

Theoretical challenges, or over-determination of gender in the Mongolia's quotas policy: A historical review, 1990-2016 *

Borkhuu, Solongo** · Choi, Il-Sung***

〈Abstract〉

'Sex' and 'gender' are important terms that are often used interchangeably in scientific literature and even legislation, but they are two profoundly different concepts. In theory, sex refers to the characteristics that are biologically determined, whereas gender refers to socially or culturally constructed aspects. Many scholars in the 1970s turned their point of view from biologically determined aspects(sex) to socio-culturally constructed aspects(gender). However, in Mongolia, these perspectives have been almost contemporarily discussed since its democratization in the early 1990s. Related policies are adopted objectively according to the will of the newly launched government without sufficient discussion of the difference between the two terms. For this reason, not only these two concepts, which may conflict with each other, are often mistakenly used, but also ambiguous over-determination of gender, especially by sex, is projected into the relevant policies, including the quotas policy. In this paper we define this singularity as 'over-determination of gender' with sex, and analyze theoretical challenges of the Mongolia's quotas policy to increase women's representation.

Keywords: Sex, Gender, Gender Quotas, Gender Mainstreaming(GM),
Over-determination of Gender

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** First Author. Ph. D. candidate. Global International Relations, Hanseo University (solongo_6444@yahoo.com)

*** Corresponding Author. Professor. International Cooperation, Hanseo University (E-mail: ischoi@hansoe.ac.kr)

1. Introduction

The democratic revolution in Mongolia began with popular demonstrations in late 1989, when the political influence of the Soviet Union substantially diminished and the democratic changes in Eastern Europe helped to create a favorable environment. This transition is by and large described today as “peaceful” and “bloodless”(Shaw, 2016: 3). That is, the democratic system was relatively – though not wholly – well accepted by the Mongolian ruling group of the previous regime(Sanders, 1999: 143; IRI, 2000: 6; Tseden, 2012: 2). Responding to demands of a growing opposition movement after December 1989, the People’s Great Khural(PGK) amended the constitution to delete several key references to the leading role of Mongolian People’s Revolutionary Party(MPRP) – authoritarian regime prior to democratization –, officially affirmed the principle of separation of power, effusively legalized the formation of political parties and positively approved the transition to a market economy. In this transition, Mongolia held the first free elections in July 1990, and took important progress toward a multiparty, pluralistic, and democratic society(Sanders, 2010: 20-26).

This change offered as well the women’s movement and organizations the possibility of exerting influence on the policy process, and made many modifications in the theoretical and substantive foundation of their participation. In the past socialist regime, because of improperly limited political associations and

activities, the women's participation was carried out by only a few avant-garde women's activists. After the democratization, it became a pan-social civic movement involving housewives, students, and young people, workers as well as female activists. In political agenda, the women's movement advocated not only women's active and equal participation in all sectors of society and in all political processes that affect them, their families, and their societies, but also the relevant policy strategies that could reflect the new feminist views of "gender perspective" on all areas of politics, economy, society, and culture(Undarya and Enkhjargal, 2009: 15-16). However, the proportion of women in the parliament of Mongolia dropped unfortunately from 25 percent to 4 percent after the end of the Communist regime in 1990(True, et al., 2014: 5), much as in the former Eastern Europe or the Soviet Union after the end of their socialist regime.

The fundamental task in Mongolia's democratic transition was then not only building a new political and economic system, but also establishing the rule of law that guarantees the realization of gender equality. That is why women's representation in politics and decision-making positions is one of the most essential components of building any democratic country in a long and difficult journey towards democracy(Lindberg, 2004: 28-29). The new regime posterior to democratization have in this sense paid attention to strengthening the women's political representation and exempted to some extent their responsibilities from the traditional roles and duties, thus enabling women to be employed and educated. Mongolian reformers have newly created various strategies to promote women's

representation, such as quotas provision, and accumulated so far some experiences in their short history of gender policy. However, it seems they have not effectively integrated gender perspective into their reforms: Increasing the numerical ratio of women within formal public spaces is necessary, but not sufficient to address historically and culturally embedded formations of disadvantage that have been the focal point for gender politics(Cornwall and Goetz, 2005: 784-785).

