

Partnership for Sustainability: NGO and Community Participation in Lawmaking in South Korea*

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Abstract

This paper analyzes citizen participation in lawmaking in South Korea, particularly during the period of early 1990s through present. In a broader context, this is part of an effort to analyze the democratization of the political process from the perspectives of community decisionmaking in terms of democratic legitimacy. This paper focuses on the participatory dimension of sustainability, from constitutional law perspectives in a larger context. Particularly, this paper analyzes the institutional and procedural aspect of participation of NGOs and citizens in some of the exemplary instances of lawmaking in South Korea's recent experience.

NGO activities in South Korea were initiated as part of democratization movement, and became conspicuously expanded in the nation's democratization context in the 1990s. Particularly since early 1990s, many NGOs and civil community in general in South Korea have been actively serving such role of participation and collaboration in policymaking and lawmaking, primarily by means of public interest litigation and proactive legislative initiatives. Such partnership for sustainability is due to diverse grounds, both domestic and international. Some of the areas where such voluntary NGO initiatives and lawmaking movement in South Korea have been particularly active include consumer protection, welfare, human rights protection for minorities including those with disabilities, gender equality, environmental protection and preservation, labor, and monitoring of the media, conglomerates, and legislative and judicial activities.

South Korea's NGOs have served as the triggering mechanism for institutional changes through changes in law and public policies from grassroots for maturing and implementing democracy, based upon their expertise in pertinent subject matters as well as their democratic legitimacy and representativeness. Such partnership for sustainability of its democracy in the form of proactive citizen participation in policymaking and lawmaking has further constitutional significance and ramifications in South Korea as the legislative process within its unicameral national legislature vests highly concentrated power and authority of lawmaking in intramural standing committees as opposed to the plenary session, thereby potentially subjecting the national legislative process to challenges of lack of deliberation under the ideal of

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representative democracy and criticisms of actively lobbying interest groups. This in turn demands even more urgently in South Korea a healthy partnership between governmental sector and civil sector in policymaking and lawmaking. A balance between institutionalization of such participation for the sake of stability and its spontaneity and voluntariness for the sake of further sustainability of democracy is the remaining challenge.

I. Introduction: Purpose and Purview of the Research

This paper analyzes citizen participation in lawmaking in South Korea, particularly during the period of early 1990s through present. In a broader context, this is part of an effort to analyze the democratization of the political process of the nation during the same period of time from the perspectives of democratic legitimacy of lawmaking. As such, it is part of a longer term effort to diagnose and develop legislative process as community decision-making process that can be better justified and more productive for the ultimate goal of sustainability of South Korea's democracy.

Until recent past, growth and development particularly in economic terms were intensely underscored as persuasive and sometimes even compelling goals in making and justifying public policies and laws. In more recent years, however, sustainability has been recognized as an essential issue in deliberating and reviewing over policies and laws on various agendas pertaining to, for examples, welfare, education and environment, and a particular commitment is incrementally made to the procedures of policymaking and lawmaking for increased participation of more of relevant parties and actors other than the government, conspicuously including NGOs and citizens in general, for democratic legitimacy. This paper focuses on the participatory dimension of sustainability in this context, from constitutional law perspectives. Particularly, this paper analyzes the idiosyncratic institutional and procedural aspect of citizen participation in lawmaking in South Korea in its recent experiences.

Current reform in South Korea of the political process and particularly of the decisionmaking process in public domain under the new paradigms of governance for government-civic sector partnership, which has been accelerated through globalization, aims to introduce efficiency and flexibility of the civic sector to lawmaking and government policymaking. Particularly since early 1990s, many NGOs and individual citizens in South

Korea have been actively participating and collaborating in various areas for policymaking and lawmaking in this context, particularly on agendas pertaining to social welfare, consumer protection, education and environmental protection, based upon their representativeness and expertise in pertinent fields.

Such partnership for sustainability, although still in an early phase, is due to diverse grounds, and such grounds are both domestic and international. They include democratization of domestic politics and development of information technology which together enable further and wider access to and sharing of information and almost instantaneous multilateral communication at a lower cost, South Korean government's own initiative to activate partnership with non-governmental actors for heightened legitimacy and sustainability, and positive pressures from outside world towards South Korean government to take more seriously the issues of legitimacy and sustainability under globally acknowledged standards.

The partnership for sustainability of democracy in the dimension of active citizen participation in policymaking and lawmaking has further constitutional significance and ramifications in South Korea, as the legislative process within its unicameral national legislature vests highly concentrated power and authority of lawmaking in the intramural standing committees as opposed to the plenary session, thereby potentially subjecting the national legislative process to lack of deliberation under the ideal of representative democracy and also potentially to illegitimate lobbying. This in turn demands even more urgently in South Korea a healthy partnership between governmental sector and civil sector in policymaking and lawmaking for democratic legitimacy.

Such partnership in South Korea is progressing beyond the very initial phase of conflict and confrontation characterized by challenges to the outcome of legislation and litigation from the perspectives of outside observers by various NGOs or general citizenry through political organizing and public opinion-forming which might lead to the necessary evil of such social cost as inefficiency and damage to democratic procedure. Past such initial phase, South Korea's partnership between the governmental sector and the citizen sector in policymaking and lawmaking is moving towards a more stable stage of consensus-building at which the

government and other actors from non-governmental sector participate as partners in decisionmaking process encompassing both fact-finding and solution-seeking. On this foundation, this paper analyzes some of the specific and representative examples of citizen participation in lawmaking in South Korea to find ways to further such partnership through participation of NGOs and civil community in lawmaking in South Korea for a more sustainable democracy.

The institutional devices for such citizen participation vary, and include the systems affecting partnership and participation on the part of NGOs and civil community in general. They include legislative petition, public hearing for promulgation of statutes and local ordinances, legislative lobbying, monitoring over legislative and other government activities, disclosure and sharing of information retained by the government, voter initiative, referendum, and pertinent financial and tax subsidy programs for NGOs. The examples analyzed in this paper indicate that NGOs in South Korea have been effectively adopting a variety of institutional means of participation in lawmaking, pursuant to the specific agendas and the given circumstances.

II. Contexts and Directives Idiosyncratic to NGO and Community Initiatives and Participation in Lawmaking in South Korea

1. Historical Context of NGO and Community Initiatives and Participation in Lawmaking in South Korea from Sustainable Democracy Perspectives

The NGO and community initiatives and participation in lawmaking in South Korea have served a significant role in South Korea's democratization process, and, at the same time, have been both demanded and enabled as the nation's democracy is maturing. In current-day South Korea, citizen groups have actively been organized and serving a significant role both quantitatively and qualitatively in changing various laws and institutions of the nation,¹⁾ while, in turn, legislation and adjudication has increasingly borne direct influence on everyday lives of the citizens. Observing

procedural justice as well as securing substantive justification becomes increasingly important in achieving intended purposes in any lawmaking in South Korea,²⁾ and constitutional and statutory issues do become material elements that visibly and palpably affect public debates and the ensuing policies and laws. Citizen participation for the sake of legitimacy and sustainability is increasingly demanded in implementing all functions of the government across legislative, executive and judicial branches.³⁾

As the nation has struggled to achieve institutionalization of democratic values and ideals particularly since mid-1980s, the quintessential challenge to South Korea from constitutional democracy standpoint now is how the nation will move onto the phase of sustainable democracy where democracy matures to request procedural as well as substantive materialization of democratic values such as human dignity, liberty, equality and fairness in community decisionmaking and the implementation thereof. Particularly in the history and context of NGO activities in South Korea, largely through mid-1980s under the past authoritarian regime, NGOs in South Korea as the spokespersons for demands of and from the civic sector adopted means both in and outside then-current laws and institutions in order to achieve intended goals. However, as democracy stabilizes and matures, NGOs now

1) Dong-Yoon Lee, *Gukhoeui Ipbeopgwajeonggwa Simindancheui Yeokhal: Chamyeoyeondaeni Hwaldonggeul Jungsimeuro* [Legislative Process and the Role of Civil Groups: A Case Study on the People's Solidarity for Participatory Democracy], 6 HANGUKJEONGDANGHAKHOEBO [KOR. PARTY STUD. REV.] 165 (2007) (Korean); Kun-Yong Park, *Siminundonggwa Ipbeopgwajeong—Ipbeobiraneun Gyeolsireul Maetgi Wihae Eotteon Ireul Beoryeonna?*— [Civic Movement and Legislative Process], 4 IPBEPAGYEONGU [J. LEGIS. STUD.] 123 (2007) (Korean); Il-Pyo Hong, *Bupaebangjibeop Jejeongundongui Saryereul Tonghae Salpyeobon Hanguk Siminipbeobundongui Donghak* [The Dynamics of Civil Legislation Movements in South Korea: Case Study of Anti-Corruption Act Legislation Movement], 31 BEOPGWA SAHOE [KOR. J.L. & SOC'Y] 135 (2006) (Korean).

