circles at home and abroad, have long criticized Korea for unjustly limiting the basic labor rights of government workers, and accordingly, several attempts were made to revise the labor related laws. The fact that all efforts failed is one reason behind why the issue is presently receiving much attention. More specifically, the labor, management and government sectors had concluded the "Social Agreement to Overcome the Economic Crisis (hereinafter the

"Feb. 6 Social Agreement") on February 6, 1998 through the Tripartite Commission right after the crisis struck, and agreed to grant the basic labor rights of public officials gradually. However, complete consensus was never reached due to differences in opinion over details and method. On September 18 of this year, the Ministry of Government Administration and Home Affairs (MOGAHA) notified the legislation of the Act (Bill) on the Establishment and Operation, etc. of civil Servants Association Union (hereinafter "the Civil Servants Association Act (Bill)"), which has been laid before the National Assembly's Government Administration and Home Affairs Committee after cabinet meetings. Meanwhile, on October 24, national assemblymen jointly proposed to the National Assembly's Environment and Labor Committee to revise a general law on labor relations called the Trade Union and Labor Relations Adjustment Act (hereinafter "the Trade Union Act") to make it applicable to civil servants. Therefore, much attention is focused on how future discussions will develop and what conclusions will be reached.

II. Review of Existing Legislation on the Fundamental Labor Rights of Civil Servants

1. Development and Characteristics of Related Legislation

There are three major phases in the history of South Korean legislation on the fundamental labor rights of government employees: first, basic labor rights were permitted, in principle, based on the 1948 Constitution; second, these rights were banned following the revision of the National Government Officials Act in 1961 and the Constitution in 1962; and third, the 1987 revision to the Constitution has led the way to a possible revival of the rights and discussions over enactment of specific laws.

Article 18 of the 1948 Constitution, Article 6 of the 1953 Trade Union Act, and Article 6 of the Labor Dispute Adjustment Act guarantee the basic labor rights (the right to act collectively excluded) of all government employees except active soldiers, civilian employees of the army, police officers, prison officers and fire officers. Moreover, Article 37 of the National Government Officials Act, enacted in 1949, does not indicate clearly measures to restrict labor movements. Although this legislative attitude of "granting the rights as a general rule but allowing exceptional restrictions" was incoherent with the realities of the country at that time, it reflected policy makers' determination to meet international standards in labor-related legislation.

This framework of initial legislation began to change fundamentally as the priority was given to economic development in the national agenda. The National Government Officials Act was revised in 1961 to limit all basic labor movements of public servants except "government employees who are de facto laborers (employees engaged in labor in field agencies such as the Korea National Railroad (KNR) and

the Korea Post under the Ministry of Information and Communication (MIC), and field laborers at the National Medical Center (NMC))". Moreover, the Constitution was revised in 1962 to deprive public officials of their overall labor rights, except those whose rights are guaranteed by law. And in 1963, the National Government Officials Act, the 1953 Trade Union Act and the Labor Dispute Adjustment Act were revised to regulate the rights uniformly through the civil servant related laws. During this time, public officials were differentiated completely from other workers so that their rights would be limited in principle, while exceptions for "government employees who are de facto laborers" would be allowed based on the civil servants related laws. In other words, a shift in the legislative attitude was taking place towards "restricting the rights as a general rule but allowing exceptions." This was a reflection of the policy requirements of the times, which were to wipe out the political tendency of labor movements hitherto and to establish a perfectly-organized officials employee structure which would lead in the economic development of the country.

Legal system that strictly limit the fundamental labor rights of government employees began to undergo major change within the bigger flow of democratization. Through the 1987 constitutional revision, labor rights of civil servants as a general rule were acknowledged, although it was "within the limits of the law." The 1989 bill to revise the labor-related laws, proposed when the opposition party was the majority in the National Assembly, sought to guarantee the rights to organize and bargain collectively to public servants in positions Grade 6 and lower, except for the armed forces, police officers, prison officers and fire officers. Although the bill was eventually vetoed by the president, discussions over permitting the basic labor rights of government workers continued through 1992 and 1997 legislative revisions proposed by the Labor Relations Law Research Committee and the Labor-Management Relations Reform Committee, respectively. Thus, in an effort to correct and move away from the logic of restricting the basic labor rights of civil servants when the country was focusing on economic development, the idea that their fundamental rights be allowed, put forth by different sectors of the society, was given consideration within the general direction of democratization. However, despite constitutional revision and

several attempts to improve related laws, the basic structure of past legislation was maintained, thereby allowing the legislative attitude of "restricting the rights as a general rule but allowing exceptions" to continue. Accordingly, The ILO and the OECD, the global community, domestic labor groups and the labor law academia have criticized Korea for unjustly restricting the fundamental labor rights of government officials.