Since the transition to a democratic regime in the 1990s, many policymakers in Mongolia try to share and understand the gender perspective and the theoretical distinction between 'sex' and 'gender'.¹⁾ Yet, quotas regulation of this country is still problematic: they mainly rely on the sex-binary concept, which seems to be predicated upon biological sex differences between men and women, rather than gender differences, which are related to social or cultural roles(Tsetsegjargal, 2009; Lkhamsuren, 2014: 69; Ariuntuya, 2015: 26). As long as the feminist view of gender in Mongolia was accepted during the transition period almost simultaneously and without

1) The original context of the 'sex/gender' distinction began with John Money and his colleagues in the 1950s(Money, et al., 1955). They used the term 'sex' to refer to individuals' physical characteristics and the term 'gender' to refer to individuals' psychological characteristics and behavior. One decade later, Robert Stoller, in his book *Sex & Gender*(1968), argued on a sociological basis that "Gender is a term that has psychological and cultural rather than biological connotations; if the proper terms for sex are 'male' and 'female', the corresponding terms for gender are 'masculine' and 'feminine', these latter being quite independent of(biological) sex(quoted in Oakley, 1972: 158)." This conceptual distinction is generally accepted by international organizations. "Gender' describes those characteristics of women and men that are largely socially created, while 'sex' encompasses those that are biologically determined(WHO, 2020)."

making any significant difference in terms of sex, a series of gender equality measures to promote the political participation of women in politics was also implemented without any in-depth discussion of their effects. For this reason, in Mongolia, these two notions of sex and gender, which may conflict with each other depending on situations and circumstances, are frequently blended in many gender equality policies, which causes in theory ambiguous so-called 'over-determination of gender'²⁾ with external sexual or biological factors, such as the quantitative number of women in a body, whether it is a candidate list, a parliament, a committee, or a government.³⁾ The gradual increasing of numbers of women does not necessarily defend in practice a gender perspective on policies of the society; the direct causal relationship between increasing numbers of women and the pursuit of gender equality by these same women, even if the number of women participating in the public sector has increased in recent times, remains still ambiguous.

We will analyze now the Mongolian approach to quotas policy implemented in the modern history of Mongolia, from its democratization in 1990 to the 2016 parliamentary election, and

2) In the analytical philosophy, the concept of 'over-determination' defines as the existence of two distinct causal events or ones(O'Connor, 1976: 275). In the field of social science, especially under the influence of L. Althusser's social theory, this concept is mainly used to describe social or ideological confusion that occurs at a specific period in a society, caused by rapid economic growth(Shin, 2012: 309-319; Kang and Chung, 2013: 5, note 5).

3) 'Sex' and 'gender' are terms that are often used interchangeably, but they are theoretically two different concepts. However, ambiguous over-determination of gender with sex is projected into the social policies, such as quota policies(Cf. Choi, 2020: 102).

derive the certain theoretical challenges of it to promote women's representation within the public sphere. It will be more specifically a research not only of proving the over-determination of gender with sex projected into the Mongolia's quotas policy, but also an analysis of what theoretical challenges this over-determination poses at present.

2. From Sex to Gender: Introducing Gender Mainstreaming

The 'sex/gender' distinction is one of the most influential ideas in the contemporary feminist perspective. Although the value and meaning of this distinction has been frequently contested among social scientists(Haig, 2004: 87), a significant number of scholars continue to think that gender is about social and cultural factors and that it is distinct from biological and anatomical sex. Our interest in this paper is not in a straight line up to the task of supporting the 'sex/gender' distinction, because the use of this distinction is not always clear-cut. We rather propose that the distinction between sex and gender in some policies, such as quotas policy, is both necessary and defensible, because each term has different social effects. With this feminist perspective on the 'sex/gender' distinction, we suggest in conclusion several theoretical challenges of the Mongolian approach to quotas policy.

Since gender quotas are generally regarded from the feminist view of the 'sex/gender' distinction as a universal strategy to promote

gender equality(Norris and Dahlerup, 2015), it would be a misunderstanding to think that they just essentialize the category of 'woman'(sex) in order to ensure women's equal access to political offices and decision-making positions. As different women as well as men under various conditions have been excluded from politics in different ways, it is necessary to introduce policy measures for their inclusion that take these differences into account. The European Institute for Gender Equality(EIGE) puts forward the concept of gender quotas as follows: "Positive measurement instrument aimed at accelerating the achievement of gender-balanced participation and representation by establishing a defined proportion(percentage) or number of places or seats to be filled by, or allocated to, *women and/or men* [our emphasis], generally under certain rules or criteria(EIGE, n.d.)." As this concept is oriented toward universalism related to gender equality, not only to women, but also to men, the definition of gender quotas is conceptually different from that of women's quotas(or female's quotas, quotas for woman, quotas for females, etc.; hereinafter 'women's quotas'), which is based on so-called 'preferential or discriminatory treatment' to equalize the opportunity for 'women' or 'females', and to rectify the effects of past and ongoing discrimination against them, by explicitly taking into account their defining characteristic(sex), which has been the basis for discrimination. However, the Mongolian policymakers' and even academia's customary tendencies have been today to equate or confuse gender quotas as universal strategy, with women's quotas recognized as preferential or discriminatory treatment, which seems to exemplify, in our opinion, one aspect of this ambiguous

over-determination of gender with sex in the Mongolia's quotas policy.

