

South Korea's Electoral System from Constitutional Democracy Perspectives

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I. Introduction

South Korea has recently been witnessing a structural social change of cultural and ethnic pluralization and diversification, which has been accelerated in many aspects due to globalization. This paper addresses some of the challenges to South Korea's representative democracy under its constitution posited by such recent changes, and analyzes South Korea's electoral system in this context.

Many observe that constitutional democracy in South Korea has been stabilized and maturing in recent years, and many of the structural problems and issues in the South Korean society such as under-representation of women and other minorities in overall political process, *inter alia*, are now addressed, deliberated and resolved through legislative, policymaking and judicial mechanisms with resulting symbolic and tangible institutional changes.¹ In more recent years, at the same time, the South Korean society is rapidly being pluralized in many aspects and dimensions, in its political, socio-economic and cultural domains, and, to an extent, the ethnic diversification in recent years² has further boosted such phenomenon.

As such, South Korea begins to face novel and perhaps unfamiliar challenges as to how the nation's constitutional-political system may proactively incorporate such changes and ensuing demands, while consistently sustaining the core constitutional value of fundamental rights protection for all including minorities and not compromising either integrity or efficiency in implementing the nation's highest law as a whole. In this vein, this

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¹ Such observation is found in many previous researches in the areas of public law in general. See, e.g., Yoo-Hwan Kim, "The Expected Roles and Problems of NGO/NPO in the 21st Century's New Governance," 15 *Administrative Law Journal* 169 (Korea Administrative Law and Practice Association, 2006), at pp. 169-185.

² Relevant statistics under various criteria can be found in the official URL of Korea Statistical Information Service (KOSIS), www.kosis.kr; and of the Ministry of Public Administration and Safety of the Republic of Korea (MOPAS), www.mopas.go.kr, and particularly at <http://rcps.egov.go.kr>.

paper primarily looks into the system of representation and participation in political processes by means of public elections. Particularly, this paper addresses the issues of right to be represented and to participate in political process and other political activities on the part of the individuals in South Korea with non-Korean citizenship. These individuals are often members of ethnic minority in the South Korean society at the same time.³ Other relevant issues include such individuals' right to travel across the national border, and qualifications for residency as well as for employment, education and healthcare, to list just a few, although these are beyond the immediate focus of this paper. Now is the time South Korea should begin to discuss in a public forum how nation's constitutional doctrines and practices should be set forth pertaining to these matters of significant constitutional ramifications. The areas of right to participate in political process and of socio-economic rights are particularly germane to this initial task. Such an effort at the level of constitutional law and practice will serve as a guideline and provide structure for the relevant legislation and policies to follow.

It should be noted here that South Korea has a positive precedent of bringing changes into the institutions and the practices through proactive legislative efforts and decisions of the Constitutional Court, for example, in increasing the representation of women as political, social and cultural minorities in the political process at the national and local levels, through changes in relevant law and system of public elections. This precedent may serve as a valuable model for the situation of rapid ethnic diversification and anticipated

³ Democracy operates primarily under majority rule. In a liberal democracy, majority rule justifies decision-making of and for the polity among equal individuals, operating as a method of decision-making and institutional mechanism for maintaining and developing the community. In turn, however, majority rule may be justified in a liberal democracy to the extent that minority interests, opinions and perspectives are respected and deliberated in decision-making processes and that minorities may become majority upon persuading the majority. Under the very fundamental premise of liberal democracy of inalienable human rights, all individuals including minorities are entitled to be respected and to pursue happiness, and, in the contemporary constitutional democracy including South Korea's, the law of constitution guarantees the fundamental rights and certain core elements of institutions for all constituents to whom the constitution applies and not merely for those constituting majority under particular criteria at a certain time. Liberal democracy is thus defined as ruling by majority through majority's persuasion of minorities. Under this definition, a liberal democracy should recognize, respect and pursue diversity among different yet equal individuals on the basis of human dignity and autonomy, and should protect itself from coercive imposition of unjustified decisions made by majority upon minorities.

constitutional law issues of representation and inclusion of minorities into the overall constitutional-political process.⁴

II. Ethnic and Cultural Diversification in South Korean Society and its Ramification to the Representative Democracy

1. Ethnic Diversification in South Korean Society from the Constitutional Perspective

The number of foreign nationals or individuals with non-Korean citizenship within South Korea has continuously increased since the establishment of the First Republic in 1948, and at a much higher rate in recent years. The number of such individuals in 1990 was 19,507 or 0.11% of the entire population of South Korea; in 2008, the number increased to 1,158,866 or 2.34% of the nation's population.⁵ Compared with the ratio of approximately 10.6% of foreign nationals among the nation's population in U.K. or other so-called multicultural societies,⁶ South Korea may as yet be characterized or categorized as a

⁴ Notwithstanding a great normative importance ubiquitous to discussions in the law and the practice of constitution, the concept of minority has been employed in South Korea both in academic and other various contexts with only a very loose, rather than any clear, definition. Yet, conspicuous is Professor Kyong Whan Ahn's definition of the minority as "those standing in a different position from the position considered to be dominant due to the causes of ethnicity, gender, economic capability, ideology, morality and others, in various political, social, economic, cultural and other domains within a polity." (Kyong Whan Ahn, "Law and Legal Reasoning for Minority Protection," 2 *Law & Society* 114, 115 (Korean Law & Society Association, 1990); Kyong Whan Ahn, "Rule of Law and Minority Protection," 12 *Law & Society* 6, 9 (Korean Law & Society Association, 1995).) From such definition, some of the core elements of minority as a constitutional law concept as applicable to the discussions in the following part of this paper are derived as follows. First, minorities are those situated outside of or in the periphery of the core position of power in relation to the majority, while belonging to the polity. Second, the numerical size of such minorities do not alter their nature as minority, as women as a group in South Korea, though numerically more than men, are minorities from the perspective of constitutional law for their position outside of current core political, social and economic power-structure in South Korea. Third, minorities as criteria that are meaningful in constitutional law analysis and discussion are those understood in the historical context of a particular political community, such as in the specific historical context of South Korea, and not merely at a specific point of time. Fourth, the concept of minority is relative and fluid, as concurrent and overlapping criteria may apply to constantly divide and consolidate individuals within a polity upon various issues and subjects.

⁵ See *supra* note 2.

⁶ As of 2010, the ratio of foreign population in European Union on average is approximately 8.6%. Comparable statistics includes 12.3% in U.S., 19.3% in Canada, and 23% in Australia. See statistics prepared by the Office for National Statistics, <http://www.statistics.gov.uk>.

multicultural or ethnically pluralist society.⁷ However, both the number and the ratio are increasing at a very high rate in more recent years, and this tendency is expected to continue at an even steeper rate in the years to come.⁸

By 2020, the number of foreign nationals within South Korea is expected to increase to 2,540,000; and, by 2050, to 4,090,000.⁹ The ratio of foreign nationals among the whole population of South Korea is expected to increase to approximately 5% by 2020, and to 9.8% by 2050. Also, among all the marriages consummated in 2009, in approximately 11% or 36,000 cases, one of the spouses was a foreign national.¹⁰ Considering the number of the children born to such families at the current and projected birth rates, the immigrants and their children are expected to compose 21.3% of the population of South Korea in 2050.¹¹ As such, the rapid ethnic diversification in South Korea in recent years has primarily been led by the immigration of labor forces and the multi-ethnic marriages, and, among these, increasing multi-ethnic marriages directly affect the composition of the population and the ethnic and cultural diversification on a long-term basis through the birth of children.

⁷ However, even currently, a survey conducted in 2009 by the Ministry of Public Administration and Security of the Republic of Korea indicates that, in 15 of the local government units including 6 such units within the Metropolitan City of Seoul, the ratio of foreign nationals among the population of the respective local government unit is over 5%.