2) Some of the exemplary cases in this regard are the impeachment of the president and the attempted relocation of the capital city in 2004 and the large-scale landfill project of Saemangeum along the west coast of South Korea in its first part in 1991-2010.

3) The recently introduced criminal jury system (GUNGMINUI HYEONGSAJAEPAN CHAMYEOE GWANHAN BEOMNYUL [ACT ON CITIZEN PARTICIPATION IN CRIMINAL TRIALS], Act No. 8495, June 1, 2007, amended by Act No. 10258, Apr. 15, 2010) and voter initiative system for enactment of local ordinance (JIBANGJACHIBEOP [LOCAL AUTONOMY ACT], Act No. 10739, May 30, 2011, art. 15) are some of the examples as such.

growingly pursue their goals by lawful means and through established procedures and institutions. As such, discussions and analyses of the given issues increasingly adopt the language of the constitution and statutory laws as primary means and strategies in NGOs' efforts to persuade the public as well as the government in pursuing intended changes.⁴⁾

Social movements initiated by NGOs and civil community at large in South Korea under the past authoritarian regime were crucial parts of democratization efforts against the implementation of law that lacked democratic legitimacy. Through nationwide movements for democratization epitomized by June of 1987, democratization in South Korea took a big step forward, which set a stable foundation for rule of law that has gradually replaced resistance to law and the implementation thereof.⁵⁾ Simultaneously, the perception of procedural democracy in the civil sector has further matured, and the activities of NGOs have largely reset the direction towards the movement within and through the law and the institutions away from the movement outside the law and the institutions.⁶⁾

As such, NGO activities in South Korea were initiated as part of democratization movement under and against the authoritarian regime, and became conspicuously expanded during the democratization process in early 1990s. Through the first decades in the twenty-first century, many NGOs have been organized to actively pursue diverse goals in various areas. Some of the areas where such voluntary NGO movements in South Korea have been particularly active include consumer protection, welfare, human rights protection for minorities including those with disabilities, gender equality, environmental protection and preservation, labor, and monitoring over the media, conglomerates, and legislative and judicial

4) Kye-Soo Lee, *Chamyeominjujuui Isanggwa Hyeonsil—Heonbeop Ironjeok Jindan— [Ideals and Realities of Participatory Democracy: Diagnosis from Constitutional Law Theories]*, 35 GONGBEOBYEONGU [PUB. L.] 185 (2006) (Korean); Hyung-Hoon Kim, *Jibanguihoeui Ipbeopgwajeonggwa NGO [Legislative Process at Local Legislature and NGOs]*, 34 Woosong College Nonmunjip [Woosong C.J.] 315 (2005) (Korean); Geon-Yong Park, *Ipbeopgwajeongeseoui Simindancheui Chamnyeobangan [Means of Participation of Citizen Groups in Legislative Process]*, 28 Uijeongjaryo [Legis. Stud.] 109 (2001) (Korean).

5) Un Jong Pak, *NGOWA BEOBUI JIBAE [NGOs AND THE RULE OF LAW]* 4-5, 17-39 (2006) (Korean).

6) *Id.* at 3-4, 177-189.

activities.⁷⁾ While their activities largely began as the movements that sought frame-changes under the past authoritarian regime, they have gradually been underscoring monitoring of government authorities, civil rights protection, and specific statutory, policy and institutional changes within and under the nation's constitutional and legal system that itself has been democratized in recent years.

Likewise, the core characteristic of South Korea's NGO activities including their lawmaking activities lies in the civil activities by and through law and lawmaking. In the historical context of democratization across public and private sectors in the nation, South Korea's NGOs have served as the triggering mechanisms for institutional changes through changes in laws and public policies from grassroots for maturing and implementing democracy, based upon their expertise in pertinent subject matters as well as their democratically justifiable stance.⁸⁾ Hence, the most conspicuous means of activities on the part of South Korea's NGOs since early 1990s has been lawmaking movement or social movement by and through lawmaking.

To be more specific, the most frequently adopted methods and resources for South Korea's NGOs in pursuing intended institutional changes while ultimately seeking sustenance of democratization since the 1990s may be identified and capitulated as public interest and cause lawyering encompassing constitutional complaints to the Constitutional Court of the Republic of Korea, criminal complaints for initiation of criminal procedure and civil litigations seeking damages on one hand, and, on the other hand, more direct lawmaking movements through, for example, legislative petition to the legislatures both at national and local levels. Means of wider and a more general applicability such as public debates on various mass-media and educational programs are almost always accompanied. The political and social influence of the NGOs in South Korea on public debates over various issues of public concern has exponentially increased over a relatively short period of time along the nation's democratization process. NGOs' capability of utilizing the lawful and legal methods and resources effectively and strategically has

7) *Id.* at 189-297.

8) *Id.* at 94-105.

developed hands-in-hands with the NGOs' increased influence in making and changing public policies and laws. Also, when facing difficulty in increasing publicity of particular issues through media or in encouraging more people to participate in social movements on certain agendas, NGOs have been able to trigger attention from the media and wider citizen participation through public interest and cause lawyering and through legislative activities.

Such NGO activities through and within the law and the legal system have been possible, as rule of law in South Korea is now established and the nation's democracy is maturing. The legislative branch now functions to enact the statute both in form and substance⁹⁾ and to check upon the executive branch; the executive branch is bound by the law enacted by the legislature; and the judicial branch exercises the judicial authority independently from the executive branch.¹⁰⁾ Furthermore, the Constitutional Court,

9) In the past, under the authoritarian regime, statistics indicate that the executive branch held de facto supremacy over the legislative branch in legislation. National Assembly, South Korea's national legislature, has maintained the largely same legislative process since 1948 primarily under the National Assembly Act (GUKHOEBEOP [NATIONAL ASSEMBLY ACT], Act No. 10652, May 19, 2011) including one of unique features of allowing both the executive branch and the members of National Assembly to submit a bill for enactment of a statute. Prior to the 13th National Assembly (1988-1992) constituted in 1988, the executive branch submitted a greater number of bills to National Assembly than that of bills submitted by National Assemblypersons. Furthermore, those bills submitted by the executive branch were enacted into statutes at a by far higher rate with less modification from the original bill during the process at National Assembly's Standing Committees and Plenary Session, than those bills submitted by Assemblypersons. At the 13th National Assembly (1988-1992), the number of bills submitted by Assemblypersons surpassed that submitted by the executive branch. This trend remains through present, and, at the current 18th National Assembly (2008-2012), as of April 2011, the number of bills submitted by Assemblypersons (approximately 9600) is approximately seven times more than that submitted by the executive branch (approximately 1400). Although government bills are still enacted into statutes at a higher rate than Assembly bills, government bills are modified in the Standing Committee review phase at an incrementally higher rate over the period of recent thirty years.