During the 1970s, the feminist view shifted in theory to “the role of women in international economic relations, concentrating particularly on the analysis of interlinkages between macro and micro economy and their impact on the role and status of women(INSTRAW, 1984: par. 54).”⁴⁾ In *Women in the World Economy*(1987), S. Joekes raised in this sense a question: “Have economic changes brought about any diminution in the disparities in wealth and well-being between whole peoples and between men and women within and between countries?(Joekes(eds.), 1987: 12)” Her answer is rather negative. The feminist slogan of “Women In Development”(WID) which represented the main spirit of the first UN World Conference on Women held in 1975 at Mexico City, and the *Convention on the Elimination of All Forms of Discrimination against Women*(CEDAW Convention) which was adopted in 1979 by the United Nations General Assembly in 1979,⁵⁾ emerged from this

4) In 1983, the Board of Trustees of INSTRAW(*International Research and Training Institute for the Advancement of Women*) decided that the Institute should prepare a series of studies on the role of women in international economic relations. The technical studies were published by INSTRAW(1985) in a series entitled *The Role of Women in International Economic Relations*(Cf. Joekes(eds.), 1987: 5-6).

5) Various world conferences at this period devoted themselves to the question of women's wretched positions in the world economy. These conferences included the World Conference of the UN Decade for Women in 1980 at Copenhagen and in 1985 at the Nairobi Conference. For example, the latter adopted the *Nairobi Forward Looking Strategies for the Advancement of Women*, covering the period 1986-2000, which were based on earlier declarations and plans of action, the *International Development Strategy for the Third Development Decade*(1980) and the *Convention on the*

realistic perception. Central to WID, first appearing in E. Boserup's critical reflections(see Boserup, 1970), was the idea that the emergence of a modern international economy was affecting men and women differently. Instead of promoting women's rights and status, the development policy measures appeared to be contributing to a degradation of their position. The proponents of WID posed some challenges to development theory that must be addressed if any effective work on integrating women into their development programs and projects is to be done(Marcucci, 1992: 12). Many of them, primarily supported by liberal feminists, placed major emphasis on egalitarianism and on the development of strategies aimed at minimizing the disadvantages of women in the economic sector and ending discrimination against them. In order to make up for past inequities that women faced, they proposed in the allocation of world's economic resources the equal opportunity programs such as affirmative action(Jaquette, 1982).

However, some of those concerned about women's status, particularly in Third World countries, were questioning the adequacy of the WID discourse. In their view, the concepts and frameworks of WID seemed to disregard the root causes of inequalities(Taylor, 1999: 20) and to identify a biological factor as the key to their subordination, without posing questions about the structure of oppression in their society. Moreover, considering "all" women - such as those not only of a white middle class, but also of Third World countries - as an undifferentiated group assumes that they

Elimination of all Forms of Discrimination Against Women(1979)(Cf. Marcucci, 1992: 11).

have the same needs and are equally disadvantaged. These assumptions ignore the diversity of women's needs and overlook differences in power, wealth, and status between women attributable to structural factors like class and social status. The ideal of WID risks therefore reinforcing and/or accentuating inequalities between women and between societies(Koczberski, 1998: 402).

The feminist concerns influenced by 'gender perspective' give increasing attention to the social or cultural representation of the sexes and its determining influence on the relationship between men and women in their society. This trend is frequently described as a shift from WID to "Gender and Development(GAD)" in the late 1980s. The use of the term 'gender' highlights the gendered character of men and women in terms of their society, culture, and rules(Bacchi and Eveline, 2010: 22). The challenging assumption that gender, unlikely sex, is not biologically predetermined, and that the idea of a hierarchy in gender relations of a systematic and structural subordination of women, began to be accepted. The value of gender perspective lies in understanding how men and women are socially or culturally constructed, and how those constructions are structurally reinforced by social conditions. It is therefore significant to avoid basing a theory on sex difference or so-called 'Universal Woman' (Grant, 1993: 161).⁶⁾

The *Beijing Declaration and Platform for Action*(BPfA), unanimously adopted in Beijing by 189 governments of the UN 4th World

6) However, just like WID, GAD has been also criticized for emphasizing the biological differences between men and women while neglecting the social relationships between them(Reeves and Baden, 2000: 33-34).