⁸ The composition of foreign nationals in South Korea has the following idiosyncratic characteristics. Out of 895,464 foreign nationals who are employed in South Korea on a long-term basis, 511,249 are manual laborers. As of December 31, 2008, among 1,158,866 foreign individuals staying in South Korea, 556,517 have PRC citizenship, among whom 376,563 are ethnically Korean; except for 117,986 U.S. citizens and 17,752 Canadian citizens, foreign nationals staying in South Korea mostly bear the citizenship of Asian countries such as Japan, Vietnam, the Philippines, Thailand, Mongolia and Indonesia. On a different note, statistics of the Supreme Court of the Republic of Korea indicates that the number of foreign nationals who have come to South Korea on marriage visa as the spouse of South Korean citizen as registered with the domestic relations register as of 2009 is 292,184 from 173 countries. Among those with foreign citizenship married to a woman of South Korean citizenship, 73,512 (51.3%) are U.S. citizens, 39,900 are Japanese citizens, 17,493 are PRC citizens, 3,369 are Canadian citizens, and 2,894 are German citizens. Among those with foreign citizenship married to a man of South Korean citizenship, 70,878 are PRC citizens, 30,612 are Vietnamese citizens, 12,355 are Japanese citizens, and 6,355 are citizens of the Philippines (or 85.9% of such individuals have citizenship of Asian countries). See *supra* note 2.

⁹ "Grand Vision 2050," a report published in September 2009 by Korea Research Institute for Human Settlements.

¹⁰ It should also be noted that the divorce rate in such multi-ethnic marriages constitutes 9.7% of the entire number of divorces concluded in 2009.

¹¹ See *supra* note 2.

On the other hand, however, various surveys reveal that the level of awareness, understanding and tolerance toward the ethnic and cultural diversity and the ethnic and cultural minorities is still very low in South Korea. In 2007, the United Nations Committee on Elimination of Racial Discrimination advised the South Korean government to take an appropriate measure to increase awareness and tolerance for growing ethnic and cultural diversity, as the mono-ethnic perception and attitude might have an adverse and discriminatory impact against those individuals in South Korea with non-Korean ethnicity or nationality. In the same light, one of the surveys conducted by Switzerland's IMD states that the openness in South Korea toward foreign cultures was ranked at the 56th place out of 57 countries that were the objects of its research in 2010. Further, as more women than men have been immigrating into South Korea through marriage, which is one of the primary grounds for rapid diversification in recent years, the ethnic and cultural diversification in South Korea as such might create gendered social phenomena or exacerbated minority situations across multifaceted social construct and structures.

The constitutional discussion to address and redress the issues stemming from ethnic and cultural diversification should first focus on the institutional and legislative ways of encouraging and increasing the representation and participation of the currently underrepresented political, social and cultural minorities including ethnic minorities in the constitutional and political process, so that such minorities would not be left out of the decision-making process under South Korea's system of representative democracy. At the same time, such dialogue should be able to contribute to the constitutional doctrines and practices for the protection of fundamental rights of such individuals and the judicial process for the redress of rights, particularly in the areas of right to freedom and socio-economic right pertaining to healthcare, employment, education, and so forth.

2. Constitutional Principles Pertaining to Ethnic and Cultural Diversification in South Korea

The constitutional principles and doctrines that may be applicable to the actual and potential situations of uneasiness or dispute originating from ethnic or cultural diversity are primarily derived from the following provisions. First, Article 10 of the Constitution

declares the respect for human dignity and the right to pursue happiness as fundamentally essential to the nation's Constitution, while certain other provisions also pertain to the Constitution's deference to culture. Next, Sections (1) and (2) of Article 37 of the Constitution mandate the constitutional protection of unenumerated as well as enumerated rights and prescribe the proportionality principle as applicable in constitutionality review over the statutes.

Article 10 of the South Korean Constitution explicitly mandates the constitutional protection of human dignity and value and the right to pursue happiness, while it is interpreted to guarantee in further details the right to freely express individual dignity and personality and the right to make personal decisions, among others. Also, the South Korean Constitution explicitly guarantees as fundamental rights the freedom of religion, of conscience and of art, and the academic freedom, under several of separate provisions. A principle of tolerance encompassing mutual recognition and respect among diverse cultures and life-styles that coexist in South Korea is derived from the above constitutional provisions as a whole. Such resolution and harmonization through protection of fundamental rights of the relevant individuals requires an effort to develop and establish relevant constitutional doctrines centered on the right to equality, and, on the general right to freedom when it is difficult to discern under the previously established doctrines which particular right is involved.

In this context, dispute resolution will take the format of clash of different fundamental rights that belong to the adversarial parties. As the South Korean Constitution mandates neutrality between diverse cultures and does not single out to recognize preferred status for any particular culture, in most of such situations and litigations the relative constitutional threshold or limit will be set towards the direction of pursuing practical concordance. Also, as the absolute constitutional threshold or limit, anything that usurps the core value of the constitutional law or violates the essential meaning of the constitutionally protected fundamental right shall be prohibited. As a whole, in this realm as well, the proportionality principle and the principle of equality will apply as the standards to relevant legislation and adjudication, should the absolute constitutional limit or threshold be satisfied.

Such constitutional doctrines for resolving and harmonizing actual and potential disputes in the context of ethnic and cultural diversity should be consistently implemented through pertinent judicial processes. Such determination and agreement at the level of constitutional principles and doctrines will provide in turn directions for the relevant legislations and policies and will offer a healthy structure thereto, thereby contributing to the integrity and efficiency of the nation's law and legal system as a whole under the Constitution. Further, in this vein, certain international covenants and standards on the rights of minorities and particularly those for the protection of rights of immigrant ethnic and cultural minorities¹² may serve as guidelines for South Korea's constitutional and legislative efforts, in the light of Article 6(1) and Article 60(1) of the Constitution of the Republic of Korea.

III. Electoral System and the Participation and Representation of Minorities in the Political Process in South Korea

1. Fundamental Rights Protection for Political-Social-Cultural Minorities

Constitutional and legislative policies in any representative democracy and particularly in a multi-culture society should address and resolve the issue of whether or not the legal status as the member of the community and the degree of fundamental rights protection of and for the minorities left out from the mainstream in the political, social, economic and cultural domains are at the same level of those for the individuals belonging to the majority or mainstream. The first step here is the establishment of the legislative and institutional frameworks necessary for the establishment of the cultural identity of the

¹² For examples, the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Framework Convention for the Protection of National Minorities (effective February 1, 1998, although South Korea is not a party thereto), and the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (GA Resolution 47/135) may provide helpful guidelines for South Korea as it faces rapid social changes in terms of ethnic and cultural diversification in recent years.

political, social and cultural minorities as the subjects or the holders of the constitutional fundamental rights.

In turn, the first step therefor is guaranteeing and encouraging the participation and representation in the political process of decision-making, for the political, social and cultural minorities. The right to participate in politics and political processes and other political activities of permanent resident foreign nationals within South Korea, the right to participate in politics and political processes of the South Korean nationals residing overseas, and the qualification for the employment and residency in South Korea for non-Korean citizens are some of the core examples of the measures and institutions to be deliberated in this vein. In the following part of this paper, among these, the focus will be on the right of the resident foreign citizens in South Korea to participate in political processes and particularly in the public elections.

2. Participation of Minorities in the Political Process

As indicated above, the number of non-Korean citizens working and residing in South Korea has rapidly increased in recent years. Particularly, those individuals on lawful permanent resident status or other long-term visa status develop over time relationships and life-styles within the local community they belong, and share to a certain extent public and communal burdens such as local taxes. Excluding such individuals from decision-making processes of local politics altogether does defeat the purpose of local autonomy that underlies the system of local government and local elections under the South Korean Constitution.

In South Korea, currently, at the national level, resident aliens hold no right to vote, to run for candidacy in public elections, or to otherwise participate in politics, for example, at the general election to constitute National Assembly, the nation's legislature, or at the presidential election. However, at the local government level, certain permanent resident aliens are given the right to vote and certain other forms of right to participate in local politics, under the statutory conditions set forth primarily in the Public Official Election Act (as most recently revised by Act No. 10067, effective March 12, 2010).

Specifically, Article 15, Section (2), Subparagraph 3, of the Public Official Election Act (as most recently revised by Act No. 10067, effective March 12, 2010) provides that any person of 19 years of age or above, who is enrolled in the register of foreigners of the relevant local government pursuant to Article 34 of the Immigration Control Act as a foreigner for whom three years have passed after the acquisition date of qualification for permanent residence under Article 10 of the same Act, shall have the right to vote in the elections of local council members and of the head of the local government in the district.¹³ This Section was amended by Act No. 9466, promulgated on February 12, 2009, pursuant to the decision of inconsistency with the Constitution rendered by the Constitutional Court of the Republic of Korea on June 28, 2007.