Discussions over this issue was formally revived through the 1997 financial crisis. Following the establishment of the Tripartite Commission on January 15, 1998, The "Feb. 6 Social Agreement" was concluded. Through the February 24, 1998 enactment of the Act on Formation and Operation of Public Servants' Workplace Association (hereinafter the "Public Servants Workplace Association Act"), which was a follow-up measure to the Tripartite Commission agreement, government employees were now able to found and operate their own workplace association to improve their work environment, enhance performance, and resolve grievances. The process has created an all or nothing situation where field agency workers government employee who are de facto labors are fully guaranteed their fundamental labor rights, whereas general service government employees are deprived of their rights in their entirety.

Thus, the existing legislation may be characterized as the following: one, established a regulation to limit labor rights directly under the Constitution (Article 33 Section 2); two, adopted a general restriction standard based on the government employee status; three, adopted a standard based on the nature of work ("simple labor") in determining exceptions to laws; four, reduced again the final range of employees who are guaranteed basic labor rights from all workers engaged in "simple labor" to only those in field agencies such as the MIC, the KNR and the NMC, while acknowledging the right to organization and the right to collective bargaining among educational public servants; five, allows a establishment and operation of the Public Servants Workplace Association, which is a type of labor-management council.

2. Dispute Over the Constitutionality of Limitation Statutes on the Fundamental Labor Rights of Civil Servants

No theory or juridical precedent in labor law questions the fact that public officials are "workers by nature" who can enjoy fundamental labor rights. Even Article 33 Section 2 of the Constitution, which puts the guarantee of the basic labor rights of public servants within the limits of law, stipulates "workers who are government officials," and Article 5 of the Trade Union Act, which confirms the freedom of workers to establish labor unions and become members, assumes that public officials are laborers in stipulating that "expect for the case of public servants or teachers who are subject to other enactments" in its provisory clause. Furthermore, government officials clearly meet the worker criteria established by the Trade Union Act (Article 2 Number 1) and the Labor Standards Act (Article 14). But because Article 7 and Article 33 Section 2 of the Constitution contain provisions on limiting the basic labor rights of government workers, and accordingly Article 66 Section 1 of the National Government Officials Act and Article 58 Section 1 of the Provincial Government Officials Act completely ban the fundamental labor rights of all public servants except for field agency workers, discussions over the constitutionality of such legislative limitations continue until today.

The Constitutional Court, as well as the Supreme Court, views Article 66 Section 1 of the National Government Officials Act, which denies public servants of general service their basic labor rights, as consistent with our Constitution. According to the court, the basic purpose behind limiting the fundamental labor rights of government employees can be deduced from Article 7 of the Constitution, which defines the status and unique nature of work of public servants, and Article 33 Section 2, which establishes the grounds for direct and legal limitations to the rights, defines the fundamental rules related to this issue. In other words, Article 7 defines public officials as "servants of the people," and accordingly, Article 33 Section 2 limits the recognition of their basic labor rights to only "those who are designated by Act," unlike other types of laborers. Moreover, allowing the legislators to exercise their

discretion in enacting specific laws is also consistent with the Constitution, according to the court.

However, by stipulating in its provisory clause that "expect for the case of public servants or teachers who are subject to other enactments," Article 5 of the Trade Union Act (a general law on labor relations) as a general rule excludes the direct regulation of public servants and teachers by the Trade Union Act. The basic labor rights of general service public officials, hence, are completely denied following regulations under the National Government Officials Act and the Provincial Government Officials Act, whereas the rights of only government employees who are de facto laborers of field agencies such as the MIC, the KNR and the NMC are recognized. On the other hand, the 1999 Act on Formation and Operation of Trade Union for Teachers (hereinafter the "Teachers Union Act") was established to regulate the labor rights of educational employees within the limits of recognizing their rights to organize and bargain collectively (the right to conclude agreements included). The result is a difference in the range of basic labor rights recognized for the general service officials of the government versus educational employees of the government and other regular workers.