Conference on Women in 1995, characterizes representatively this conversion. Whereas the *CEDAW Convention* indicates the “temporary special measures” in its 4th article in order to eliminate discrimination against women in political and public life and accelerate *de facto* equality between men and women, the BPfA highlights in public the concept of “Gender Mainstreaming(GM)”, proposing to promote “an active and visible policy of mainstreaming a gender perspective” as a key strategy to elevate gender equality by calling on governments and other actors to apply it to all policies and programs. The United Nations Economic and Social Council(ECOSOC) has defined the concept of GM, which provides today an important starting point for the related discussion, as follows: “Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality(UN Women, 2000: 2).”⁷⁾

The core spirit of GM focuses on the process and procedures that mainstream the gender perspective in all areas and at all levels of

7) In this respect, the Council of Europe developed the definition of GM in 1998: “Gender mainstreaming is the (re)organization, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all states, by the actors normally involved in policy-making”(CE, 2004: 11).

politics, economy, society, and culture. It is not women's issue, nor Universal Woman's. Instead, it highlights acting on the society as a whole, by changing the norms and practices that stand at the roots of gender inequality and perpetuate it, in order to ultimately realize gender equality. Thus, GM reviews unequal and contradictory social structures from a gender perspective and demands switching to an equal and fair social structure for everyone. It is a more radical strategy for achieving gender equality that involves public policies to address gender-imbalanced relations, policies that are devised by taking into account the specific interests and values of both men and women. The GM strategy is a more advanced ideal than is that of WID or of GAD, in terms of democratic values and potential for the realization of gender equality. For quotas policy, whereas the one that is implemented from the perspective of WID is women's quotas, the other one, which internalizes gender perspectives in the social structure, is gender quotas policy(Norris and Dahlerup, 2015).

These changes, which were observed in the global women's movement, resulted from realizing that there is a relationship of 'domination/oppression' among women as well, and that the hypothesis in which women as a group are permanently or essentially discriminated against by men seems to be fictitious. In fact, the WID, which presupposed the uniformity of biological sex, not only overlooked, on the one hand, various repressive factors based on race, class, culture, or sexual orientation that may exist between men and women as well as among women, but also strengthened the existing hierarchical and unequal gender relations. In this respect, GM, beyond the liberal ideology of WID or GAD, which provided

women with equal opportunities or active discrimination against men, puts forward the universalist spirit that no one should be placed under unreasonable conditions.

In connection with this theoretical movement of the global feminist movement, it would be a mistake to decide that biological sex is no longer a significant category. That is why the discourses of WID, GAD, and GM overlap with each other. In addition, the BPfA broadly recognizes the necessity and effectiveness of special measures for women, and, based on these measures, describes the fields that should be improved to promote women's participation and their advancement, such as those of tertiary education(par. 80. c.), of occupational choices(par. 82. g.), of technical and scientific spheres(par. 82. h.), of educational policy(par. 83. f.), of the formulation of policies and definition of structures through such bodies as ministries of finance and trade, national economic commissions, economic research institutes, and other key agencies(par. 165. d.), of all governmental and public administration positions(par. 190. a.), and of strategic decision-making positions(par. 192. a.). These policies have already been emphasized through international conventions, such as the General Recommendations of the Committee on the Elimination of All Forms of Discrimination Against Women(CEDAW Committee),⁸⁾ which was established by the United Nations in 1982 to check the implementation of the *CEDAW*

8) For example, the CEDAW Committee issued in 2004 'General Recommendation No 25', by which each of the member states should report to the Committee what 'temporary special measures' are being implemented(and to what extent) in order to resolve the discrimination between men and women(Cf. UN CEDAW Committee, 2004: par. 33).

Convention.

However, the BPfA highlights, beyond these temporary special measures, “an active and visible policy of mainstreaming a gender perspective in all policies and programmes”, taking into account not only their effect on women, but also “on women and men”(see par. 79, 105, 123, 141, 164, 189, 202, 204a, 229, 252, 273). In other words, it calls for the establishment and implementation of universalist policies at the national and international levels that conform to the circumstances of the countries concerned. From this point of view, the BPfA proposes “gender budget”, “gender analysis”, “gender impact assessment”, “gender sensitive statistics”, and “data and statistic systematically collected, disaggregated and analyzed by age, sex, and socio-economic status and by established demographic criteria”, which are all important strategic tools for GM(Sterner and Biller, 2007: 15-17).

In the way of these developments, demands for ‘gender quotas’ have become part of wider political discourses of democracy and democratization, as new international standards have diffused across the global networks(Krook and Mackay(eds.), 2011: 2). The effect of the women’s quotas on the history of democracy cannot be excessively emphasized, but women’s quotas, such as affirmative action, is not enough to realize the ideals of GM, which aim to transform unequal and contradictory social structures into equal and equitable ones, not only for women, but also for men. The fact that the women’s quotas are a provisional and temporary measure to resolve discrimination between men and women represents implicitly their restriction; they are not appropriate for a universalist policy.