Also, Article 5, Section (2), of the Local Referendum Act (as most recently revised by Act No. 9468, effective February 12, 2009) provides that foreigners of 19 years of age or above who are qualified for permanent residence under the relevant immigration law shall have the right to vote at the local referendum conducted under Article 14 of the Local Autonomy Act (as most recently revised by Act No. 9577, effective April 1, 2009).¹⁴ This is subject to the conditions set forth by the ordinance of the local government unit where they are domiciled.

In a broader context, Article 8 of the Constitution of the Republic of Korea guarantees the freedom to establish political parties and also the multi-party system. The

¹³ The full text of Article 15 of the Public Official Election Act provides as follows:

Article 15 (Voting Franchise). (1) A national of 19 years of age or above shall have a voting right for the elections of the President and the members of the National Assembly.

(2) Any person of 19 years of age or above who falls under any of the following subparagraphs as of the basis date of preparation of the electoral register under Article 37(1) shall have a right to vote in the elections of local council members and the head of the local government in the district:

1. Any person whose resident registration is made in the district under the jurisdiction of the relevant local government;
2. Any national who is enrolled in the list of reporters of domestic domicile of the relevant local government (hereinafter referred to as the “list of reporters of domestic domicile” in this Chapter) pursuant to Article 6(1) of the Act on the Immigration and Legal Status of Overseas Koreans; and
3. Any person who is enrolled in the register of foreigners of the relevant local government pursuant to Article 34 of the Immigration Control Act as a foreigner for whom three years have passed after the acquisition date of qualification for permanent residence under Article 10 of the same Act.

¹⁴ Local referendum under Article 14 of the Local Autonomy Act intends to guarantee direct participation of the residents of the relevant local government district in the decision-making process over the matters to be decided by the local council that may impose a significant burden or have otherwise a significant effect upon the residents.

political party system under the South Korean Constitution is subject to the institutional guarantee, and the legislature is endowed with a relatively greater degree of discretion in promulgating the relevant statutes, with the exception that the essence of the constitutional guarantee of the institution itself remains beyond the legislative discretion. As such, under the current constitutional doctrines, certain extent of right and freedom to participate in the establishment of political parties and other political party activities may possibly be endowed to the non-Korean nationals, should relevant legislative policies be set forth within the purview of legitimate legislative discretion to allow such right and freedom.

However, currently, the qualifications for the promoters of the political party and for the party membership are limited to the “persons having the election rights of [National] Assembly members” (Article 22, Section (1), of the Political Parties Act, as most recently revised by Act No. 9973, effective January 25, 2010) and, further, the relevant statute (Article 22, Section (2), of the Political Parties Act, as most recently revised by Act No. 9973, effective January 25, 2010) explicitly provides that the “[p]ersons who are not nationals of the Republic of Korea shall not become [political] party members.” Also, a non-Korean national may not become a member of any Supporters’ Association for a political party or an individual member of National Assembly, either as natural person or legal person (Article 8 of the Political Fund Act, as most recently revised by Act No. 9975, effective January 25, 2010). Further, no non-Korean national may contribute political fund to a political party or an individual member of National Assembly either within South Korea or from abroad, nor may anyone contribute political fund out of the fund belonging to non-Korean national (Article 31 of the Political Fund Act, as most recently revised by Act No. 9975, effective January 25, 2010).

The above provisions of relevant statutes practically and effectively prohibit a wide range of meaningful political activities on the part of non-Korean nationals. These rigid bans on participation in political activities should be reconsidered, so that political, social and cultural minorities will be given certain meaningful and substantial access to the political processes at the lowest possible cost, for the expression of preferences and for the participation in decision-making procedures.

3. Proportional Representation System and the Representation of Women in Political Process in South Korea

(1) Introduction

All systems and institutions of representation group individuals according to certain principles and criteria, and none can be absolutely neutral in this regard. Whether the principle of constituency is geography, organizational or occupational interest, or social group interest or position, members of the constituency are better represented when they organize together to discuss their agreements and differences with each other and with the representatives. Furthermore, individuals are better represented when representative bodies are plural, and when individuals have plural relationships to representatives, in both political and civic organizations.¹⁵ To the extent that what distinguishes social groups is structural relations, particularly structural relations of privilege and disadvantage, and to the extent that persons are similarly positioned in those structures, then they have similar perspectives both on their own situation and on other positions in the society. As such, a system or institution of group representation should do best to pluralize group representation. The representation of the perspective of women in a legislative body or commission would be better done by means of a committee of women rather than just one woman.

Here, with respect to specific mechanisms, one means of group representation is to reserve a specific number of seats or positions in a representative body for representatives of a particular group. However, reserving seats for particular groups may tend to freeze both the identity of that group and its relations with other groups in the polity. Therefore, some less rigid procedure is desirable for adapting to changing social relations. Reserving seats may also tend to freeze the specially represented group members out of additional representational opportunities in other contested seats, thus possibly isolating and

¹⁵ For a detailed analysis on group rights as instrumental rights and fundamental rights from the viewpoint of representation, refer to, e.g., Neus Torbisco Casals, *GROUP RIGHTS AS HUMAN RIGHTS* (Springer, 2006).

marginalizing the specifically represented group at the representational level. For these reasons, reserving seats in authoritative decision-making bodies should be a last resort and temporary option for representing otherwise excluded or marginalized perspectives.

On the other hand, quotas for women in party lists or, more generally, rules mandating a certain proportion of minority group members to be present in party list, are often acceptable and desirable ways of promoting the inclusion of diverse perspectives and interests, as this method does not disconnect group members from others, but include them in wider party deliberations. Depending on the number of parties and the voting procedures, voters from all groups continue to have several candidate options. There is a relevant argument that strengthening the formation and active deliberation of political parties is the best way to foster the representation of politically interested social groups with different perspectives.¹⁶

Proportional representation that institutionally requires political parties under the relevant election rule to attend to minority representation tends to increase party competition and enable more parties to obtain legislative seats than do simple winner-take-all systems. Systems of such proportional representation also allow voters more opportunity to join with others in various structural social groups. These arguments are persuasive as grounding the claim that proportional representation provides more opportunity for differentiated representation than does a system based on single-member, winner-take-all electoral districts.

¹⁶ David K. Ryden, *Representation in Crisis: The Constitution, Interest Groups, and Political Parties* (State University of New York Press, 1996), pp. 110-138. Ryden argues that special measures for social group representation in the formal state representative institutions would tend to freeze group identity and fragment politics, and it is better to use party politics as the vehicle for contesting and constructing group representation. *Ibid.*

(2) Historical Overview of South Korea's Proportional Representation System

The proportional representation system was initially introduced to South Korea through its constitutional revision in 1962 (the 5th constitutional revision), and has been implemented since the general election in 1963 that constituted the 6th National Assembly (1963-1967). During the years immediately following its introduction, the proportional representation system in South Korea was operated for the purpose of increasing dominance of the ruling party over National Assembly, by providing certain institutional premium to the political party that obtained the most number of electoral district seats by intended design.

Prior to the introduction of current “one person two votes” system in the 2004 general election, the proportional representation system in South Korea operated under “one vote for both electoral district representatives and for national district proportional representatives” system. Under this previous or “Third Republic” proportional representation system, although the proportional representation system was in place, such seats were assigned to the political parties in proportion to the number of votes that respective parties obtained at the electoral district election, which were cast to individual candidates. The political party that received the most number of votes at the electoral district election was given proportional representation seats of maximum of 2/3 of all proportional representation seats, if it obtained of or over 50% of all votes; if the votes obtained were short of 50% of all votes, then the party was given 1/2 of all proportional representation seats. As the political situation as a whole at that time was in favor of the ruling party, such proportional representation system operated as skewed in favor of the ruling party, functioning to further strengthen ruling party's dominance over the national legislature.

As political scientists in South Korea have unequivocally analyzed, the above “one vote for both” rule functioned to fortify dominance of the ruling party over National Assembly,¹⁷ to enlarge influence of the party leadership upon assemblypersons of the

¹⁷ Meen-Geon Kim & Ji-Yeon Shim, “Strategic Intentions in Changes in Electoral System in Korea,” 36-1 Korean Political Science Association Journal 139 (2002); Wan-Ki Ahn, “Relationship Between Electoral System

same party membership,¹⁸ and to relieve the party's financial burden.¹⁹ The institutional purpose of proportional representation system was defeated further, as the voters were not provided with the opportunity to distinguish between their preferences for individual candidates and those for the political parties under the "one vote for both" system.²⁰

What followed through the constitutional revision in 1972 (the 7th constitutional revision) was a change in the proportional representation system to further increase the dominance over National Assembly of the ruling party and the nation's President. Beginning at the 1973 general election that constituted the 9th National Assembly (1973-1978), 146 assemblypersons out of its full membership of 219 were elected from the electoral district through direct votes of the voters; however, the rest of 73 members of National Assembly were chosen not by the direct vote but by the electoral college of "People's Council for Unification and Autonomy," consisting of approximately 2,500 members. The People's Council was an institution established by and under the Constitution that elected proportional representatives for National Assembly as such, as well as the nation's President. President, in turn, served ex officio as the chair of the People's Council. Under this design, the ruling party could safely control the national legislature.