The issue, then, is "are there no limits to legislators exercising their discretion in determining the range of basic labor rights allowed for government workers?" The legal and labor sectors strongly criticize the absence of such limits based on the following grounds: One, the "minimum principle" and "principle of non-infringement of essentials" put forth by Article 37 Section 2 of the Constitution, which defines the general restrictions to basic rights and their limitations, have to be applied to all legislative discretions related to the restriction of basic rights. Two, despite theoretical and practical grounds supporting each theory on the special nature of government employee labor relations, they are limited in terms of restricting the basic labor rights of government officials, in particular the general service workers, comprehensively and substantially. Three, that the general service workers' status as national or provincial government officials is reason enough to deprive them of their entire basic labor rights, without distinction of their job description and despite the fact that they are

laborers who should enjoy fundamental rights, will bring about economic and/or social discrimination of these employees against other workers, in particular the field agency and educational employees. Four, the basic labor rights of workers are a necessary condition in guaranteeing their rights to survival, humane life and pursuit of happiness, thus the need for public officials to fulfill their job as service providers to the nation cannot be a rational reason for depriving them of their basic labor rights comprehensively and substantially. In conclusion, although it is necessary to restrict some of the basic labor rights of civil servants in cases where the discontinuation of their services to the public harms the national interest, such restrictions must be set at the least amount necessary after careful comparison and gauging between the need to respect the fundamental labor rights and the maintenance and/or promotion of the overall interest in the lives of the public.

III. Future Course of Legislation to Guarantee the Fundamental Labor Rights of Civil Servants

1. Fundamental Principle: Maturation of Overall Environment and Realistic Limitations

First, past circumstances in which government officials in Korea comprised the elite class, contributed to national development, and enjoyed more job security and welfare benefits compared to other workers are disappearing. The government has recently revised the Government Official Pension Act, which directly affects the lives of public servants, and as part of public sector restructuring efforts following the financial crisis and global economic stagnation, it is pursuing measures to reduce the technical worker population. Also, as part of government reform, the "open position system" has been implemented since 1999 to enhance the expertise of public servants and strengthen their competitiveness. Government officials have accordingly begun to recognize themselves as laborers just like any other workers and are asking that their basic labor rights be guaranteed in order to attain job security and stable working conditions.

Second, changes have begun to take place in the political, legal and economic aspects of our society, as well as in civic labor movements and in the level of awareness of the public and government employees. According to a poll taken in 1989 when the National Teachers Union movement failed, half of Seoul residents supported trade unions for public servants, while half opposed the idea. It showed a mid-way split. In terms of political circumstances, the president vetoing the revision to the labor-related laws, which had been approved by the National Assembly, and the reversal to the ruling party becoming the majority through the merging of three

parties reflected strong concern over labor movements. With regards to the driving force of the executive branch, the basic position of the government then was the exercise of veto power and the suppression of illegal labor movements. Although the level of internal motivation among government officials themselves was high, the percentage of active participation was small. However, recent circumstances show a considerable amount of change. According statistical data compiled in 1996, 89.7% of labor law academics supported government officials' labor unions, while 10.3% opposed; 78.6% of lawmakers supported while 20.7% opposed and 0.7% were not sure. Meanwhile, year 2000 figures show that 59.8% of the general public answered that trade unions for public officials are needed or strongly needed, while 34.6% said they are not necessary or entirely unnecessary. Even public opinion polls conducted by the Tripartite Commission and announced by MOGAHA revealed that a certain level of consensus has been reached among government officials and the general public. Political circumstances have also turned favorable through change of administration and support for the government and the ruling party. These trends have been confirmed through the Tripartite Commission as well. Another sign of change would be that a bill to guarantee the basic labor rights of the majority of government officials has been laid before the National Assembly. Self motivation-wise, public officials themselves have begun to point out the limitations of the Workplace Association and are attempting to establish a trade union. Year 2000 figures show that 81.5% of civil servants feel the need or strongly feel the need, and only 6.6% said it is unnecessary or completely unnecessary.