The *CEDAW Convention*(1979) acknowledges similarly that affirmative action is an effective and successful measure that can overcome different forms of discrimination against women, which are deeply rooted in politics, economy, society and culture, but symbolically articulates the theoretical and practical limitation in the revised provision of Article 4.1., by which “these measures *shall be discontinued* [our emphasis] when the objectives of equality of opportunity and treatment have been achieved.” This limitation is an imperative requirement for distinguishing the difference between the identity of the women’s quotas and of the gender quotas. In this sense, it’s a theoretical standstill to consider the GM strategy to be one that mainstream ‘women’, or to equate gender quotas with the women’s quotas based on sex-based discrimination.

3. Over-determination of Gender with Sex in the Mongolia’s Quotas Policy

1) Quotas Policy in the Social Sphere of Mongolia

After the participation at the UN 4th World Conference on Women(1995), Mongolia has attended also major international conferences on gender equality and endorsed agreements.⁹⁾ To follow up on commitments made in the BPfA, Mongolai’s

9) For Mongolia’s commitments to international standards and conventions concerning gender equality, see Begzsuren and Dolgion(2014), *Gender Overview – Mongolia: A Desk Study, 2013-2014*, Bern: SDC and IRIM, p. 8.

government implemented for the first time the *National Programme of Action for Advancement of Women 1996-2020*(NPAW) in 1996,¹⁰⁾ and established the National Council for Women's Affairs(NCWA) to facilitate the implementation of the NPAW. In order to counter the decline of women's participation rate during the transition period, the NPAW put forward the goal of increasing women's representation in political and elected positions to 20 percent in the elections of 2000(NCGE, 2002: 13). Yet, this project could not undesirably become a successful model; it did not introduce any regulations such as quotas aimed at increasing women's participation. Besides, it was not institutionalized, because the policy capacities within government agencies and the funds allocated were both very limited(ADB and WB, 2005: 60).¹¹⁾

Effort to increase women's representative have newly requested by the *Millennium Declaration and eight Millennium Development Goals*(MDGs), which were endorsed by the leaders of 189 UN member states in 2000 and played a decisive role in the formulation and implementation of the new national programme. In 2001, the

10) The National Program of Action for Advancement of Women(NPAW) covered the period 1996-2020 corresponding to the stages of Mongolia's National Development Plan(JICA, 2002: 5).

11) In Mongolia, insufficient funds are generally committed to promoting gender equality. It was also very difficult to make detailed financing for gender equality activities at governmental levels until 2019. However, budget allocations for gender activities have been increasing considerably during recent years. In 2019 a budget of 706.8 million MNT(approx. 280 thousand US\$) was approved for the implementation of the National Programme on Gender Equality(NPGE) 2017-2021. This is the first time that financial provisions were specifically made for the implementation of the NPGE(MLSP, 2019: 6).

government of Mongolia established, in relation to the third Goal(Promoting Gender Equality) of the MDGs, the National Council on Gender Equality(NCGE Council), in the Ministry of Social Welfare and Labor, and one year later replaced the previous NPAW with the new *National Programme for Gender Equality 2002-2015*(NPGE), which aimed not only at removing barriers to equal participation of men and women in economic and social development, but also at seeking gender equality as a priority at all levels of decision-making. Beyond the ideal of NPAW, the NPGE sets goals mainly focused on “ensuring equal participation of men and women in development and creating a favorable enabling environment for equal ownership and access to resources”(NCGE 2002: 2). As part of achieving this goal, the NPGE(Activities 8.1.2. and Output 14.4.) mentioned newly the need for quota regulations not only in certain professions at colleges and universities in order to reduce the gender gap in tertiary education(NCGE, 2002: 10), but also in parties and political forces in order to develop an enabling environment to provide gender equality in decision-making(NCGE, 2002: 14). However, the program ended also with declarative rhetoric, without any specific procedures and processes to realize such a need(NCGE, 2019: 10). Besides, with no visible leadership from government and no specific budget allocations, there were few programs that contributed to achieving NPGE objectives, resulting in cutting short its implementation(MLSP, 2019: 7).

In 2005, there was a major reform with the establishment of the National Committee on Gender Equality(NCGE Committee) as a part of the government in order to ensure consultation, coordination, and

monitoring on the implementation of the NPGE. Whereas the prior NCGE Council led by the Vice Chairman of the Cabinet Office could not therefore become a mechanism for integration of gender issues into the various sectoral policies and programs, the NCGE Committee was headed directly by the Prime Minister as a consultative body at the national level according to the resolution of the Government of Mongolia. It consists of 26 members(NCGE, 2019: 6), including key ministers and representatives from the private sector and civil society.¹²⁾ Although the Prime Minister heads the NCGE Committee and supervises its operation, both the committee and its secretariat were weak and not proactive in integrating gender elements into their sectoral policies and programs, largely because of a humble understanding and awareness of the relevance and importance of gender integration at the managerial level, as well as because they lacked adequate financial resources(Begzsuren and Dolgion, 2014: 17).