Subsequently, the constitutional revision in 1980 (the 8th constitutional revision) reshaped the proportional representation system so that it returned to the original proportional representation model under the Third Republic (1962-1972). Out of 276 seats at National Assembly, 92 seats, equivalent to 1/3 of the entire membership, were designated to proportional representatives. These proportional representation seats were assigned to political parties in accordance with the ratio of votes respective parties received at the electoral district election cast for the individual candidates. The political

And Political Party Structure in Korea, 7 Korea North East Association Journal 23 (1998); Young-Kook Chung & Myungsoon Shin, "National District Proportional Representation System and National Assembly," Korean Legislative Studies Institute 1992-1993 Research Project Paper (Korean Legislative Studies Institute, 1994); and Yong-Ho Kim, "Changes in General Election and Their Political Effects," in Nam-Young Lee, Election in Korea (Nanam, 1993).

¹⁸ Hyung-Sup Yoon, Politics in Korea (Pakyoung Publishing Co., 1992).

¹⁹ Myungsoon Shin, "A Critical Analysis of the National District Electoral System in Korea," 28-2 Korean Political Science Association Journal 239 (Korean Political Science Association, 1994).

²⁰ Jong-Bin Yoon, Election and Democracy in Korea (Jipmoondang, 2007).

party that secured the most number of seats at National Assembly through electoral district election gained 2/3 of the proportional representation seats, and the rest of the parties that secured 5 or more seats at National Assembly through electoral district election obtained according to the ratio thereof the rest of the proportional representation seats.

Under the current Constitution of the Sixth Republic of Korea (1988-present), the proportional representation system has gradually yet significantly evolved. At the 1988 general election that constituted the 13th National Assembly (1988-1992), the proportional representation seats were assigned to the parties according to the result of the electoral district election as in the previous election. The political party that gained the most number of electoral district seats obtained 1/2 of the proportional representation seats for the claimed purpose of stability of national politics, thereby securing a higher ratio of seats at National Assembly than the actual ratio among valid votes earned at the electoral district election.²¹

At the general elections in 1992, 1996 and 2000, which constituted the 14th (1992-1996), 15th (1996-2000) and 16th (2000-2004) National Assembly respectively, there were changes in the number of proportional representation seats and the minimum requirement for distributing proportional representation seats in terms of the number of seats earned through electoral district election, and so forth, and the party that gained the most number of seats at electoral district election could no longer take 1/2 of the proportional representation seats. However, it remained unchanged that the proportional representation seats were assigned out to political parties according to the result of the electoral district election under “one vote for both electoral district representatives and proportional representatives” system.²²

²¹ The number of proportional representation seats at National Assembly was 75, or equivalent to one-fourth of the entire membership of 299.

²² Through revisions in election law in 1991, the proportional representation seats were assigned to respective political parties in proportion to the number of seats each party earned through electoral district election, with no premium of set proportion for the party that secured the most number of seats at electoral district election. Through a subsequent revision of the Public Official Election Act in 1994 (Act No. 4739, effective March 16, 1994), the proportional representation seats at National Assembly began to be assigned to political parties in proportion to the ratio of votes each party received against all valid votes cast at the electoral district election.

In July 2001, a decision of the Constitutional Court brought a significant change to South Korea's proportional representation system.²³ In this decision, the Constitutional Court held the mechanism of distributing proportional representation seats in accordance with the result of the electoral district election under "one vote for both" system to be unconstitutional. The Constitutional Court based its decision on the ground that the assumption of the then-current election law fictitiously identifying the voters' preferences for individual candidates in electoral district as those for the political parties at national district for proportional representation seats violated the principles of democracy, direct vote and equal vote, thereby infringing the fundamental right to vote held by individual voters. Subsequently, the relevant statutes were revised in compliance of this Constitutional Court decision, introducing the "one person two votes" system to the general election and to the local council election in South Korea.²⁴ The mechanism of distributing the proportional representation seats also changed accordingly.

Under the current system, the entire membership of National Assembly consists of 299 seats.²⁵ Among these, 245 seats are for the representatives elected through electoral district election by simple plurality under one representative per district rule; the other 54 seats are for the proportional representatives chosen from the party list in the order fixed and disclosed prior to the election, now through the separate vote cast to the political parties.²⁶ In order to obtain proportional representation seat, a political party should either gain five seats at National Assembly through electoral district election, or earn 3% or more of valid votes cast to political parties.²⁷ To the political parties that satisfy such minimum requirement, proportional representation seats are assigned in proportion to the ratio of votes each of such political parties has earned at the vote cast to the parties.²⁸ This mechanism intends to lower the entry barrier to the national and the local legislatures for minority or smaller political parties. Furthermore, the statute requires that any political party place women to all odd-numbered queues in preparing the list of individuals for

²³ 2000 Hun-Ma 91, July 19, 2001, 13-2 KCCR 77 (on Public Official Election Act, Article 146(2)).

²⁴ See, e.g., Public Official Election Act, Articles 189 and 190-2.

²⁵ Constitution of the Sixth Republic of Korea, Article 41(2); Public Official Election Act, Article 21(1).

²⁶ Public Official Election Act, Articles 21(1) and 25(2).

²⁷ Public Official Election Act, Article 189(1).

²⁸ Public Official Election Act, Article 189(1).

proportional representation seats,²⁹ thereby mandating one-half or more of the proportional representation seats to be filled by women.³⁰

At the level of local council or local legislature, South Korea also has the proportional representation system. At the local level, the number of seats under proportional representation system is 10/100 of the entire number of seats at respective council.³¹ Here, those political parties that have gained 5/100 or more of the valid votes cast to the parties take proportional representation seats in accordance with the ratio of valid votes respective parties earned, while at the same time no single political party may take more than 2/3 of the proportional representation seats.³² At the local council level, political parties should nominate female candidates at all odd-numbered queues in their list for proportional representation seats.³³

The following two tables indicate the number of female representatives throughout South Korea's parliamentary history both at the national and local levels, under different designs of proportional representation system.

²⁹ Public Official Election Act, Article 47(3).

³⁰ This requirement applies to the nomination of candidates for proportional representatives at the local council as well (Public Official Election Act, Article 47(3)). Should a political party be in violation of this requirement, such party may not register any of the candidates it endorses and nominates (Public Official Election Act, Article 49(8)), or the registration, if completed, is rescinded (Public Official Election Act, Article 52(1)). However, to the proportional representation system at general election to constitute National Assembly, these penalty provisions do not currently apply, which calls for a revision to this effect applicable to general election. As a relevant matter, under Public Official Election Act Article 47(4), a political party should make its best effort to nominate women for 30% or more of its candidates for electoral district seats at National Assembly and local council, in which case the party is entitled to additional subsidy for election purposes.

³¹ Public Official Election Act, Articles 22 and 190-2(1).

³² Public Official Election Act, Article 190-2(2).

³³ Public Official Election Act, Articles 47(3), 49(8) and 52(1).