10) For detailed analysis of the normalization of political process and government functions under the separation of powers structure of the Constitution, see, e.g., Kuk-Woon Lee, Jayuminjuuui Jeongsanghwamunje (II)—Chamyeojaui Gwanjeom— [The Normalization Issue of Liberal Democracy in Korea (II): A Participant's Viewpoint], 34 BEOPGWA SAHOE [KOR. J.L. & Soc'y] 23 (2008) (Korean); Jun-Han Lee, Roh Moo Hyun Daetongnyeong Sigiui Daetongnyeonggwa Gukhoe Gwangye [President and National Assembly under Roh's Presidency], 17 UIJEONGYEONGU [KOR. J. LEGIS. STUD.] 93 (2004) (Korean).

which was established in 1988 under the current Constitution (particularly under Articles 111-113), by way of its active engagement, has contributed to the implementation of the constitutional guarantees of fundamental rights and separation of powers in the nation.¹¹⁾ Particularly, the Constitutional Court adjudicates constitutionality of the exercise of the government authority or the failure to exercise thereof thereby allegedly infringing the fundamental right upon private citizens' filing of constitutional complaint with the Constitutional Court, which has greatly increased public trust in the implementation of the constitutional guarantees of fundamental rights and the constitutional democracy under the current Constitution. Furthermore, the Human Rights Commission of the Republic of Korea, which was established in 2001, by way of investigating facts relevant to alleged human rights violation primarily in the areas of fundamental rights to freedom and social rights and then issuing recommendations either on its own motion or upon request of individuals and citizen groups, has greatly contributed to expand the forum for public debates on human rights issues upon initiatives of the citizen sector in South Korea.¹²⁾

Furthermore, increase in the number of lawyers and particularly of the legal experts willing to participate in public interest and civil right activities and their timely engagement in the NGO lawmaking movement have greatly activated the citizen lawmaking movement in South Korea.¹³⁾ More lawyers are participating in citizen activities and particularly civil rights movement, and their proactive issue-spotting based upon restructuring in legal terms of various social relations between and among, for examples, the government and the civic sectors, the corporation or controlling shareholders and the minority shareholders, and the corporate manufacturers and the consumers have effectively posed questions for public debates and led citizen monitoring over various government agencies and institutions.¹⁴⁾ Through such process, NGOs in South Korea

11) Heon-Hwan Lee, *Heonbeopjaepan Isimnyeonui Heonbeopakjeok Pyeonggawa Jeonmang* [Twenty Years of the Constitutional Court], THE 90TH MONTHLY SEMINAR OF THE ASSOCIATION FOR THE STUDY OF PRACTICE OF CONSTITUTIONAL ADJUDICATION (2008).

12) Refer to statistics in the annual reports of the National Human Rights Commission of Korea at <http://www.humanrights.go.kr> (last visited Aug. 1, 2011).

13) Pak, *supra* note 5, at 40-60.

14) Pak, *supra* note 5, at 177-200.

have risen as companions on par with the government sector in making public policies and laws and developing alternatives, in many areas on various issues.

2. Conditions and Directives Idiosyncratic to Active NGO and Community Participation in Lawmaking in South Korea: late 1980s or early 1990s to present

The methods and processes of lawmaking bear direct relevance to the sustainability of democracy, in that law is decisionmaking of, by and for the given community, and the implementation and development of democracy through rule of law is possible when such law does have democratic legitimacy both in form and substance. Democracy, rule of law and democratization of political processes have developed positively affecting each other, and the participation of mature civil sector has served a key role in this process in South Korea. The legislative process under the representative democracy in South Korea constitutes a core part of the nation's political process in that the process sets forth as norms the perceptions of public good held by the constituents while reflecting their preferences through their representatives. As such, democratic justifiability serves as the foundation for the implementation of law as the community's decisionmaking, and the participation of the constituents in the process of lawmaking materially contributes to the democratic legitimacy of law.

Under the past authoritarian regime, social movements led by citizens and citizen groups in South Korea concentrated on reforming the paradigm and the frame of the political institutions occasionally through methods outside then-current laws, rather than revising specific provisions of law through legislative process within National Assembly. As democracy has matured in South Korea since late 1980s under the current Constitution, the authority and the function of the legislative branch and the judicial branch as opposed to the executive branch have been normalized, which in turn has both enabled NGO access to political processes for changes and mandated NGOs to pursue intended changes by way of law and existing institutions. Attempt to seek social changes through means outside of law and institutions while resolving problems through existing institutions is possible may not draw wide support from the citizens. Citizens now

demand plausible and realistic alternatives based on expertise to the identified issues rather than revolutionary frame-resetting changes. Also, as South Korea's politics and political processes have been democratized, expectations and demands for changes that were reserved in the past are now entering public forum for open debates in diverse areas, including those areas of welfare, education, environmental protection and preservation, and gender equality, each requesting expertise in diagnosing problems and prescribing alternatives in respective fields. This has further activated NGO movements in South Korea in recent years, as NGOs in South Korea have been successful in timely engaging expert human resources in pertinent fields.

All these have served as the context for the NGO activities in South Korea of making efforts to bring in intended changes by and through law and lawmaking. Lawmaking movement in this light means any and all effort intended to affect making and revising of statutes and local ordinances through various means including legislative petition,¹⁵⁾ initiative to request promulgation, revision and abrogation of local ordinance,¹⁶⁾ lobbying,¹⁷⁾ debate in public forum and particularly on mass-media,

15) The Constitution of the Republic of Korea (DAEHANMINGUK HEONBEOP [CONSTITUTION OF KOREA], art. 26 (1987).), the Petition Act (CHEONGWONBEOP [PETITION ACT], Act No. 8171, Jan. 3, 2007.), the NATIONAL ASSEMBLY ACT and the LOCAL AUTONOMY ACT provide the legislative petition system under which private citizens may prepare a bill for a statute or a local ordinance and submit it to the national or local legislature by way of recommendation of the legislator from the election district to which the petitioner resides.

16) The LOCAL AUTONOMY ACT provides an initiative system under which local residents may submit a bill for a local ordinance to the chief executive officer of the local government unit such as governor or mayor, upon such submission the official is mandated to submit the bill to the local legislature as if it were prepared and submitted by the local administration. Once the bill reaches the local legislature, the bill is subject to the identical ordinance-making procedure and the authority of the local legislature.

17) In the 17th National Assembly (2004-2008), an initiative was taken to enact an inaugural statute for regulation of lobbying by defining lobbying and lobbyist and by obligating the lobbyists of certain categories to register with the Office of Administration at National Assembly as well as to report two times a year their for-profit lobbying activities with possible criminal sanctions for failure of such obligations, under the directives of 33 National Assembly persons (Bill No. 17-5143). However, the bill was aborted while pending due to the expiration of the term of the 17th National Assembly. There was a separate bill in the same vein submitted by 10 National Assemblypersons, which was also aborted in the 17th National Assembly (Bill No. 17-2231). There exists no statute in South Korea as yet that

assembly and association, monitoring of government activities, referendum,¹⁸⁾ and recall of elected public officials.¹⁹⁾ Such NGO activities by and through law based upon expertise to offer law and policy alternatives have appealed to the public and drawn a wide attention and participation of the public, which in turn increases the sustainability of such NGO activities. Active NGO lawmaking movement in South Korea since late 1980s is the outcome of democratization and establishment of rule of law in the nation on one hand, and of the ongoing process of implementing participatory democracy to compensate limits of South Korea's representative democracy on the other.²⁰⁾

Public interest and cause lawyering and lawmaking movement initiated by NGOs since late 1980s in South Korea seeks beyond challenging the incumbent power for lack of democratic legitimacy, and has evolved to systematically pursue a comprehensive resolution of identified issues in a broader social and legal context through lawful procedures which are in themselves legitimate in light of democracy and reason.²¹⁾ They have

regulates lobbying.

18) Referendum in the context of determining matters of public concern under participatory democracy ideal is provided in the article 14 of the LOCAL AUTONOMY ACT, in its Articles 14, at the local government level. At the national level, referendum is to be held for constitutional revision (CONSTITUTION OF KOREA, art. 130.), and, the only other occasion is when the president submits a certain policy of national significance as narrowly delineated in the constitutional provision itself (CONSTITUTION OF KOREA, art. 72), which has never been put to use in South Korea since 1948.

19) The Recall Act (JUMINSOHWANE GWANHAN BEOMNYUL [RECALL ACT], Act No. 7958, May 24, 2006, amended by Act No. 9974, Jan. 25, 2010) provides the system to recall certain of elected officials at the local government level. There is no recall system at the national level in South Korea. For discussions of the recall system as it exists in South Korea, see, e.g., Young-Soo Jang, *Chamyeminjuuiui Silhyeongwa Gungminsohwanje Doibui Munjejeom* [Implementation of Participatory Democracy and Problems of National Recall System], 7 GONGBEOPAGYEONGU [PUB. L.] 3 (2006) (Korean); Seong-Kwon Cheon, *Hangugui Jibangjachiwa Chamyeminjuui* [Local Governing and Participatory-Democracy in South Korea: The Necessity of Adopting 'Recall' System], 6 MINJUJUIWA INGWON [DEMOCRACY & HUM. RTS.] 207 (2006) (Korean).