Nevertheless, one of the most important innovations in quotas policy began with the enactment of the *Law on Promotion of Gender Equality*(LPGE), which was followed by the NCGE Committee's wide

12) Its primary functions are: coordinating activities on formulating policies, legislation, strategies, and action plans; implementing programs and projects; raising awareness, disseminating information, and building capacity; delivering services; promulgating gender mainstreaming across government; providing advice to public sector; liaising with and coordinating government and civil society stakeholders; conducting needs assessments and research; and monitoring and evaluating initiatives and compliance with national and international gender-equality commitments(MLSP, 2019: 56). About the structure and constitution of the NCGE Committee, refer to the *Law on Promotion of Gender Equality*(LPGE, 2011), Art. 18(Mandate of the National Committee on Gender with regard to promoting gender equality).

trainings for gender perspective policy planning and adopted by the Parliament of Mongolia in 2011(Tseden, 2012: 8; Gantumur, 2014: 30). The LPGE law, by which the structure and functions of the NCGE Committee are confirmed under Article 18, highlights first of all the principle of government's responsibility for promoting the gender equality of men and women provided for in the Constitution of Mongolia, international treaties, and other legislation(LPGE, 2011: Art. 5.1.3), and the principle of gender mainstreaming, by which public policies should be made gender sensitive by incorporating gender perspectives in laws, government policies, programs, and projects(Art. 5.1.4). Special measures required to be implemented under these principles should also be available in accordance with regulations provided by 7th Article(Special measures to ensure equality of men and women) for the purpose of "deciding on the number of seats or implementing other such quotas aimed at equalizing the representation of men or women at political and decision-making levels"(Art. 7.2.2). In order to realize these provisions, the law explicitly demands for the first time the institutionalization of quotas, not only in the political sphere, but also in civil service under conditions and procedures specified by the relevant laws(Art. 10).

According to the LPGE law, in political spheres, "representation of any one sex in any central and local body of a political party shall not be lower than 25 percent"(Art. 8.3). Yet, it is difficult to understand why the regulation of gender quotas in the political sphere is still limited to 25 percent, since the BPfA mentions the aim of "having(at least) 30 percent women in(all) positions at decision-making

levels”(Par. 182) in regional, national, and international institutions. This question is frequently justified as women arithmetically make up more or less 50 percent of the population. In civil service, the 10th article of the LPGE Law has in this sense an ambitious measure; it speaks of “guarantees of equal right in civil service” and the installation of gender quotas into the civil service, including politically appointed civil servants,¹³⁾ decision-making positions in public administration,¹⁴⁾ public servants in special public agencies¹⁵⁾ and so on; it set up different quota percentages of 15 percent up to 40 percent for different types and levels of civic service in great detail. In any sense, the ratification of these quotas regulation was a significant step forward for women and gender equality. But disappointingly, the higher the position, the lower the quota percentage. For example, it stipulates quota percentages in decision-making positions for state secretaries and heads of agencies as 15 percent, managers in other central agencies as 20 percent, head of

13) *Aimag*, City, *Soum*, *Duureg*, and *Khoroo* represent the administrative districts of Mongolia. “Representation of any one sex among politically appointed civil servants shall not be less than 15 percent on national, *aimag*, and the capital city levels, 20 percent on districts, 25 percent on *soum*, and 30 percent on *khoroos* levels(LPGE, 2011: Art. 10.1.1).”

14) “Representation of any one sex in decision-making positions in public administration shall not be less than 15 percent among state secretaries and heads of agencies, 20 percent among managers in other central agencies, 30 percent among heads of department in ministries and agencies, 40 percent among heads of secretariats, departments and divisions on *aimag*, city, *soum*, *duureg* and *khoroos* levels(LPGE, 2011: Art.10.1.2).”

15) “Representation of any one sex among public servants in special public agencies shall not be less than 40 percent(LPGE, 2011: Art.10.1.3).”

department in ministries and agencies as 30 percent, and heads of secretariats, departments, and divisions on *Aimag, City, Soum, Duureg*, and *Khoroо* levels as 40 percent(LPGE, 2011: Art.10.1.2).¹⁶⁾

If we take the social and political exclusion of women as a starting point, we admit that women face, in both private and public spaces, occupational segregation and multiple barriers – such as lack of access to education, capital, work and power – due to social and cultural mindsets and stereotypes. The higher the position, these obstacles make it more difficult for women to get on an equal opportunity with men in the civil service. However, it is theoretically problematic to understand why quotas rate depends also on the social level or hierarchy of the civil society. Mongolian defenders of this quotas regulation argued that it is far too early to expect women in higher position to have an impact on decision-making, and that women in many parts should form then the ‘supporting soldiers – in the sense that they could not form the leadership positions –’ in organizing civil society(OSCE and ODIHR, 2013: 12). These uneven regulations do not seem to conform in this respect to international standards, such as the BPfA, which speaks of achieving “equal representation of women and men [...] in all governmental and administration positions”(Par. 190), which means 50 percent of representation ‘in terms of quantity’, or gender-neutral quota, at all decision-making levels in national and international institutions. In this ambiguity, the gatekeepers to the public sphere – used to be the