Third, guaranteeing the fundamental labor rights of government officials can no longer be postponed as it constitutes the prompt implementation of the Social Agreement born in an overall effort to overcome internal and external challenges. The Feb. 6 Social Agreement of 1998 has special significance in that it heeded public opinion and improved regulations to gradually guarantee the right to form trade unions in the overall process of overcoming an unprecedented national crisis. Five year since then, it is now time for specific legislation that would guarantee fundamental labor rights. The multilateral response from the international community also reflects this

need.

In the end, the fundamental direction of the issue of basic labor rights for civil servants must consider legal soundness grounded on existing laws as well as the realistic circumstances that support these analyses, and ultimately be pursued in terms of the realizing national consensus. In particular, the Feb. 6 Social Agreement of 1998 starts out from the recognition of the appropriateness of granting such rights and from the circumstantial changes that support this argument, yet proposes a gradual implementation considering our realities. Thus, it will sufficiently serve as the fundamental principle in resolving the problem.

However, the following three points need to be taken into serious account when considering the South Korean situation. First, its ideological/military standoff with North Korea. Second, high expectation of the public on civil servants in enhancing national competitiveness and improving the quality of administrative services after the financial crisis. Third, bad job performance of government employees, who have traditionally been in charge of implementing government-led policies, may also affect the entire society badly. Thus, in recognizing the labor rights of government officials, not only should the "all or nothing" logic of banning all rights of general service workers while allowing all rights of simple laborers be corrected, but we should also remember the realistic request that certain limitations have to be set considering our basic legal framework and the special circumstances of the country.

2. Details of Legislation

A. Extent of Basic Labor Rights of Civil Servants to Be Recognized

In discussions to date over to what extent rights should be granted, the dominant view was that the rights to organize and bargain collectively (right to conclude collective agreements included) must be recognized while the right to act collectively should not be granted. Even in ILO agreements and the legislation of other countries, it is rare that the entire range of basic labor rights of government

employees are guaranteed without any exceptions or limitations. The Civil Servants Association Act (Bill) of MOGAHA recognizes the rights to organize and bargain collectively but not the right to conclude collective agreements (Article 9 Section 1 provision), and bans strikes, slowdowns and all other acts that impede normal operations (Article 12 Section 1).

From the standpoint of legal principles, basic labor rights consist of the rights to organize, bargain collectively, and act collectively. Theories and precedents commonly view each right as having its own significance, and being closely and organically connected to each other. The right to organize is a key factor in basic labor rights and an extension of the freedom of association, and limiting this right in any circumstance may violate the very nature of basic rights. Moreover, if this right, which aims to maintain or improve working conditions, is not guaranteed along with the rights to bargain collectively and act collectively, it may become a right in name only. Because of the nature of basic labor rights, having the rights to organize and bargain collectively without being able to conclude agreements will render these rights perfunctory. That being said, whether to view the basic rights of laborers collectively (as all or nothing) or separately (some rights being limited/guaranteed according to need) is not an issue of logic but of legislative policy. Whether to recognize the overall labor rights or to partly allow/limit these rights according to need should be determined based on the specific circumstances and the government employee organization of each country. It is, however, advisable that based on the nature of basic labor rights, restrictions must be limited to the minimum level necessary to prevent violation of the essential aspects of the rights.

In conclusion, the basic labor rights of government officials must be guaranteed as a general rule, but certain restrictions stemming from the special nature of specific job types or job descriptions are unavoidable. It is easy to see that in countries like South Korea where the government had operated the key functions of the state, collective action by public servants would severely impede the functions of the state and its administrative services. By its very nature, the public sector is different from the private sector in that workplace shutdown, as a counter-measure to direct action

(strike) by trade unions, is not possible. The "balance of labor- management power" or the "weapons equality principle" of such direct actions is not applicable in the public sector. Therefore, the basic principles of the Feb. 6 Social Agreement, the special nature of labor relations in the public sector, and the realistic limitations of our country must be considered to initially allow the rights of organization and collective bargaining but not the right of collective action.