20) Dong-Yoon Lee, *Gukhoeui Ipbeopgwajeonggwa Simindancheui Yeokhal: Chamyoyeondaewi Hwaldongeul Jungsimeuro* [Legislative Process and the Role of Civil Groups: A Case Study on the People's Solidarity for Participatory Democracy], 6 HANGUKJEONGDANGHAKHOEBO [KOR. PARTY STUD. REV.] 165 (2007) (Korean); Young-Hoa Chung, *Hanguk Chamyeminjuuiui Heonbeopjeok Gwajewa Pyeongga* [Constitutional Problems and Values on Korean Participatory Democracy], 32 GONGBEOPYEONGU [PUB. L.] 43 (2003) (Korean).

21) Cause lawyering as part of such NGO movement seldom denotes a single case or

proactively engaged legal experts, and, based upon tripartite deliberation from diverse perspectives among social activists, experts in given field and lawyers, have been able to analyze the problems to be solved in legal and social terms to present such problems as public agendas to citizens with reasonable alternatives accompanied by suggested means to achieve the goal. As the means to obtain the goal, NGOs have actively been utilizing when necessary judicial process including litigation, setting the agenda for political process primarily through National Assembly, and advocating the cause through various forms of media including social network communication system and through more conventional methods of assembly and public debates, thereby securing understanding, compassion and participation of the general public. Ultimately, upon such foundations, when necessary, NGOs have been proactively engaged in more direct lawmaking activities.

One of the very first among such comprehensive citizen movements in South Korea was the “Securing Life Beyond Poverty Line” movement led by one of the conspicuously active citizen groups, People’s Solidarity for Participatory Democracy (PSPD). PSPD’s Special Committee for Social Welfare led a series of relevant lawsuits beginning in 1994, including lawsuits seeking damages from the National Pension Service,²²⁾ securing entitlement under the old-age pension system, and seeking administrative decisions with respect to unreasonable standards as applied to medical insurance, and constitutional complaints seeking declaration of unconstitutionality of the amount of welfare benefits in monthly payment.²³⁾ PSPD then almost simultaneously started legislative movement

litigation, yet, instead, takes the form of a series of pilot cases as organized as such with much symbolic impact towards the achievement of the ultimately intended goal, regardless of the immediate result of any respective lawsuits at a particular phase.

22) The National Pension Service was established in January 1988 to secure financial resources to pay back such pension benefits for the insured as Old-Age Pension, Survivor Pension and Disability Pension.

23) In this instant case, the Constitutional Court held that the amount at issue was not in itself in violation of the fundamental right to humane conditions of the article 34 of the CONSTITUTION OF KOREA or the right to pursue happiness of the article 10 of the CONSTITUTION OF KOREA, notwithstanding its finding that the amount at issue was set below the minimum standard of living Decision of May 29, 1994, 94Hun-Ma33 (Constitutional Court of Korea). However, the Court endorsed the position that the amount of welfare benefits paid in

for enacting and revising relevant laws. The above shows an exemplary case of public interest and cause lawyering and legislative movement initiated and led by NGOs in pursuit of securing specific social rights and entitlement of welfare benefits as guaranteed by the Constitution in the name of fundamental right to life, backed by general public's support and participation.

A subsequent example of such comprehensive NGO movement was the "Securing Transparency, Democracy and Responsibility in Corporate Governance" movement led by a group of citizen organizations while PSPD's Committee for Democracy in Economy took the first initiative. A large pool of experts in various relevant fields including law, economics and business administration participated to define the short-term and long-term goals and to set forth and orchestrate the master plan consisting of a series of litigations, legislative activities and citizen education and engagement in various domains, all in consistent directions. The expert group and the activists prepared and implemented a series of litigations and other activities for the exercise of shareholder rights particularly for minority shareholders including minority shareholder derivative actions, e.g., the lawsuits seeking revocation of decisions by the general shareholder meeting that had lacked procedural requirements and annulment of issuance of convertible bonds at a price lower than quoted market price and relevant injunctions, and minority shareholder actions seeking to hold controlling shareholders liable for the loss incurred by illegitimate internal transactions.

They almost simultaneously made legislative petitions to National Assembly, notably in February 1998, for revision of relevant provisions of Commercial Act²⁴⁾ and the Securities and Exchange Act²⁵⁾ and for initial

monthly installment to individuals below poverty line constituted a material standard in determining whether the government failed to satisfy the obligation to guarantee constitutionally protected fundamental rights for its nationals.

24) SANGBEOP [COMMERCIAL ACT], Act No. 5053 that came into effect in December 1996 at time of PSPD's legislative petition for revision in 1998, as most recently revised in May 2010 effective November 2010 by Act No. 10281. The PSPD's legislative petition to revise the COMMERCIAL ACT was to allow request for removal of directors and representative suit by a single share.

25) JEUNGGWONGEORAEBEOP [SECURITIES AND EXCHANGE ACT], Act No. 5423 as revised in

enactment of a statute pertaining to auditing of companies as limited by share,²⁶⁾ each accompanied by proactive lobbying. Some of the experts involved in this citizen movement subsequently participated at a practical level in the task of revising the relevant laws. As a long term campaign, they started a shareholder rights restoration project of purchasing and holding ten shares of the companies to be monitored for the sake of transparency and responsibility in business administration and corporate governance.

The citizen movement in the above examples and others has been productive not only in obtaining the intended goals of implementing social rights and entitlements and the democratization of business operation and administration through subsequent revisions of relevant laws, but also in further activating South Korea's NGO movement and citizen participation in political process of community decisionmaking in general. Many of citizen groups have been organized as equipped with expertise in pertinent fields of activities, and have been following the tradition of active citizen movement by way of law and through lawful means.

Furthermore, in 1998, the Disclosure of Information by Government Institutions Act²⁷⁾ was newly enacted and came into effect, guaranteeing the right of the citizens to request government agencies and institutions at either national or local level to disclose information. The Act provides a cause of action for lawsuit for disclosure of requested information should the government fail to disclose without justification.²⁸⁾ Such statutory right for access to information retained by the government has served as the stepping stone for South Korea's NGOs in that a wide range of relevant

December 1997 that was to come into effect in April 1998 at time of PSPD's legislative petition for revision, as most recently revised in March 2008 effective March 2008 by Act No. 8985. The PSPD's legislative petition to revise the SECURITIES AND EXCHANGE ACT was to allow request for removal of directors and representative suit by a single share.

26) Although not successful at National Assembly, this legislative petition was to introduce a three-person panel of auditors among whom one should be an outside auditor appointed by the Board of Auditors, and, in a larger corporations, labor would be permitted to appoint another one of the auditor.

27) GONGGONGGIGWANUI JEONGBOGONGGAE GWANHAN BEOMNYUL [ACT ON DISCLOSURE OF INFORMATION BY PUBLIC AGENCIES], Act No. 5242, Dec. 31, 1996, *amended by* Act No. 10012, Feb. 4, 2010.