Table 1. Number of Female Representatives at National Assembly in South Korea, 1948-
Present

National Assembly (Election Year)	Number of Representatives at National Assembly	Number of Female Assemblypersons (Percentage)	Number of Female Assemblypersons Elected from Districts (Percentage among Elected Representatives)	Number of Female Proportional Representatives (Percentage among Proportional Representatives)
1 st (1948)	200	1 (0.5%)	1/200 (0.5%)	-
2 nd (1950)	210	2 (0.9%)	2/210 (0.9%)	-
3 rd (1954)	203	1 (0.5%)	1/203 (0.5%)	-
4 th (1958)	233	3 (1.3%)	3/233 (1.3%)	-
5 th (1960)	233	1 (0.4%)	1/233 (0.4%)	-
6 th (1963)	175	2 (1.1%)	1/131 (0.7%)	1/44 (2.3%)
7 th (1967)	175	3 (1.7%)	1/131 (0.7%)	2/44 (4.5%)
8 th (1971)	204	5 (2.5%)	0/153 (0.0%)	5/51 (9.8%)
9 th (1973)	219	12 (5.5%)	2/146 (1.4%)	10/73 (13.7%)
10 th (1978)	231	8 (3.5%)	1/154 (0.6%)	7/77 (9.1%)
11 th (1981)	276	9 (3.3%)	1/184 (0.5%)	8/92 (8.7%)
12 th (1985)	276	8 (2.9%)	2/184 (1.1%)	6/92 (6.5%)
13 th (1988)	299	6 (2.0%)	0/224 (0.0%)	6/75 (8.0%)
14 th (1992)	299	8 (2.7%)	1/237 (0.4%)	7/62 (11.3%)
15 th (1996)	299	11 (3.7%)	3/253 (1.2%)	8/46 (17.4%)
16 th (2000)	273	16 (5.9%)	5/227 (2.2%)	11/46 (23.9%)
17 th (2004)	299	39 (13%)	10/243 (4.1%)	29/56 (51.8%)
18 th (2008)	299	41 (13.7%)	14/245 (5.7%)	27/54 (50.0%)
Total Numbers	4,403	176	49	127

Table 2. Number of Female Candidates and Elected Representatives at Local Council Elections in South Korea, 1991- June 2010

			1991		1995		1998		2002		2006	
			Total Number of Representatives	Female Representatives (Percentage)	Total Number of Reps.	Female Reps. (%)	Total Number of Reps.	Female Reps. (%)	Total Number of Reps.	Female Reps. (%)	Total Number of Reps.	Female Reps. (%)
Governors, Mayors & other Local Government Presidents	Metropolitan Units	Number of Candidates	—	—	56	2 (3.6%)	40	0 (0.0%)	55	0 (0.0%)	66	4 (6.1%)
		No. of Elected Representatives	—	—	15	0 (0.0%)	16	0 (0.0%)	16	0 (0.0%)	16	0 (0.0%)
	Si/Gu /Gun Units	Number of Candidates	—	—	943	4 (0.4%)	677	8 (1.2%)	750	8 (1.1%)	848	23 (2.7%)
		No. of Elected Representatives	—	—	230	1 (0.4%)	232	0 (0.0%)	232	2 (0.9%)	230	3 (1.3%)
Representatives at Local Council Elected from Electoral Districts	Metropolitan Units	Number of Candidates	2,885	63 (2.1%)	2,446	38 (1.6%)	1,571	37 (2.4%)	1,531	48 (3.1%)	2,068	107 (5.2%)
		No. of Elected Representatives	858	8 (0.9%)	875	13 (1.5%)	616	14 (2.3%)	609	14 (2.3%)	655	32 (4.9%)
	Si/Gu /Gun Units	Number of Candidates	10,159	123 (1.2%)	11,970	206 (1.7%)	7,754	140 (1.8%)	8,373	222 (2.7%)	7,995	391 (4.9%)
		No. of Elected Representatives	4,303	40 (0.9%)	4,541	72 (1.6%)	3,489	56 (30.0%)	3,485	77 (2.2%)	2,513	110 (4.4%)
Proportional Representatives at Local Council	Metropolitan Units	Number of Candidates	—		178	68 (38.2%)	180	54 (30.0%)	209	116 (55.5%)	211	136 (64.5%)
		No. of Elected Representatives	—		97	42 (43.3%)	74	27 (36.5%)	73	49 (67.1%)	78	57 (73.1%)
	Si/Gu /Gun Units	Number of Candidates	—		—		—		—		1,025	750 (73.2%)
		No. of Elected Representatives	—		—		—		—		375	327 (87.2%)
Total Numbers (Percentage)	Number of Candidates		13,044	186 (1.4%)	15,593	318 (2.0%)	10,222	239 (2.3%)	10,918	394 (3.6%)	12,213	1,411 (11.6%)
	No. of Elected Representatives		5,161	48 (0.9%)	5,758	128 (2.2%)	4,427	97 (2.2%)	4,415	142 (3.2%)	3,867	529 (13.7%)

(3) South Korea's Proportional Representation System in Light of Minority Representation in Legislative Body and Political Process

a. South Korea's Proportional Representation System and the Representation of Minority Perspectives in the Legislature

One of the important intended purposes of the proportional representation system is to serve as a vehicle that conveys to the legislature the interests, opinions and perspectives held by diverse individuals and groups including minorities. For any meaningful discussion for institutional improvement of proportional representation system in South Korea, a diagnosis should precede with respect to whether it contributes to enhance the presence and the representation of minorities or their interests, opinions and perspectives, at South

Korea's policymaking and lawmaking institutions and processes, while South Korean society is growingly diversified and pluralized.

Preceding studies on this aspect of South Korea's proportional representation system have been made mainly in the eyes of political science since early 1990s. They include those works analyzing the social and economic backgrounds of proportional representatives as opposed to those of electoral district representatives,³⁴ the pattern of assignment of proportional representatives to standing committees within National Assembly as opposed to that of electoral district representatives,³⁵ the political relations and dynamics between potential proportional representatives and the party leadership through the preparation process for the party list,³⁶ the legislative activities of proportional representatives as opposed to those of electoral district representatives,³⁷ and, more generally, the overall influence resulting from the implementation of the proportional representation system in South Korea.³⁸ A both comprehensive and in-depth analysis over all such important aspects pertaining to South Korea's proportional representation system from constitutional law perspective is now due.

One of the recent research efforts to the point intended to see whether the ideological positions, propensities or inclinations of proportional representatives did indeed differ from those of electoral district representatives to the extent that such

³⁴ Young-Kook Chung, *Analysis of Standing Committee Activities of the Proportional Representatives in National Assembly*, 11-1 *Korea and World Politics* 53 (Institute for Far Eastern Studies, Kyungnam University, 1995); Myungsoon Shin, "A Critical Analysis of the National District Electoral System in Korea," 28-2 *Korean Political Science Association Journal* 239 (Korean Political Science Association, 1994); and Hyung-Sup Yoon, *Politics in Korea* (Pakyong Publishing Co., 1992).

³⁵ Young-Kook Chung, *Analysis of Standing Committee Activities of the Proportional Representatives in National Assembly*, 11-1 *Korea and World Politics* 53 (Institute for Far Eastern Studies, Kyungnam University, 1995).

³⁶ Myungsoon Shin, "A Critical Analysis of the National District Electoral System in Korea," 28-2 *Korean Political Science Association Journal* 239 (Korean Political Science Association, 1994); and Hyung-Sup Yoon, *Politics in Korea* (Pakyong Publishing Co., 1992).

³⁷ Sang-Joon Ka, Byung-Kwon Son, Jong-Bin Yoon & Jun-Young Choi, "A Comparison of Characteristics and Outcome of Legislative Activities between Electoral District Representatives and Proportional Representatives in National Assembly," (Korean Legislative Studies Institute Research Paper, 2007); and Eun-Hee Song, "The Past and Present of the National Assembly and Women in Korea: On Women's Sharing of the Assembly Seats," 30-3 *Korean Political Science Association Journal* 61 (Korean Political Science Association, 1996).

³⁸ Myungsoon Shin, "A Critical Analysis of the National District Electoral System in Korea," 28-2 *Korean Political Science Association Journal* 239 (Korean Political Science Association, 1994); and Yong-Ho Kim, "Changes in General Election and Their Political Effects," in Nam-Young Lee, *Election in Korea* (Nanam, 1993).

difference was statistically meaningful.³⁹ The basic premises of this research project are as follows: first, the dispersion of ideological positions of proportional representatives spread over wider spectrum than that of electoral district representatives; and, second, the ideological positions, beliefs and value structures of proportional representatives differ from those held by electoral district representatives.⁴⁰ Pursuant to this research, through the 16th National Assembly (2000-2004), no statistically meaningful distinction existed between proportional representatives and electoral district representatives in light of the purpose of representing various perspectives including those of minorities at the legislature.