B. Extent of Membership (Those Allowed to Join) in Civil Servants' Union

The dominant view on the extent of membership until now has been that employees Grade 6 and lower would be guaranteed the right to organize and other basic labor rights, while those whose positions are higher would not be allowed the right to organize. Many also viewed that the armed forces, police officers, prison officers fire officers and other civil servants with special jobs should not be granted the rights. Meanwhile, although there are restrictions based on the job type or job description of government officials (for example, soldiers, policemen, policy decision-makers, supervisors, intelligence officers) even in ILO agreements and in the legislation of other countries, it is rare that limitations are based on specific grade or rank.

First, although there is no controversy for public officials in career service (technical/research positions included), in skilled service, and in special labor service, the 1953 Trade Union Act contains regulation that permits restrictions on the right to organize for the four types of government officials mentioned above. Their jobs directly affect the life, physical well-being, health and safety of the public, thus limitations on their basic labor rights may be acceptable. The problem is whether to exclude general service officials with special jobs, as well as special service officials (political service, extraordinary civil service, contractual service), from membership in trade unions. It is, however, not appropriate to regulate membership uniformly based on the types of public servants. Among special service officials, those in political service and extraordinary civil service may be excluded considering the nature of their

work.

Second, in terms of job description, the dominant view was that supervisors, personnel officers, budget officers, accountants, secretaries, safety and security officers, and other employees involved in special work should not become union members, and MOGAHA's Civil Servants Association Act (Bill) comply this view. But Article 2 of the current Trade Union Act, does not recognize the organization as a trade union in cases where an employer or other person who always act in their employer's interest are allowed to join the organization (Article 2 Section 4 Item ka). Thus, officials who fall under the reason for disqualification set by the Trade Union Act, that is "employer or other persons who always act in their employer's interest." should be excluded. The specific range of membership may be determined independently by the union with bylaws, or if needed, decided through collective bargaining.

Third, the consent of Tripartite Commission and the Civil Servants Association Act (Bill) of MOGAHA acknowledges the basic labor rights of only the general service workers ranking Grade 6 and below. But determining the range of labor rights allowed based on employee rank is a practice found only in South Korea. Unlike legislation abroad where generally, job description (whether it is a supervisory position or not) is the criteria in determining union membership, the South Korean government official system has been operated traditionally based on a class system. Thus, public servants ranking Grade 5 and higher (in general service), i. e. deputy director and above, took up most of the management positions. But uniformly disqualifying all officials Grade 5 and above has a weak basis for argument and is not practical. To prevent unnecessary conflict between labor and management, whether to exclude employees in management or supervisory positions from union membership should be settled based on the criteria set forth by the aforementioned Article 2 Section 4 Item ka of the Trade Union Act: "employer or other persons who always act in their employer's interest."

C. Structure of Civil Servants' Union and Guarantee of Union Activity

On the organizational structure of trade union, it has been agreed through the Tripartite Commission that national government officials would be allowed to form a national union that transcends government departments, and provincial officials would be allowed a regional labor union on the level of metropolitan local autonomy units. The MOGAHA's Civil Servants Association Act (Bill) originally reflected this principle, but after a series of cabinet meetings, trade unions on the level of basic local autonomy units (city, county, district) have also been permitted (Article 2 Section 1). Meanwhile, labor unions limited only to certain types of civil servants or job functions (occupational group or series of class) are banned by law (Article 2 Section 2), and linkage with private sector unions is not allowed as well (Article 12 Section 2).

From the perspective of legal principles, the organizational structure of trade union should be left in the hands of government officials themselves, like any other laborers, and establishing express legal provisions is not favorable. Banning the formation of unions based on job types or job functions (occupational group, series of class, etc.) may also bring about unnecessary conflict. Only, considering the structural realities of the government employee organization, such as worker classification, exchange of personnel etc., it is highly probable that national and provincial officials would have separate unions, and in this case, metropolitan unit-level structures are advisable for provincial officials. Not only is this stipulated in the Feb. 6 Social Agreement and the Tripartite Commission consent but also effective in minimizing labor-management conflict and bargaining costs. If the union structure of provincial officials breaks down to the level of basic local autonomy units, these officials would seek to strengthen solidarity by pursuing various types of alliances but would be hindered by MOGAHA's Civil Servants Association Act (Bill), which prevents linkage with private sector unions.