28) ACT ON DISCLOSURE OF INFORMATION BY PUBLIC AGENCIES, arts. 18, 19, and 20.

information shared with the corresponding government branches, institutions and agencies have greatly improved NGOs' ability to monitor the government activities and to develop alternatives to existing policies and laws.²⁹⁾

NGOs in South Korea have actively exercised the right to request disclosure of information and pursued the available litigation therefor since 1998, particularly to obtain information pertaining to the allocation and expenditure of budget and the decisionmaking and implementation processes of relevant government policies. Due to the information likewise obtained and the possibility of disclosure of such information, matters having to do with budget and with making and implementing public policies are well subject to constant monitoring by the citizens. This trend has also led to a more systematized monitoring over legislative activities of National Assemblypersons and the process and outcome of the court procedures, inviting even wider engagement and participation of the citizens to public debates on various issues. One of the more noticeable outcomes of such citizen engagement and participation was the enactment of the Anti-Corruption Act in 2001.³⁰⁾

Also, in general, as multilateral and almost instantaneous information-sharing and communication at a relatively low cost has become possible through developments in technology as symbolized by the Internet and the social network, a more direct participation of general citizenry in political processes has become constant and ubiquitous. Under the above conditions and in the above contexts, NGOs in South Korea are making continued

29) However, it should also be noted that the rate of denial of request for disclosure of information under the Act has considerably increased under the current administration, from approximately 4.1% in 2002 to approximately 18.0% in 2010. Furthermore, some of the government departments and agencies have conspicuously low rates of disclosure upon request, which include the Office of the President at Cheong Wa Dae (5.9% or 59 out of 994 cases), the Board of Audit and Inspection of Korea (16.8%), the Supreme Prosecutors' Office of the Republic of Korea (18.9%), Korea Communications Commission (22.5%), and the Department of Justice of the Republic of Korea (30.7%).

30) BUPAEBANGJIBEOP [ANTI-CORRUPTION ACT], Act No. 6494, July 24, 2001, which is currently BUPAEBANGJI MIT GUNGMINGWONIGWIWONHOEUI SEOLCHIWA UNNYEONGE GWANHAN BEOMNYUL [ACT ON THE PREVENTION OF CORRUPTION AND THE ESTABLISHMENT AND MANAGEMENT OF THE ANTICORRUPTION AND CIVIL RIGHTS COMMISSION], Act No. 8878, Feb. 29, 2008, amended by Act No. 9968, Jan. 25, 2010.

efforts to sustain citizen movement for various public interest causes by way of securing and analyzing relevant information, organizing citizen participation and education, as well as proactively pursuing litigations and lawmaking.

III. NGO and Community Participation in Lawmaking in South Korea: An Analysis

1. *Patterns and Processes of NGO Lawmaking Movement in South Korea*

Lawmaking movements initiated and led by NGOs in South Korea primarily since early 1990s have been productive both in quality and quantity, in light of the length of time period during which such lawmaking efforts have been made. Furthermore, those laws successfully enacted or revised by the initiatives of various citizen groups, which encompass the matters of public election,³¹⁾ donation of fund to political parties,³²⁾ preclusion and sanction of conflict of interest and political corruptions,³³⁾ ethics in government,³⁴⁾ guarantee of minimum standard of living,³⁵⁾ rights of minority shareholders and available procedures for exercising such rights under commercial law and other relevant statutes,³⁶⁾ to name a few, are the statutes that have considerably contributed to the establishment and development of respective systems in the areas of nation's politics, economy and commerce, at the very fundamental level. Such laws are premised upon the establishment of democracy and rule of law, and, in turn, contribute to the sustenance of democracy and rule of law. South Korea's NGOs have been able to bring in concrete changes in

31) GONGJIKSEONGEOBOP [PUBLIC OFFICIAL ELECTION ACT], Act No. 10981, July 28, 2011.

32) See JEONGCHIJAGEUMBOP [POLITICAL FUND ACT], Act No. 10395, July 23, 2010, and Public Official Election Act.

33) See *supra* note 30.

34) GONGJIKJAYULLIBOP [PUBLIC SERVICE ETHICS ACT], Act No. 10148, Mar. 22, 2010.

35) GUNGMINGICHOSAENGHWAL BOJANGBOP [NATIONAL BASIC LIVING SECURITY ACT], Act No. 6024, Sep. 7, 1999, amended by Act No. 10854, July 14, 2011.

36) See, e.g., COMMERCIAL ACT, and SECURITIES AND EXCHANGE ACT.

laws and institutions through such lawmaking movement, overcoming common trap for citizen movement of remaining at the level of problem-spotting in abstract and general terms without concrete or realistic suggestions for alternatives.

Yet, the most recent years have witnessed on the other hand the limits of lawmaking movement led by NGOs in South Korea. In the areas where there exist well-organized and resourceful interest groups equipped with expertise seeking narrow self-interest for relevant professions, efforts to bring in changes through revisions of law as initiated and led by citizen groups have largely been unproductive. Some of such examples include efforts to revise laws applicable to medical profession, legal profession, pharmaceutical industry and private tutoring industry. The situation has been similar where there is a clash of interests among different social groups or social classes yet any change in law or system would bring in tangible differences to everyone across the community, as in the areas of tax and social welfare. In these areas, notwithstanding certain changes in certain part of the system, there has been practically no example of citizen lawmaking at the level of changing institutional structures from different perspectives. These limits observed in citizen movement are exacerbated as South Korea's political parties are generally centered on individual leadership and regional positioning as opposed to differences in policy or political philosophy, and are largely incapable of providing the structure for deliberation, opposition, agreement and cooperation from the perspective of different policies and political philosophies in the process of public debate on respective issues for citizen lawmaking.

In the following part, this paper analyzes various lawmaking efforts led by the NGOs pursuant to their patterns, given conditions, processes and strategies. First, one of the conspicuous patterns or conditions observed in citizen lawmaking in South Korea is that NGOs have targeted the areas for lawmaking movement where the applicable law or institution is nonexistent or the existing law or institution has structural defects despite seriousness of the spotted issue, and then approached such situation by setting anew the legislative agenda. In these situations, although the amount of time consumed for enactment of intended law varies considerably, NGOs' lawmaking efforts have been successful in most of the cases, for the draft of the statutory bill suggested by the citizen groups in

these situations appeal to the citizens as refreshing for pioneering, and the government can hardly avoid legislation in its entirety merely on policy ground. Also, in these situations, as NGOs venture to create the forum for legislative debate, they tend to preempt legislative debates and take initiatives in subsequent legislative process.

Examples of laws enacted through this pattern of lawmaking include the Anti-Corruption Act,³⁷⁾ the Minimum National Welfare Protection Act,³⁸⁾ the Commercial Property Lease Protection Act,³⁹⁾ and the Bioethics and Safety Act.⁴⁰⁾ This pattern was also adopted in revising the Commercial Act⁴¹⁾ and the Securities and Exchange Act⁴²⁾ to introduce a type of class action for minority shareholders against the directors and the controlling shareholders and in revising the Ethics In Government Act⁴³⁾ to introduce the blind trust system mandating certain high-ranking public officials to either sell or put in blind trust the shares of or over 30 million Korean Won or approximately thirty thousand US Dollars in worth held by such officials in relation to their public office during the terms of such office. These laws were largely enacted as original promulgation based upon the bills suggested by citizen groups through legislative petition to National Assembly.

Taking the example of the Anti-Corruption Act⁴⁴⁾ among these, the Peoples' Solidarity for Participatory Democracy through collective efforts with various other citizen groups perceived and identified the demand for an independent and comprehensive statute to provide rule of ethics applicable to government officials and possible sanctions for violation thereof. Citizen groups together set forth this as one of the legislative

37) *See supra* note 30.

38) *See supra* note 35.

39) SANGGAGEONMUL IMDAECHABOHOBEOP [COMMERCIAL BUILDING SEASE PROTECTION ACT], Act No. 6542, Dec. 29, 2001, *amended by* Act No. 10303, May 17, 2010.

40) SAENGMYEONGYULLI MIT ANJEONE GWANHAN BEOMNYUL [BIOETHICS AND SAFETY ACT], Act No. 7150, Jan. 29, 2004, *amended by* Act No. 10605, Apr. 28, 2011.

41) *See supra* note 24.

42) *See supra* note 25.

43) PUBLIC SERVICE ETHICS ACT, Act No. 7493, May 18, 2005 at time of this revision, as most recently *amended by* Act No. 10148, Mar. 22, 2010.

44) *See supra* note 30.

agendas and held a hearing open to the public in January 1996 to present such legislative agenda, and invited the general public to relevant debates. PSPD then prepared a draft bill of a statute tentatively titled the Prevention of Corruption Act, providing specific ethical rules of conduct for government officials, protection of whistle blower informant informing misbehavior of government officials for the sake of public good, prevention and sanction of laundering political funds, and the establishment of an independent institution that would be called the Office of Investigation of Misbehavior of High-Ranking Government Officials to be endowed with the authority to independently investigate alleged corruptions involving high-ranking government officials.