Yet, the above research indicates that, at the 17th National Assembly (2004-2008) constituted through the 2004 general election following the introduction of “one person two votes” system and the “gender quota on party list” rule for proportional representation system, a considerable disparity existed between proportional representatives and electoral district representatives, particularly in the case of assemblypersons with Democratic Party (“*Min-Joo*” Party) and *Uri* Party⁴¹ memberships.⁴² Finally, this research shows that, at the current 18th National Assembly (2008-2012), while a constitutionally meaningful difference in ideological dispersion between the proportional representatives as a whole and the electoral district representatives as a whole still exists, such difference dissipates and disappears within a political party. Rather, the research proceeds to indicate that the ideological stance of practically all proportional representatives across different political parties is more homogenized now than the past.⁴³ These together mandate certain institutional modifications and changes of South Korea’s proportional representation system for the system’s intended normative goal of having

³⁹ Sang-Joon Ka, “A Comparative Study of Ideological Differences between Proportional Representatives and District Representatives,” 14-1 Legislative Studies 109 (Korean Legislative Studies Institute, 2009). In this research, the author analyzes the legislative activities at the 17th (2004-2008) and 18th (2008-2012) National Assembly in comparison with the 16th National Assembly (2000-2004), to see the outcome of the “one person two votes” system and the party list gender quota requirement as intended, by way of in-depth written interviews with assemblypersons conducted on several distinct occasions.

⁴⁰ *Ibid.*

⁴¹ *Uri* Party was established in 2003 and was voluntarily dissolved in 2007.

⁴² Sang-Joon Ka, “A Comparative Study of Ideological Differences between Proportional Representatives and District Representatives,” 14-1 Legislative Studies 109, 117-122 (Korean Legislative Studies Institute, 2009).

⁴³ *Ibid.*, at 122-125.

minority perspectives present and represented in its legislature and political process in general.

b. Gender Quota Applicable to the Party List under South Korea's Proportional Representation System

Another distinctive aspect of South Korea's current proportional representation system is that the law requires the political parties nominate female candidates to all odd-numbered queues in their list for proportional representation seats both at national and local legislative levels.⁴⁴ This is to guarantee that 50% or more of all proportional representation seats to be occupied by female representatives.

At National Assembly, in the inaugural National Assembly through the 5th Assembly over the period of 1948 to 1963, as Table 1 indicates, only a few women took the seats at National Assembly. They were elites rather than those representing the cross-section of the female constituency, who mostly had previously been involved in the political and social movement for, for example, independence from Japanese colonial rule. The ratio of female representatives across National Assembly during this period was approximately 1% (Table 1). It is worth noting here that voting rights for women were obtained in South Korea simultaneously with those for men, without much of relevant public debates or political struggle, as the voting rights for both women and men were included in the inaugural 1948 Constitution upon establishment of the First Republic of Korea. Therefore, at least from institutional standpoint, women were able to participate in the political process on par with their male counterpart. However, in actual reality across the community life, patriarchal modes of thinking and living remained largely unchanged, resulting in hardly any participation, activities or election of women in or through public elections.⁴⁵

⁴⁴ Public Official Election Act, Article 47(3).

⁴⁵ Jin-Sun Ryu, "Participation of Women in National Assembly General Election in Korea," Doctoral Dissertation, College of Law, Chosun University (2006).

Following this initial period, in the 6th National Assembly through the 10th National Assembly over the period of 1963 to 1981, the administration proactively induced participation of women in politics as part of the effort to compensate their lack of democratic legitimacy in obtaining political power. Major changes were made to the electoral system, including the introduction of the proportional representation system operating concurrently with the single member simple plurality electorate system. During this period, there was a notable increase in the number of assemblywomen. However, such a change was brought in primarily to fortify dominance of the ruling party and of the incumbent administration over National Assembly.⁴⁶

In the 11th National Assembly through the 14th National Assembly over the period of 1981 to 1996, the law and the system for increased female participation in politics and political process for its symbolic and actual impact began to be seriously discussed in the public domains of the community. Gender issues and Gendered issues became part of official policy agenda in the public sector and women entered the positions of policymaking, thus enlarging the opportunities for women to participate in policymaking processes. Participation and presence of women in politics grew both quantitatively and qualitatively. Also, from this period on, each political party conspicuously began to make election promises relevant and applicable to women. This indicates that the political parties began to perceive votes of female voters as an independent variable or element for determining the outcome of any given election, which in itself has a significant meaning in South Korean constitutional-political history.

In the 15th National Assembly through the 17th National Assembly over the period of 1996 to 2008, the status of female representatives as legislative experts was palpably established. Simultaneously, with the rule of authoritarian government coming to an end, the perception of and the concern for minorities rose in general in South Korean society in the context of liberalization, democratization and pluralization. Against this background, the South Korean politics showed mounted interests and understanding in and of women

⁴⁶ *Ibid.*

and the issues pertaining to women as well as other minorities.⁴⁷ This enabled the issue of participation in politics and policymaking on the part of women and other minorities to be centrally situated as one of the main objects of public debate and discussion.

The female quota system applicable to the party list for proportional representation seats was introduced and implemented through the revision of the Public Official Election Act and the Political Party Act. At its initial step, the law required the political party to nominate 30% or more of female candidates in preparing its list for proportional representation seats. The first general election following the introduction of such gender quota system was the 2000 general election that constituted the 16th National Assembly (2000-2004). Since the 2000 general election, the number of female representatives at National Assembly has sharply increased. With the changes in election law encouraging the parties to nominate female candidates for 30% or more of the seats at electoral district election and mandating the parties to nominate female candidates for 50% of the proportional representation seats,⁴⁸ this trend is ongoing. Through the 2004 general election that constituted the 17th National Assembly (2004-2008) and the most recently held 2008 general election that constituted the currently sitting 18th National Assembly (2008-2012), the number of female representatives at National Assembly has constantly grown. In terms of legislative and other parliamentary activities, the National Assemblywomen in recent years have proactively been exercising their expertise in various standing committees and beyond.

At local council or local legislatures, the ratio of female representatives is still extremely low,⁴⁹ although the conventional competition among men has been relatively less and mitigated compared with that at the level of national politics, in the process of constituting and operating local council.⁵⁰ The ratio of female representatives at local

⁴⁷ Also, during this period, policy institutions and research centers dedicated for specifically addressing and discussing gender and women issues such as the Korean Institute for Women and Politics, which was established in 1989, were formed and began to function, thereby proactively engaging the constituents across the polity in such issues.

⁴⁸ Public Official Election Act, Articles 47(3) and 47(4).

⁴⁹ See Table 2.

⁵⁰ In South Korea, local autonomy system was restored in as late as 1991, after all local councils under the previous local autonomy system were dissolved immediately following the military coup d'état in May 1961; and the governors, mayors and other local government heads began to be elected through residents' direct

council almost doubled from the initial local council election under the current Constitution in 1991 by the time of the 1995 local election, as each of the political parties, facing the direct election for the chief executive of the local government, adopted the strategy of nominating relatively many of female candidates at local council election in order to appeal to the female population.⁵¹ Experience at local elections cumulatively shows that such proportional representation system as institutionally mandating at least 50% of the seats to women by designating their positioning on party list, as well as the electoral district election that elects two or more representatives rather than one from each electoral district has been more productive in increasing the female presence at the local council.⁵² Also, under the same legal system, more women were elected to local council in larger cities than in rural areas, indicating perception pertaining to women's presence and participation in political process and public sphere still varies significantly due to the socio-economic and cultural backgrounds in the 1990s and beyond.⁵³

Facing the 2000 general election, the Political Party Act was revised to apply a 30% quota to the party list for proportional representation seats at the local council. Now, through revisions in the Public Official Election Act and the Political Party Act in 2002 that aimed for the local election then upcoming in the same year, political parties are encouraged to nominate female candidates to 30% or more of the seats at the local council at electoral district election for the metropolitan local government units, and are required to nominate female candidates to 50% or more of the proportional representation seats at all local council under the local autonomy system. However, the result of the 2006 local election indicates that, while the number of female candidates

vote in 1995. A detailed analysis of the current situation of female representation at the local council is found, for example, in Chae-Bok Park, "Solution for Political Parties to Increase Female Representation at Local Elections," 18 *World Regional Studies Journal* 37 (Korean World Regional Studies Institute, 2002).

⁵¹ At the 1995 election, approximately 10% of the nominated candidates in the party list for proportional representation seats for local council were women across all political parties that participated in the election.

⁵² Ehwa Yoon, "Analysis of the Gender Quota for Proportional Representation System in Korea," 11-2 *Korean Autonomous Local Government Society Journal* 69, 77 (Korean Autonomous Local Government Society, August 2009).