Meanwhile, the aforementioned MOGAHA's Act(Bill), as a general rule, prohibits civil servants from becoming full-time officials of union but does allow unpaid leave

from government work up to five years (Article 8 Section 1 or 3). There are no express provisions on qualifications of union members or officers, compulsory membership, unfair labor practices and other issues related to the guarantee of union activity rights, but Article 13 Section 2 prevents the application of the Trade Union Act. However, it would be favorable in principle to adopt the Trade Union Act regulations in issues related to guaranteeing the union activity, including rules on full-time officials, membership of laid-off workers, compulsory membership, and unfair labor practices. These issues are essential to not only ensuring the daily activities of the union but also maintaining and/or strengthening the union, so the absence of express regulations and prohibition of applying the Trade Union Act would easily bring about unnecessary friction. The compulsory membership issue, however, is still a matter of debate and requires careful review since it may cause problems related to the guarantee of status under the civil servants related laws

D. Organization and Subjects of Collective Bargaining

The Civil Servants Association Act (Bill) of MOGAHA stipulates that the chairperson of Civil Service Commission(CSC) and the local government leaders may act as negotiators for national and provincial government officials, respectively (Article 9 Section 1), and that bargaining authority may not be delegated to individuals or groups outside of the public officials union (Article 9 Section 4). If there are multiple unions, bargaining channels must be unified into one (Article 9 Section 5), and negotiations are limited to once a year (twice a year if labor and management reach a consent; Article 9 Section 6).

The general practice on the organization of negotiations is for laborers to decide among themselves, and this is likely to be true for civil servants as well. Therefore, the proper structure for collective bargaining between the public servants' union and the government should be decided based on the specific structure of the union. Realistically, bargaining should proceed with consideration to the union structure decided through the basic principles of the Feb. 6 Social Agreement and the Tripartite

Commission's consent, and in accordance with the Tripartite Commission's consent on government-side negotiators. However, in cases where the local government leaders negotiate with labor unions that are on the level of basic local autonomy units as stipulated in the MOGAHA Civil Servants Association Act (Bill), such bargaining may lose their effect due to limitations on the executory rights of the negotiation leaders and the tendency of unions to seek alliances to strengthen their solidarity. In addition, prohibiting the delegation of bargaining authority to private groups or individuals and limiting negotiations to once a year may easily create unnecessary conflict between labor and management in light of the legal nature of bargaining authority delegation and the actual negotiation circumstances.

Meanwhile on subjects to collective bargaining, "wage, and other matters related to work conditions" have been agreed upon as negotiation topics through the Feb. 6 Social Agreement and discussions at the Tripartite Commission. The Civil Servants Association Act (Bill) of MOGAHA reflects this agreement, but excludes from collective bargaining management issues such as policy decisions of national or provincial autonomous governments, organization, personnel and budget compilation (Article 9 Section 1).

Under the current Trade Union Act, there are no express provisions on issues to be covered by collective bargaining. Nevertheless, although precedents and theories dictate that those which relate to wage, working conditions, welfare and other matters that uplift their socio-economic status but basically violate the management rights of employers cannot be included in negotiations, those closely linked to the laborers' working conditions or those that employers bring forth to the negotiation table can be included. It is difficult to conclude that matters of policy decisions or management rights in government officials union bargaining are necessarily irrelevant to the working conditions of the employees. If they are policy decision or management rights issues that ultimately affect employee's working conditions, they may become subjects of collective bargaining. However, even if democratization of the public sector or democratic policy operation is the ultimate goal of the union, it is unlikely that such goals can be resolved through negotiation and agreements with the

government at once.

E. Allowing the Right to Conclude Collective Agreements, and the Effect of Agreement

Allowing collective bargaining rights of the proposed civil servants' union raises the question of whether to allow the bargaining rights while excluding the right to conclude agreements (recognizing bargaining rights only), or to allow the right to conclude collective agreements which do not have legally binding force (allowing "gentlemen's agreement" only). This is because a considerable part of the working conditions of the civil servants, i. e. wages, is stipulated in laws and ordinances or is related to budgets and expenditures of the central or local autonomous governments. The basic principles of the Feb. 6 Social Agreement, as well as MOGAHA's Civil Servants Association Act (Bill), do not allow conclusion of agreements on bargaining issues (provision in Article 9 Section 1).