The bill was presented to the 15th National Assembly (1996-2000) through legislative petition in November 1996 (Legislative Petition No. 15-0080), with the signatures of 157 National Assemblypersons. Immediately following PSPD's legislative petition to National Assembly, National Congress for New Politics (NCNP),⁴⁵⁾ which was then an opposing party, submitted a separate bill echoing most of the key elements of PSPD's legislative petition (Bill No. 15-0225). However, after NCNP became the ruling party at the subsequent presidential election in December 1997, it did not actively pursue the enactment thereof, and the bills were discarded upon expiration of the term of the 15th National Assembly in 2000. During the term of the 16th National Assembly (2000-2004), a statute was enacted in 2001 under the title of the Anti-Corruption Act⁴⁶⁾ providing the protection for whistle blower informant for public interest sake and the establishment of the Anti-Corruption Commission, which, however, gave up in entirety

45) National Congress for New Politics, as abbreviated as NCNP, was a political party that existed in 1995 through 2000 in South Korea. Former President Mr. Kim Dae Jung, upon returning to politics following his tentative retirement after the loss at the 1992 presidential election, organized NCNP in July 1995 and registered NCNP as a political party in September 1995, which immediately became the largest opposition party. Although NCNP merely obtained 79 seats out of 299 at National Assembly at the 15th National Assembly (1996-2000) constituted through the general election in 1996 due to the split within the opposition parties, NCNP produced President Kim Dae Jung at the presidential election in December 1997, through coalition with United Liberal Democrats (ULD), a conservative party under Mr. Kim Jong Pil's leadership that existed in 1995 through 2006. NCNP was voluntarily dissolved to be part of the Millennium Democratic Party (Democratic Party) which was established in 2000.

46) See *supra* note 30.

the legislation of the rules of ethics applicable to public officials and the establishment of the Office of Investigation of Misbehavior of High-Ranking Government Officials. In September 2001, part of the original bill petitioned by PSPD for prevention of laundering political funds became enacted as separated (Bill No. 16-0375) from the original bill, with the exception of obligation to report cash transactions beyond a certain sum and the authority to trace accounts used for certain domestic financial transactions (Law No. 9516).

As such, the anti-corruption law as originally designed by PSPD as an independent and comprehensive statute was divided into several parts in the legislative process within National Assembly, and merely some parts thereof were finally enacted into statutes.⁴⁷⁾ During this process, PSPD and allied citizen groups recognized loss of the symbolic legislative agenda of prevention and elimination of corruption in government, and, under this new condition, contemplated strategies for the next phase citizen lawmaking movement for prevention and elimination of corruption in government. Citizen groups then set as the new legislative agenda the issue of conflict of interest applicable to government officials, as precluding actual and potential conflict of interest would lead to prevention of corruption in government.

In July 2000, "Citizen Front for Enacting Anti-Corruption Law" was formed with thirty-eight NGOs. The Citizen Front publicly announced in multiple occasions around the year 2004 the types, the numbers and the monetary values evaluated at market price of shares held by the secretaries and the under-secretaries at respective departments at the incumbent administration and by the National Assemblypersons, accompanied by the analysis on its relevance to the obligations at their respective offices. Such activities effectively raised public's attention toward conflict of interest issues applicable to government officials. In May 2005, approximately one year from such agenda-setting, the Ethics in Government Act was revised,⁴⁸⁾ and, in June 2005, the National Assembly Act was revised to newly introduce prohibition of any for-profit activities or transactions over the matters under the control of the standing committee to which any

47) *See supra* note 30.

48) *See supra* note 43.

individual National Assemblyperson belonged (Article 40-2).⁴⁹⁾

In the process of enacting the Anti-Corruption Act, numerous allied citizen groups together set a new legislative agenda, and developed and implemented diverse programs of citizen engagement and movement to support legislation, which were keys to success in legislating the intended law. Immediately after it took the first step for enacting the Anti-Corruption Act, PSPD initiated a campaign titled "Toward Clean Society" with The Hankyoreh Daily in March 1996, which consisted of a series of forty-nine columns on relevant issues featured in The Hankyoreh Daily. During the newspaper campaign period, PSPD also sponsored a citizen signature rally to monitor qualifications of the candidates at the general election held in 1996 to constitute the 15th National Assembly (1996-2000), and a million citizen signature rally for prevention and elimination of corruption in government. Also, it held six hearings and other lecture programs open to general public to discuss relevant policies. Hearing and its equivalents held by NGOs along the lawmaking movement have served to activate debates and deliberations within and beyond National Assembly, whereas hearing as part of official legislative process within a designated standing committee at National Assembly occasionally falls short of actively assuming the intended role as it may be omitted by resolution of the standing committee (Article 58, Section 5, of the National Assembly Act (Law No. 10339)).

Second, when the threshold issue for citizen lawmaking movement was how to secure legitimacy to represent interests and positions in pursuing intended legislative goals, NGOs overcame any potential challenges as such by laying a more solid foundation in early phases of recognizing the issues and preparing the bills presenting reasonable alternatives based on required expertise, prior to setting legislative agendas to move onto more direct lawmaking activities. A good example of this is found in South Korean NGOs' successive attempt to enact and revise statutes for gender equality, pertaining to women's status and rights. As paternalistic perceptions and customs have had long and tangible vestiges in South Korea, it took much time and effort to set the ground for legislation through

49) NATIONAL ASSEMBLY ACT, Act No. 7614, July 28, 2005, art. 40-2 at time of this revision, as most recently amended by Act No. 10652, May 19, 2011.

recognition and definition of the issues of gender equality and women's right, so that the community would perceive such issues as those to be resolved through collective efforts in public and social domains, as opposed to those that should remain as private and personal. South Korean government has made an effort to discuss gender equality issues in public and legal terms as well, which can be epitomized by the establishment of the Ministry of Gender Equality⁵⁰⁾ within the administration in 2001 to address and change gender inequality situation.

Along with the government's effort, NGOs in South Korea invested a great deal of time and effort during the initial phase of changing the perception over gender inequality issues as public and social issues to be addressed and resolved publicly and in the name of law. NGOs did this initially by establishing a unified front among various citizen groups, not only across diverse directives and perspectives for gender equality per se but also with various other research groups and interest groups dedicated to social and natural sciences. Through such effort, they could come up with convincing policy suggestions and legislative agendas founded on expert legal, political, social, medical and biological researches. In the phase of more direct legislative activities, in order to compensate relatively low political power to influence the national legislature, they made an effort to lobby in the name of citizens, while actively seeking to expand influence by persuading individual members of National Assembly.

Through such process, many relevant laws were either enacted or revised, including the Act on Punishment of Sexual Offense and Protection of Victim,⁵¹⁾ the Special Act on Punishment of Crime of Domestic Violence,⁵²⁾ the Act on Prevention of Domestic Violence and Protection of Victim,⁵³⁾ the

50) Currently, it is reorganized as the Ministry of Gender Equality and Family.

51) SEONGPONGNYEOK BEOMJOEUI CHEOBEOL MIT PIHAEJABOHO DEUNGE GWANHAN BEOMNYUL [ACT ON THE PUNISHMENT OF SEXUAL CRIMES AND PROTECTION OF VICTIMS THEREOF], Act No. 4702, Jan. 5, 1994.

52) GAJEONGPONGNYEOKBEOMJOEUI CHEOBEOL DEUNGE GWANHAN TEUNGYEBEOP[SPECIAL ACT ON PUNISHMENT OF CRIME OF DOMESTIC VIOLENCE], Act No. 5436, Dec. 13, 1997, amended by Act No. 10573, Apr. 12, 2011.

53) GAJEONGPONGNYEOKBANGJI MIT PIHAEJABOHO DEUNGE GWANHAN BEOMNYUL[ACT ON THE PREVENTION OF DOMESTIC VIOLENCE AND PROTECTION, ETC. OF VICTIMS THEREOF], Act No. 5487, Dec. 31, 1997, amended by Act No. 10038, Feb. 4, 2010.