⁵³ Han-Soo Choi, "An Analysis of the Outcome of 1998 Local Elections" 47 *Local Autonomy* 25 (Korean Autonomous Local Government Society, 1998).

almost doubled from the 2002 local election, the number of elected female representatives did not increase much from the 2002 local election (Table 2).⁵⁴

A closer look at the outcome of the recent local elections indicates that, while the same law pertaining to the proportional representation system is applicable to both metropolitan local government units and smaller Si/Gun/Gu local government units, more female representatives enter the Si/Gun/Gu local council. This is at least partly due to the mandate of positioning a female candidate at each odd-numbered queue on the party list for proportional representation seats, as the number of seats at local council at Si/Gun/Gu local government units is smaller than the number of seats at local council at metropolitan local government units.⁵⁵ The number of female representatives across the local council in South Korea has thus gradually increased. However, the ratio of female representatives at local council reached the 10% landmark for the first time at the most recent local election in 2006. Aside from proportional representatives, the ratio of female representatives elected to the local council through electoral district election is still less than 5%. This reality calls for a further effort to enhance the representation and participation of female population in the political process and the overall politics in South Korea at the level of institutional design.

c. Sub-Conclusion

There have been 135 women altogether at South Korea's National Assembly, from the inaugural 1948 National Assembly to the 17th National Assembly constituted in 2004. A

⁵⁴ Many of new systems and incentives were introduced in the 2006 local elections such as remuneration for local council members, medium-sized local electoral district, party nomination of the local election candidates, proportional representation system at non-metropolitan Si/Gun/Gu local government units, which makes it difficult to single out and analyze the effect of gender quota for the party list for proportional representation as an independent variable since 2006. However, there is no doubt that the intended purpose of the gender quota for the party list for proportional representation at the local council level is to institutionalize the long-standing demand for increased presence and representation of women in the political process and to secure support for the political parties involved. Ah Ran Hwang, "The Impact of Political Parties on Women's Representation in Local Councils: An Analysis of the 2006 Local Election in Korea," 20-3 Local Administration Journal 51 (Korea Research Institute for Local Administration, 2006).

⁵⁵ A more detailed analysis to this effect is found in Jae-Hun Chung, "Analysis of the Impact of Local Election Law: A Case Study of the 2006 Local Election," Master of Law Dissertation, Mokwon University (2007).

research over 131 nations in the world indicates that, as of 2008, the ratio on average of female representatives at the national legislature in respective nations is approximately 11%.⁵⁶ In South Korea, the ratio of female representatives at the 17th National Assembly (2004-2008) and the 18th National Assembly (2008-2012) is approximately 13%. However, the ratio through the 16th National Assembly in the prior constitutional history is, on average, 2.8%, with most of the female representatives during this period were proportional representatives and only 35 women who were elected to National Assembly through direct vote of the voters at electoral district election. At the current 18th National Assembly (2008-2012), the ratio of female representatives among the electoral district representatives is just over 5% (Table 1).

Under such statistics, it is hardly rebuttable that the proportional representation system in South Korea has, as a system, contributed to enhance the presence and the representation of women as minority at the nation's legislative body. The next and more constitutionally challenging task is how to improve the system, both at the institutional and real-life levels, so that the system itself and the system-induced increase in presence and representation of women at the legislature may produce sustainable changes in perception and motive of the entire constituents towards minority perspective representation and participation in political process including that of women. This should lead to further increased participation and representation in the policymaking and lawmaking institutions and processes of the constituents including minorities based on the inclusive expression and exchange of interests, opinions and perspectives. A comprehensive effort to analyze the relevant laws, institutions and systems and their implementation should continue.

Under the relevant provisions of South Korea's Constitution and statutes, a functional proportional representation system may be an effective addition to the current "one person two votes" system that combines the electoral district election and the proportional representation of nationwide district from political parties' lists, both

⁵⁶ Ehwa Yoon, "Analysis of the Gender Quota for Proportional Representation System in Korea," 11-2 Korean Autonomous Local Government Society Journal 69, 90 (Korean Autonomous Local Government Society, August 2009).

symbolically and practically.⁵⁷ In this vein, an increase in the number of proportional representation seats at the legislature may serve to more effectively achieve the purpose, as intended in various occasions both within and outside National Assembly and local legislatures.⁵⁸

The current proportional representation system in South Korea counts upon political party's nomination of potential representatives for obtaining the goal of the enlarged presence and representation of various perspectives across South Korean society, including those of minorities. Certain groups such as NGOs engaged in environmental protection or consumer rights protection and the perspectives they represent did actually march into National Assembly, thereby entering the forum for public discussion and debates and are actively participating as new voices in policymaking and lawmaking processes, due to the proportional representation system. However, the current design of proportional representation system as it exists in South Korea heightens an opportunity for the ruling party to become the party with the most number of seats at National Assembly and at local council, due to the fact that the proportional representatives may only come from the party list. This, as combined with the relevant law and system pertaining to the formation and activities of the political party-based negotiation groups within the legislature,⁵⁹ might hinder the minority members from assuming the role of expressing and representing the interests, opinions and perspectives in the appropriate political

⁵⁷ Nak-In Sung, *Constitutional Law* (10th edition), (Bobmun Sa Publishing Co., 2010), at 178-179. Nak-In Sung observes that it is rare that a state with approximately the same population and of approximately the same size as South Korea has a national constituency system for proportional representation. *Ibid.*, at 177.

⁵⁸ This effort has been made more actively since 2003, facing the then-upcoming 2004 general election to constitute the 17th National Assembly (2004-2008). The advisory committee within National Assembly, the National Committee on Political Reform, officially advised National Assembly to increase the number of proportional representation seats to 100 and reduce the number of electoral district representatives to 199, on December 8, 2003. An effort to revise the relevant statutes including the Public Official Election Act to this effect followed both at the 16th National Assembly (2000-2004) and at the 17th National Assembly (2004-2008), though such bills were discarded due to the expiration of terms. Such legislative efforts can be traced at South Korean National Assembly's URL at www.assembly.go.kr.

⁵⁹ On this point, it should be noted that legislative efforts have been made to reduce the minimum number of seats at National Assembly required to form a negotiation group. The current law sets the requirement at 20 or more members (National Assembly Act, Article 33). For an example of such effort, albeit aborted, see Bill No. 174043 introduced to the 17th National Assembly in March of 2006 that intended to reduce the number to 5.

processes. This also might serve as an institutional barrier against peaceful transition of regimes between the ruling party and the opposition party.

As such, for South Korea's current proportional representation system exclusively designates the list prepared by each of the political parties as the gate to the legislature, a self-directed and voluntary effort on the part of respective political parties to search for, listen to, and engage themselves in the voices, perspectives and demands from across the polity is the key to the outcome intended by South Korea's proportional representation system for more and better representation of minorities including women. South Korea's current proportional representation system may serve to obtain the intended purpose, only on the premise of democratization of and within political parties.

Despite relatively short history of political party system under the Constitution and frequent changes, splits and mergers of and among fractions of political interest groups within and across various political parties, the phenomenon of "political party state" is readily observed in South Korea, as witnessed at recent electoral district elections where voters growingly tend to vote for candidates endorsed by the political party they support than for those not nominated by political parties. Further, under the current proportional representation system, the voters cast a separate vote outright for the political party they support, and the democratization of political parties is even more crucial therefor. The political parties should initiate an effort to establish and present standards and rules for party nomination of individuals for proportional representation seats, and should implement such standards and rules in a transparent fashion.

Also, under the current election system, a concurrent nomination for electoral district election and proportional representation may be a plausible and even desirable alternative for the purpose of securing qualified candidates who are also expected to exercise the responsibilities as representatives sincerely on the party platform and policies. However, this alternative should be given a further thought as it might exacerbate bureaucratization of party leadership and caucus⁶⁰ within the political parties in South Korea. In addition, laws applicable to discarding or changing political party membership by

⁶⁰ Professor Nak-In Sung has raised the same concern in this regard. See Nak-In Sung, *Constitutional Law* (10th edition), (Bobmun Sa Publishing Co., 2010), at 178-179.

proportional representatives subsequent to obtaining the position as such should be prepared and promulgated to respond to potentially significant outcome thereof in light of the purpose of the system.

South Korea has a unicameral legislature both at the national and the local government levels, while power and authority in overall legislative and parliamentary affairs is highly concentrated on the standing committees within the legislature. This seriously undermines the deliberative function of the legislature under South Korean Constitution's indirect, representative and deliberative democracy. Efforts to better represent interests, opinions and perspectives of minorities in the representative body and the overall political process are crucial for the legitimacy of South Korea's representative and deliberative democracy itself.