16) On the process of enacting the LPGE Law, see B. Narantuya(ed.)(2010), *Discussion for General conference of State Great Khural of May 14*, Parliament of Mongolia.

political parties – appear hostile to women’s engagement in decision-making position, especially at the top position, and think that the purpose of Mongolian quotas policy will have been achieved once the uneven target quota percentage found in the LPGE has been reached. This could lead to a perpetuation of gender inequality, particularly in higher positions, and could create a ‘glass ceiling’(Wood, 1997: 370-371) for women, which is an invisible barrier that limits their participation. Mongolian policymakers should reevaluate at the moment this limited approach to quotas regulation, and create a suitable timeline to gradually reach true gender equality as time goes on; if not, they will find it difficult to consolidate their democratic legitimacy any longer.

2) Quotas Policy in the *Law on Election of Parliament* from 2008 to 2016: Advancing Women’s Political Representation?

According to the World Economic Forum(WEF), Mongolia ranks 58th out of 149 countries in the Global Gender Gap Index 2018, and does well in terms of gender equality in ‘Economic Participation and Opportunity’(20th), ‘Educational Attainment’(70th)¹⁷⁾ and ‘Health and Survival’(1st); however, it ranks 109th out of 149 countries for political empowerment, because women’s participation in decision-making

17) About 86.3 percent of the male population vs. 91.2 percent of the female population(ages 25 and older) have completed at least some secondary education. Yet the female labor-force participation rate(67.8 percent of ages 15 and older) lags behind male’s(66.7 percent)(Cf. UNDP, 2020).

positions is proportionally much lower than in other countries(WEF, 2018: 242).¹⁸⁾ Although the *Law on Election of Parliament(LoE)*, enacted in 2005, provided for the first time the tentative provision that “at least 30 percent of party and coalition candidates shall be women:(Art. 28.2), this article was regrettably annulled and removed by the revised LoE in 2007, just before the election in 2008(Yadamsuren, 2018: 26-27; MDSWA and FES, 2010: 5; Erdenechimeg and Erdenechimeg, 2015: 16). In protest of the decision, a number of women's organizations submitted a petition to the Parliament, but it was finally rejected by the male members, who made up the majority of Parliament on 11 January 2008(Tucker, 2020; UNDP, 2013: 4). Due to this marginalization, the proportion of female representatives in the Mongolian parliament in 2008 was just 3.9 percent; there were only 3 women out of 76 elected members.

The freshly revised LoE on 15 December 2011, only six months before the parliamentary elections in June 2012, was epoch-making in Mongolian election history. The law introduced several substantial changes not only to the electoral system, but also to the administration of elections(UNDP, 2013: 4-6). These changes included the move from a plurality system to a mixed system, known as a ‘Mixed Member Majoritarian(MMM)’¹⁹⁾ system: 48 seats(out of 76) were

18) The political empowerment sub-index measures the gap between men and women at the highest level of political decision-making in terms of the ratio of women to men in minister-level positions and in parliamentary positions(WB, 2020).

19) The ‘Mixed Member Majoritarian(MMM)’ system uses generally both majoritarian systems and proportional systems. The former usually have single- or multi-seat districts with plurality rule, whereas the latter is most often based on a party proportional list(Cf. Shugart and

elected by plurality vote in 26 constituencies(nominal tiers) and the remaining 28 seats were elected on a closed proportional-representation list(list tier)(Sanders, 2017: 31; Maškarinec, 2014: 187). Each voter had two votes: one was for candidates in single- to three-member districts and the other for a party proportional list. In single-member districts, the system worked like first-past-the-post voting(FPTP). In multi-member districts, it worked like an unlimited vote; each voter had as many votes as the number of mandates in their district, and candidates with the most votes obtained a mandate. In the list tier, Mongolia used a single closed party-list ballot covering the entire country, in which seats were distributed using the largest remainder method, known as the ‘Hare quota method’²⁰⁾. A party or coalition that received at least 5 percent of the second votes received a fraction of seats(Maškarinec, 2019: 239-240).

Another historical reform of the 2011 LoE was the introducing of a gender quota. During the drafting stage of the law, the women’s organizations in various fields discussed the introduction of a gender quota with the parliamentary working group, and demanded a gender quota of 30 percent; however, their petition was finally refused by party politicians(Tucker, 2020). The women’s movement at that time originated a media campaign, launched on 3 October

Wattenberg, 2003).