Act on Elimination of Gender Inequality and Remedies,⁵⁴⁾ the 2004 revision of the Infant Care Act,⁵⁵⁾ the Act on Punishment of Procuring Prostitution,⁵⁶⁾ the Act on Prevention of Prostitution and Protection of Victim,⁵⁷⁾ and the revision of the Civil Act⁵⁸⁾ that abrogated the “Ho-Ju” or male-prone family-head system upon the decision of the Constitutional Court in February 2005 holding that such system under the then-current Civil Act was not in compliance with the Constitution.⁵⁹⁾ How to monitor the implementation of the above laws while maintaining campaign for continued interest in gender equality issues among the general public is the remaining challenge for South Korea in its legislative effort for gender equality.

In all of the above situations, NGOs in South Korea made a proactive effort to build a public opinion favorable to the given legislative goal. An effort for compassion and support from the general public is germane to any citizen movement. However, such step to build a favorable public opinion has been even more crucial and effective as means to achieve intended legislation in South Korea as the media from a comparative standpoint has great influence on politics and political decisions in South Korea. Accordingly, South Korea’s NGOs invariably made a great effort to access the media for their campaign through media, in their lawmaking activities. PSPD and The Hankyoreh Daily’s campaign of “Toward Clean Society” by way of featuring forty-nine columns during the period of one

54) This Act came into effect in July 1997, introducing the concept of sexual harassment at workplace and providing legal relief for such sexual harassment. This Act was subsequently abrogated in June of 2005 due to the enactment of more comprehensive statutes.

55) YEONGYUABOYUKBEOP [INFANT CARE ACT], Act No. 4328, Jan. 14, 1991, *amended by* Act No. 10854, July 14, 2011. Through consistent effort at the 15th National Assembly (1996-2000) and the 16th National Assembly (2000-2004), caring of the infant is now defined as obligation of the society, through and since the revision in December 2004 by Act No. 7302 that came into effect in January 2005.

56) SEONGMAEMAEALSEON DEUNG HAENGWIUI CHEOBEORE GWANHAN BEOMNYUL [ACT ON THE PUNISHMENT OF ACTS ARRANGING SEXUAL TRAFFIC], Act No. 7196, Mar. 22, 2004, *amended by* Act No. 10697, May 23, 2011.

57) SEONGMAEMAEANGJI MIT PIHAEJABOHO DEUNGE GWANHAN BEOMNYUL [ACT ON THE PREVENTION OF SEXUAL TRAFFIC AND PROTECTION, ETC. OF VICTIMS THEREOF], Act No. 7212, Mar. 22, 2004, *amended by* Act No. 10261, Apr. 15, 2010.

58) Revision by Act No. 7427 in March 2005 abrogating articles 778 et sub., as most recently revised by Act No. 9650 in May 2009 effective August 2009.

59) Decision of Feb. 3, 2005, 2001Hun-Ga9 (Constitutional Court of Korea).

year for the enactment of the Anti-Corruption Act,⁶⁰⁾ and the public campaign through radios for the enactment of the Commercial Property Lease Protection Act⁶¹⁾ and the Rental Housing Act⁶²⁾ are good examples.

Next, in terms of specific mechanisms of presenting draft bills for legislation on the part of NGOs, in most cases the citizen groups use the legislative petition system under the Constitution,⁶³⁾ the Petition Act,⁶⁴⁾ and the National Assembly Act.⁶⁵⁾ NGOs make an effort not only to enact the bill that they petition to National Assembly, but also to participate in legislative process of those relevant bills submitted by the government or by the National Assemblypersons. A proactive involvement of citizen groups in the process of revising the Antitrust and Fair Trade Act⁶⁶⁾ to limit the gross-sum of investment or to regulate voting rights of subsidiary companies of conglomerates is a good example. In these situations, sometimes the immediate goal is to halt the legislative process.

In a larger context and in a long term, monitoring, collecting and accumulating analytical data on legislative and other government activities and making such data available to the citizens in general constitute crucial phase and means of citizen lawmaking movement. For example, many NGOs in South Korea including PSPD's Legislation Monitoring Center regularly issue reports at the closure of each session of National Assembly upon monitoring legislative activities in general, and also per issue and per member of National Assembly. Some of such reports publish individual Assemblypersons' attendance rate at the standing committees and the plenary session, their voting patterns, and the donation of funds to the Assemblypersons and spending patterns thereof.

60) *See supra* note 30.

61) *See supra* note 39.

62) IMDAEJUTAEKBEOP [RENTAL HOUSING ACT], Act No. 10463, Mar. 9, 2011.

63) Article 26 of the CONSTITUTION OF KOREA guarantees the right of the citizens to petition the government.

64) PETITION ACT, Act No. 8171, Jan. 3, 2007.

65) NATIONAL ASSEMBLY ACT, Act No. 10652, May 19, 2011.

66) DOKJEOMGYUJE MIT GONGJEONGGEORAE GWANHAN BEOMNYUL [MONOPOLY REGULATION AND FAIR TRADE ACT], Act No. 10303, May 17, 2010.

2. *Challenges to NGO-Initiated Lawmaking Movement in South Korea*

During the period of 1990s through President Kim Dae Jung's administration, NGO movement in South Korea largely concentrated on litigation under public interest and cause lawyering and lawmaking activities both for and through the Constitution and the relevant statutes as a means to activate participatory democracy as part of establishing procedural justice and democracy. NGOs' activities by and through law as such greatly contributed to the nation's democratization and rule of law. A more immediate goal for NGO activities during this period was to change then-existing laws and institutions that either lacked legitimacy or were arbitrarily operated under the authoritarian regime. NGOs introduced systematic monitoring over various government institutions and agencies and moved on to suggest alternatives, while in some cases participating in actual legislative process for a system change. Such activities were combined efforts on the part of career activists at respective citizen groups, experts in pertinent fields, and the lawyers. Since the turn of the century, NGO movement in South Korea is largely turning to put yet more emphasis on legislative initiatives pertaining to diverse issues in various areas in light of public interest. More recent examples of such areas include political processes including legislative procedures and behavior patterns within National Assembly, tax reform, transparency and responsibility in corporate governance and social welfare.

Such underscoring of citizen initiation of and participation in lawmaking is a natural tendency in the current context in South Korea, as the nation's legislative branch is restoring its authority and function particularly in the face of the executive branch. NGOs' participation in policymaking and lawmaking as critics and companions is growingly institutionalized and stabilized, which in turn newly creates an idiosyncratic feature of South Korea's citizen movement. First, beginning in President Kim Dae Jung's administration and through President Roh Moo Hyun's administration, many laws and procedural rules have institutionalized citizen participation in government policymaking and other decisionmaking processes within the government, and many NGOs or their individual activists have been officially participating from early

phases of policy and legislative agenda setting and information and data analysis, sometimes as officially appointed by the government to positions in government. Many activists of NGOs are now participating in hearings held by government entities and, sometimes, serving as members in various government committees on a permanent basis. As such, NGOs are in a good position to share core information relevant to government policies, to influence the procedure and the content of government policies, and, sometimes, to take initiatives in defining policy and legislative agendas and creating policies and laws. However, many observe that, through this governmentalization process, the driving force for wider day-to-day voluntary citizen participation itself is weakening.⁶⁷⁾

On the other hand, although NGOs have accumulated a great deal of expertise as well as information in relevant fields, in certain core areas requiring intense and higher degrees of expertise, NGOs as well as ordinary citizens may only criticize the general direction of government policies yet are incapable of developing alternatives. As more of conventional government functions are privatized along furthered democratization and economic growth, core of current and future government functions in this sense might be left beyond monitoring by and participation of citizens and citizen groups, whereas decisions and choices in such areas would define the community's future in many ways. This in turn might debilitate South Korea's citizen movement in the future.

While South Korea's citizen movement exerted a concerted effort to achieve intended goals as a comprehensive program extended over a variety of agendas, aspects and means pertaining to the core subject matter, it is projected that such citizen movement will be divided into more specialized areas and units due to complexity of the issues to be challenged and the increased degree of demanded expertise. Likewise, pattern of citizen participation is expected to be localized per, for example, local government units,⁶⁸⁾ or to be pluralized pursuant to individuals' particular interests and positions.

67) Pak, *supra* note 5, at 106-108.