Certain institutional efforts in this direction are ongoing, and such efforts include lowering the number of representatives consenting to the introduction to a bill required for the submission of a bill to National Assembly, mandating public hearing during the standing committee process as part of legislative process for the purpose of inviting various perspectives including minority's on the subject matter at low cost, supplementing rules and procedures relevant to legislative petition. At the local council level, minority groups may now petition the chief executive official of the local government unit by securing a certain number of signatures of fellow residents, mandating the chief executive official to submit the petition as a bill to the local council in its regular ordinance-making process.⁶¹ Ultimately, throughout public elections, policymaking and lawmaking processes and particularly at the earliest point thereof, inclusive communication that may solicit and sustain participation of constituents including minorities should occur proactively. Guaranty of the freedom of expression and the active and responsible media may also contribute in this direction.

Legislatures are not the only governmental bodies, in which arguments for group representation can and should be applied. Appointed committees and commissions are also among the other deliberative and decision-making bodies that should be candidates for inclusive representation, even when constituents do not directly vote for their

⁶¹ Local Autonomy Act, Article 15.

composition. In recent years, more attention has been devoted to the representation of diverse groups in bodies and procedures such as these in South Korea. A more democratic representative government would have various layers and sites of elected, appointed and volunteer bodies that discuss options for policies and laws, make policy decisions and laws, or review the effectiveness of policies and laws.

In such bodies it is possible and desirable to give specific representation to particular social group perspectives which might not otherwise be present. Furthermore, the processes of authorization and accountability that constitute the representative function should not be confined to official government bodies. Civil society is also an important forum for the expression and consolidation of social perspectives. Organization and activation in the public spheres of civil society are among the best methods of maintaining connections between representatives and constituents, and of insisting that representatives be accountable. Autonomous and plural activities of civic associations offer individuals and social groups maximum opportunity in their own diversity to be represented in public life, thereby deepening democracy.

IV. Concluding Remarks

South Korea is currently facing a new social change of ethnic and cultural diversification due to a rapid increase in the immigrating population, which was not foreseen by its Constitution. Yet, such a social change is expected to be further expedited due to ongoing globalization. From a constitutional law standpoint, such a change accompanies most fundamental issues for the law of constitution of the fundamental rights protection of minorities in a representative democracy and of the representation and participation of minorities in the political process. Records relevant to the establishment and the previous revisions of the South Korean Constitution reveal that such a situation was not clearly foreseen, which is only confirmed by the paucity of the texts in the Constitution pertaining to these issues.

Thus, an approach to such issues in searching for the resolution thereof based on the texts and the language of the Constitution is neither properly founded nor desirable. Currently, South Korea is at the stage of trying to reach a consensus for its next revision of the twenty-two-year-old Constitution, as constitutional revisions have been suggested in many areas from diverse perspectives. The embracement of the reality of ethnic diversification and the ensuing cultural diversification is one of many important agendas and areas in this task.⁶²

Suggestions for future constitutional revisions set aside, under the current Constitution of the Republic of Korea, Article 9 seemingly bears a close relevance to the issue of cultural diversification.⁶³ However, the Constitutional Court of the Republic of Korea is in the position that Article 9 of the Constitution is interpreted to stipulate that the State has an obligation to preserve the cultural heritage and tradition, without obligating the State to reject, oppose or counter cultural diversity.⁶⁴ Under firmly established constitutional doctrines both based on the text and through the interpretation by the Constitutional Court, the basic principles of the South Korean Constitution are clearly grounded upon the understanding of individual human beings as liberal and autonomous, and upon the value of democratic tolerance in the political community; this in turn mandates as a necessary condition therefor cultural openness, diversity and tolerance (2003 Hun-Ga 1, May 27, 2004, 16-1 KCCR 670, 679).

As such, facing the social phenomenon of ethnic and cultural diversity, the Constitution should be implemented in a way that is most suitable and productive for realization of such principles in all areas of legislation, administration and adjudication.

⁶² As of September 2010, the following suggestions have been made for constitutional revision in this regard: Revising Article 9 to stipulate that the State “shall pursue cultural diversity” (National Assembly Advisory Committee for Constitutional Revision, Draft for Constitutional Revision, 2009); revising Article 9 to provide that the State “shall protect and cultivate such culture as necessary for the life and spiritual domain of the individuals” (Korean Constitutional Law Association, Final Report of the Constitution Revision Committee, 2006); and adding the expression of “ethnic or racial origin” as an example of characteristics as well as the existing “sex, religion or social status” that should not be adopted as a standard for discriminatory purposes in Article 11, which is the primary ground for the right to equality (Korea Dialogue Academy, Draft for Constitutional Revision, 2009).

⁶³ Article 9 of the Constitution of the Sixth Republic of Korea provides in full as follows: “The State shall make an effort to sustain and develop the cultural heritage and to enhance national culture.”

⁶⁴ Refer to, e.g., 2006 Hun-Ba 109, May 28, 2009, 21-1(II) KCCR 545, 566-567; 2002 Hun-Ga 2, December 18, 2003, 15-2(II) KCCR 367, 382.

Further, the “human dignity and value” of Article 10 of the Constitution as the fundamental value of South Korea’s Constitution serves as a convincing ground for rejecting to impose a single Korean cultural identity upon foreign nationals or to disregard diverse cultural identities in South Korea. More specifically in the area of right to freedom, the Constitutional Court of the Republic of Korea has consistently held that the South Korean Constitution guarantees the freedom of conscience and thought, the freedom of religion and the freedom of expression, as essential elements for the implementation of the ideal of cultural and civilized state, and that diversity in ideas, values and opinions is an indispensable condition for such state (98 Hun-Ga 16 (*as consolidated*), April 27, 2000, 12-1 KCCR 427, 445, 446). From the perspective of right to equality, the government shall not discriminate unreasonably or arbitrarily against non-Korean nationals, and a classification between Korean nationals and non-Korean nationals, should the object of different treatment based upon such classification be a matter significantly relevant to human rights, is to be subjected to a strict scrutiny.

Further, the Constitutional Court of the Republic of Korea is in the position that the Constitution’s stipulation of “all citizens” as the subject or the bearer of the fundamental rights in many provisions guaranteeing fundamental rights is merely to underscore that such rights are preliminarily guaranteed for the South Korean nationals and should not be interpreted to deny in general or in entirety foreign nationals as the subject of the fundamental rights.⁶⁵ This position becomes clearer through the holding of the Constitutional Court that, in such areas of social welfare pertaining to employment, healthcare and education, to the extent the right and entitlement to a “life worthy of human being” (Article 34, Section (1), of the Constitution) is presupposed as connoted in “human dignity and value” (Article 10 of the Constitution), such social rights for minimum conditions for life as a human being may be guaranteed to non-Korean nationals (2004 Hun-Ma 670, August 30, 2007, 19-2 KCCR 297, 305; 2001 Hun-Ba 50, November 28, 2002, 14-2 KCCR 668, 678; 98 Hun-Ga 16 (*as consolidated*), April 27, 2000, 12-1 KCCR 427, 445, 446). Further legislative efforts are due, therefore, facing the social change of ethnic and

⁶⁵ Constitutional Court of the Republic of Korea, “Subject of the Fundamental Right under the Constitution of the Republic of Korea,” in CONSTITUTIONAL ADJUDICATION Vol. 20 (1986), at p. 86.

cultural diversification, for the implementation of the Constitution in light of its fundamental values and spirit most conspicuously embodied in Article 10 of the Constitution, particularly to further encourage participation and representation of the underrepresented minorities including increasing ethnic and cultural minorities, in overall political processes.

South Korea has a substantial experience of bringing a tangible and sustainable change in its constitutional political reality by way of legislative revisions and institutional restructuring, for the representation of women, who as a group have been political, social and cultural minorities in South Korea, through proportional representation system. While the current task to be accomplished in this regard is to find a way to connect and funnel the increased representation of women in the national and local legislatures and the overall political process to the legislation and policymaking for actual and substantive gender equality, such experience can productively apply to the situation of growing ethnic and cultural diversification where South Korea has to find a way to encourage and increase inclusion, participation and representation in political processes of other political, social and cultural minorities. Further diagnosis and deliberation at the level of constitutional doctrine and practice will provide consistency and structure for the legislative and policymaking efforts to be followed.

<Key Words> election system, public election, proportional representation system, ethnic diversity, minority

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