Looking from the perspective of labor laws, allowing collective bargaining rights while banning the conclusion of agreement on the results of the negotiation severely contradicts the fundamentals of the labor rights system and renders collective bargaining rights meaningless. However, collective agreements concluded as a result of the collective bargaining of the civil servants' union already becomes subject to laws, ordinances that stipulate the civil servants' working conditions (wages), or to government budgets. Therefore, it is realistically difficult for the government officials union to fully obtain substantial power of or commitment to bargaining. If labor-management relationships mature in the future, however, what is concluded as a consent between the labor and the management could be implemented with the government revising related laws and adjusting budgets.

In conclusion, the basic principles of the Feb. 6 Social Agreement and MOGAHA's Civil Servants Association Act (Bill) have the merits of preventing conflict between collective bargaining and law/ordinance/ budget/policy, while minimizing disputes related to the implementation of the agreements and their social

side-effects. However, if the right to conclude agreement is to be denied, the rights of organization and collective bargaining will likely be meaningless. Thus, it is important to consider recognizing, in principle, the right to conclude agreements, as in the case of Article 6 of the Teachers Union Act, provided that legal enforcement is denied to the issues governed or mandated by laws/ordinances/budgets, as in Article 7 of the Teachers Union Act. Instead, the head of the organization concerned could be obliged to make sincere efforts to implement the issues concluded (i. e. presenting revisions to the related laws or ordinances, or establishing a supplementary budget).

F. Dispute Settlement System

When it comes to government officials in the specific circumstances of South Korea, it is very unlikely that the right to collectively act may be allowed for civil servants. As a compensation, it would be necessary to introduce a dispute settlement system that promptly resolves conflicts that may occur in the process of collective bargaining. At the same time, it would be realistic to install an objective and professional dispute settlement system that takes into consideration the special labor-management relationship in the public arena.

According to MOGAHA's Civil Servants Association Act (Bill), when negotiation between the civil servants' union and the employer hits a deadlock, the concerned parties may apply for mediation from the Committee for Mediation of Civil Servants Association Bargaining in CSC, MOGAHA, etc., whose decision shall be respected by the parties involved (Article 11). However, it would be much too unrealistic to limit the roles of the dispute settlement body to simply mediate and resolve collective bargaining, or to exclude elements of objectivity and professionalism, which are essential to labor-related disputes. Thus, in order to promote objectivity and professionalism in labor relations as well as to respect the special nature of labor-management relationship in the public sector, we should consider utilizing the existing Labor Relations Commission (setting up a Mediation Committee for Civil Servants Labor Relations, in particular).

Meanwhile, another issue is whether there is a need for a compulsory mediation system involving official authority separate from the general mediation system. In fact, considering the special nature of civil servants labor relations and the specific circumstances of South Korea, the compulsory mediation system may be a necessary evil for promptly resolving deadlock in collective bargainings, and thereby minimizing the negative impact on society and government affairs. In particular, the compulsory system may be inevitably required as a last resort for resolving stalemate. However, even in such a case, compulsory mediation should be provided only when the voluntary mediation between the concerned parties ended in failure. If not, it would contradict "the principle of minimal and necessary" in basic labor rights, and prevent the resolution of the issue to ultimately undermine the development of a sound labor-management relationship in the long run.

G. Term of the Civil Servants' Organizations

Naming of civil servants' organizations is one of those issues that the Tripartite Commission failed to conclude until the end of its discussions. MOGAHA has adamantly refused the title of "labor union" and insisted on "Civil Servants Association" instead. MOGAHA made its argument clear in the Civil Servants Association Act (Bill). Meanwhile, the Federation of Korean Trade Unions (FKTU) strongly argued for "government officials labor union", and the Public Officials Trade Union also criticized MOGAHA severely.