68) Ki-Wu Lee, *Chamyeminjujuuii Gongbeopjeok Silheomgwa Geu Gonggwa* [*The Experiments of the Participatory Democracy and Their Merits and Demerits in the View of Public Law*], 35 GONGBEOPYEONGU [PUB. L.] 215 (2006) (Korean).

Notwithstanding the role of the NGOs as the companion of the government under the new flexible model of public governance, the role of the NGOs as the opposing party to the government sector remains to be indispensable for sustenance of democracy. In this regard, a more conventional form of NGO activities including monitoring over government institutions and agencies, public interest and cause lawyering and campaign to enact and revise target provisions of law should continue in a way appropriate to the changing environment. Further, in this vein, NGOs in South Korea in now further specialized areas with particular expertise should also be prepared to systematically share information and create effective resource pool, to refine communication tools both within civil sector and with the government sector, to comprehensively analyze data, to develop and implement policy and law as part of consistent and balanced whole, and to present a consumer-friendly and flexible model of citizen participation in NGO movement, for the ultimate goal of sustainable democracy through sustained voluntary engagement and participation of the citizens in community decisionmaking. Also, NGOs in South Korea should consider and redefine their role in identifying agendas and reacting to and taking initiatives in formation of policy and law from more comprehensive and globalized perspectives taking the constitution and the relevant body of international agreements more seriously.

IV. Closing Remarks

South Korea's NGOs since early 1990s have largely concentrated on activities by way of law and through legal systems in the context of democratization of the nation. Such NGO movement has increased transparency of political processes and corporate governance, strengthened rule of law and enabled participatory democracy. For example, NGO activities have contributed to systematized and constant monitoring over government functions across legislative, executive and judicial, as well as over such actors in civil sector as the conglomerates and the media. Through such process, NGOs in South Korea have exercised much influence on actual and tangible changes of law and policy, encouraging wider citizen participation in political process.

On the other hand, to the extent the influence and the capability of the NGOs have grown in system change, the demands for NGOs' role have also increased. An analysis from diverse perspectives is due in order to understand the unique developmental trajectory and societal influence of South Korea's NGOs in the nation's idiosyncratic context of democratization. Some of the conspicuously noticeable aspects of South Korea's NGOs now include the pluralization and particularization of targeted agendas of activities for respective citizen groups and resulting particularization of expertise, the tendency to become government-friendly following continuous and systematized NGO participation in government committees and processes and resulting diminution of driving force to propel a comprehensively programmed activities through collective effort, the recession of grass-root participatory ideal due to so-called judicialization and legalization of the primary means of activities, some of which are subject to criticism from the very perspective of participatory democracy and, in a larger context, of the ultimate goal of sustainable democracy.

As indicated in the preceding part of this paper, NGO movements since the 1990s in South Korea that have largely been pursued by way of legislative and judicial tools as opposed to those lying outside law or lawful institutions are categorized into two: one has been public interest litigation seeking relief through judicial process, and the other has been more direct legislative or lawmaking campaign. Lawyers with ample experience in relevant practice timely have participated in public debate in public forum over matters of community-wide concern, cooperating with career activists in citizen groups, which at least partly explains that the litigations for the sake of public interest through NGOs' cause lawyering have had a high success rate, and lawmaking campaigns have produced tangible outcomes in many cases. Notwithstanding direct and indirect impact and ramifications of such activities in positive light, such activities are subject to criticism in that relatively complex nature of legislative process and litigation process has compelled much reliance upon legal experts, thereby limiting spontaneous voluntary participation of lay citizens, in NGO activities in South Korea. In situations where laws are enacted with no widespread compassion, support and participation of the general public, the community comes across the problem of free-riding, and, should

lawmaking be attempted in the name of the citizens while sufficient public debate is lacking, it might as well incur legitimacy issues.

Citizen activities through and by way of law should be founded upon a sufficient public debate and a wide voluntary participation of citizenry. In this vein, such entry barriers as information cost and organization cost should be lowered as much as possible at the institutional level. However, although any law should be based upon common sense and ethics, laws undeniably require a considerable degree of expertise for proper understanding, analysis and implementation. Modern days' public issues have not only increased in number, but also become more complex to require consistency and balance as a whole in light of interrelated structure at various points and phases. This in turn mandates further specified expertise in particular issues or matters, calling for engagement of experts. Any negative side-effect of professionalized aspect of citizen activities or excess of reliance on experts on one hand should constantly be balanced against the lack of such in particular situations and context.

Next, simultaneously with greater engagement of NGOs and their activists in policymaking and lawmaking on the part of the government as now institutionalized in many occasions,⁶⁹⁾ there arise the issues of definition or identity of NGOs' role and the "governmentalization" of NGOs. Some of the lawyers and academics who had been actively involved in citizen activities as members of NGOs accepted public offices in government particularly during President Kim Dae Jung's administration and President Roh Moo Hyun's administration for example, beyond participation in government's policymaking and lawmaking. Such "governmentalization" of NGOs or NGO human resources has had both positive and negative impacts on NGOs' taking increased role in the nation's policymaking and lawmaking, and, in a larger context, on the nation's democratization.⁷⁰⁾ Such characteristic of NGO movement

69) Pak, *supra* note 5, at 13.

70) For discussions in this regard in a larger context, see, e.g., Jong-Soo Lee, *Chamyeminjujuui Silhyeongwa Gukgagyeongjaengnyeok [Implementation of Participatory Democracy and National Competitiveness]*, 11 *SEGYEHEONBEOBYEONGU [WORLD CONST. L. REV.]* 1 (2005) (Korean); Hyeon-Woo Lee, *Chamyeminjujuui Jedohwaui Inyeomgwa Banghyang [Idea and Direction for the Institutionalization of Participatory Democracy]*, 17 *UIJEONGYEONGU [KOR. J. LEGIS. STUD.]* 33 (2004) (Korean); Geon-Yong Park, *Ipbeopgwajeongeseoui Simindancheui Chamyebangan*

idiosyncratic to South Korea's unique democratization context cannot be evaluated in a clear-cut way. A healthy degree of tension and opposition between the government and the civil sectors on one hand and a ready collaboration and cooperation between the two sectors on the other are both necessary and proper for sustenance of democracy and rule of law. This further mandates a sincere effort to define and develop means to be adopted to pursue intended goals as well as the one to define and share directions to move on, on the part of NGOs in South Korea.

Throughout history of democratization in South Korea, many political agendas, policies and legislations became possible and fruitful by the effort of citizens and citizen groups. Such effort identified the issues of minority rights protection, environmental protection, poverty, bioethics, inequality of information, to take only a few examples, as those to be discussed and resolved through collective efforts in public domain, beyond narrow planes limited to individuals. Through such effort, these issues became policy and legislative agendas, and such effort eventually moved the government and the system to enable policymaking and enactment of law, as well as cooperation with international organizations when necessary. When an issue that might be perceived to be a merely private problem is easily converted to a matter of public concern to be debated and resolved in the public forum, it serves as an effective indicator showing that law does function as a means of harmonizing in the name of norm diverse values, positions and preferences existing in the community.

Democracy under rule of law is enabled when law is supported by participation of the citizenry thus constantly engaging the citizens and reflecting changing demands. Constant citizen vigil upon and participation in public and government domains are the only means leading to sustain democracy operating under the rule of law. Ultimately, sustainability of democracy in its participatory dimension depends upon continuous efforts by the NGOs and civil community in general in South Korea to further democratize and rationalize the internal decision-making process, establish effective systems of securing and advancing expertise in the pertinent

[*Means of Participation of Citizen Groups in Legislative Process*], 28 UJJEONGJARYO [LEGIS. STUD.] 109 (2001) (Korean); Seung-Hyun Baek, *Chamyeminjujuuiwa Uihoejeongchi* [*Participatory Democracy and Representational Politics*], 9 UJJEONGYEONGU [KOR. J. LEGIS. STUD.] 8 (2000) (Korean).

fields, maintain fairness and balanced cause, and develop mature culture of discussion and understanding. The same applies to the government as well.

KEY WORDS: NGOs, participatory democracy, citizen participation in political process, citizen participation in lawmaking, citizen legislative movement

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