The Feb. 6 Social Agreement calls for firstly allowing a public servants workplace association and then allowing the formation of a "labor union". The ongoing discussions are also heading towards a consensus that civil servants' basic labor rights should be protected by a special law and not by general labor related laws. The special nature of civil servants, i. e. the need to limit their right to collective action as argued by MOGAHA, are mostly reflected in the proposed legislation as well. Thus, arguments against the term of "labor union" seem unconvincing not only to FKTU but also to those civil servants already engaged in

union activities. It is desirable to allow the term of "labor union" for good and practical reasons. Using other titles to call the civil servants organization would only earn skeptical response from international and domestic labor organizations, and leave a difficult task of defining the relationship with the public servants workplace association.

H. Legislation

There are two main ways of enacting legislation that protect the fundamental labor rights of government employees: making the law subject to the Trade Union Act, which is a general labor relations law (e. g. lawmakers proposing revisions to the Trade Union Act), or legislating a special law like the Teachers Union Act (e. g. MOGAHA's Civil Servants Association Act (Bill)). The latter has had predominance over the former in past discussions, and in fact, the Teachers Union Act, which was born after long and painstaking efforts and includes much of a rather general Trade Union Act in the form of a special law, can be a precedent. However, the issue is not about logic. Rather, it is about how much more efficiently real problems can be coordinated, considering the special nature of civil servants labor relations, and how seriously relationships among different laws are examined.

Meanwhile, it is a legal principle that even when a special law is legislated, what is not specified under the law becomes subject to the Trade Union Act, which is the general law on labor relations. As can be confirmed in examples of other countries, there is also a need to include very specific clauses/regulations in order to resolve various issues that may arise in reality. Setting only those very general rules and leaving all other real issues outside of its realm (MOGAHA's Civil Servants Association Act (Bill)), or making enforcement decrees or enforcement regulations to supplement the law based on no legal basis, would cause controversy as being a clear legal flaw and undue violation of basic labor rights. In particular, it should be noted that, although the current law may not be the most ideal, it became what it is today after a lot of controversies and trial-and-errors since its legislation, which means that

the law best reflects the characteristics of the Korean industrial relations.

I. Enforcement Time

The labor sector and the government is also widely divided over the time of enforcement of laws that protect civil servants' basic labor rights. An additional clause of MOGAHA's Civil Servants Association Act (Bill) stipulates January 1, 2006 as the implementation date, thus setting a three-year grace period presuming that the law is legislated by the end of this year. The Feb. 6 Social Agreement also simply states that the law should be "enforced with consideration to public opinion and alignment with related laws", without pinning down the specific time of enforcement. Thus, rather than enforcing the law immediately after legislation/ promulgation, it would be more desirable to give a certain grace period to the parties involved to be fully ready.

Labor laws do not specify legal/logical considerations for setting the time of the enforcement. It should rather be a policy decision. However, considering that it has already been almost five years since social consensus was reached through the Tripartite Commission, waiting three more years for enforcement after legislation may cause domestic and foreign labor organizations to doubt the Korean government's commitment to protecting the fundamental labor rights of its civil servants.

IV. Conclusion

From a legal standpoint, there is little ground for controversy over the fact that civil servants are "laborers" and that their fundamental labor rights must be acknowledged. Not only public officials themselves but also a majority of the public feel the need for government officials' union. However, there seems to be wide differences in opinion over the details, such as what types of positions/job descriptions should be allowed certain rights to what extent. Examples from other countries reveal that the extent of rights allowed depended on the historical background, socio-economic and political circumstances of each country. What is common, though, is that the right to organize is recognized in almost all cases, and that apart from the formality of laws and systems, the user (government) exerts effort to fulfill agreements it reached with the civil servants' union through legislative revisions. Also, rather than hurrying to secure basic labor rights completely at once, measures appropriate to actual circumstances and based on consideration of the realities, circumstances, the level of public/worker awareness etc., are sought before ILO and other international labor standards are adopted as much as possible. We must take note that the basic labor rights of government employees in other countries have been expanded gradually.

Korea in the short term must also resolve issues within the bigger picture of recovering the rights to organize and bargain collectively, which had been anticipated in the 1948 Constitution and in the 1953 labor related laws. Therefore, minimum labor activity must be guaranteed within the framework of the special nature of labor relations in the public sector and our country's circumstances, while details would be best left to general labor-related laws, such as the Teachers Union Act. However, in the long term as labor relations mature and current areas of contention in labor

related laws are settled, details should be worked out to meet all fundamental labor rights and international/ universal labor standards.