20) The ‘Hare quota’ is defined as follows. The method requires the calculation of a quota based on the number of seats at stake and the number of votes cast. Each party is first allocated a number of seats equal to their integer. The unallocated seats are then awarded to the parties that present the largest remainders(Gallagher, 1992: 471).

2011, under the name of “Women Can”, which was mainly supported by the UN Development Program(UNDP). Their campaign was in part successful and helped a gender quota of 20 percent break through. According to the 2011 LoE, “a party or coalition shall propose no more than 76 candidates for a Parliamentary election” (Art. 27.1), and “at least 20 percent of candidates proposed by a party or coalition shall be represented by women”(Art. 27.2). For the 2012 election, a gender quota of 20 percent was applied for the first time since the democratization of Mongolia. Supported by this legal structure, a record number of women were on the ballot in the 28 June 2012 parliamentary election. Of the 544 candidates from 11 parties and 2 coalitions running for the 76 seats,²¹⁾ 174(nearly 32 percent) were women, largely above the quota regulation of 20 percent(see Narangoa, 2012). Following the 2012 election, 11 women(nearly 14,5 percent) were finally elected; these figures indicated a momentous step forward and brought up the proportion of female legislators from 3 women(3,9 percent) to 11, a historical high.

However, the gender quota at that time did not work as commendably as women expected; they gained only 14,5 percent (11 seats out of 76), positioning Mongolia below the world average of 20,5 percent(UNDP, 2013: 8). Since the law did not provide a ‘ranking order’ pertaining to the placement of the required 20 percent of women candidates in parties’ candidate lists, few parties put female candidates at a high and winnable position on their proportional list as well as on constituencies. In short, there was no

21) There were 26 of 544 candidates who ran as independent candidates (Maškarinec, 2014: 188).

particular regulation that put women into the electable positions, such as in the ‘zipper quota’ regulation of South Korea,²²⁾ in which the placement of female candidates must be on an odd number on their proportional list(Tan, 2015: 173). Accordingly, the Mongolian People’s Party(MPP), one of the Mongolian major parties, put almost all their female candidates towards the bottom of the proportional list; hence, only one of the 11 female members of Parliament was from the MPP in the 2012 election(Dierkes, 2012).

The gender quota regulation of the 2011 LoE, even if it was implemented after the adoption of LPGE in 2011, had not been effusively discussed among the concerned scholars(Jacob, 2012) and therefore sturdily embodied the nature of the WID, such as by affirmative action, based on the biological differences between men and women, rather than reflecting GM’s ideal. This kind of judgment provides a theoretical justification, since this quota regulation was implemented as part of the ‘special measure’ or ‘affirmative action’ to ensure equality of men and women specified in 7th Article of the LPGE. But the 2011 LoE did not contain a ‘temporary’ or ‘momentary’ provision that could be an essential condition for this special measure(NUM and KAS, 2020: 45). Instead, the law, by specifying that the regulations should follow procedures “based on democratic principles”(LoE, 2011: Art. 27.4), revealed the universalist nature of gender quotas. This ambiguous aspect shows in a roundabout way that the quota regulation of the 2011 LoE is considered, in theory, to

22) Proportional Representation(PR) with zipper quota have contributed to securing diversity of representation - however partially - in South Korea (Cf. Lee, et al., 2017).

be a gender quota regulation that requires following democratic principles and procedures; yet, it operates *in practice* as an affirmative action, such as a women's quota that emphasized merely the promotion of the descriptive representation of women. In our theoretical terminology, this would be notably an illustration of 'over-determination of gender' with sex.

The LoE was once again amended on 5 May 2016, just before the 2016 election was held. Since the Constitutional Court of Mongolia invalidated on 22 April 2016 the proportional representation of the electoral system on the grounds that it violates the 'direct' election provision guaranteed by the Constitution(Andrikiené, 2016: 3), the governing Democratic Party(DP) pushed for reform of the electoral system from the MMM system to a FPTP system. The electoral system was finally revised from multi-member to single-member constituencies, increasing the number of constituencies from 26 to 76, and from a mixed system to a fully majoritarian system, in which, in order to be elected, a candidate must have an absolute majority of votes in his/her constituency(LoE, 2016: Art. 120,2) (Dierkes, 1997: 128-134; Radchenko and Mendee, 2017: 1032-1057).

Nonetheless, these changes were expected correspondingly to lamentably marginalize female candidates and be a favorable condition for male candidates: the women candidates would probably not be elected in a single-member rather than a multi-member district, in the majority representation rather than in the proportional representation system. Actually, the major parties, including the Democratic Party(DP), which maintained dominant power in the outgoing parliament and its main rival fraction, the

Mongolian People's Party(MPP), would nominate female candidates in probably unwinnable districts. Moreover, although the gender quota regulation was provisionally set at 30 percent(OSCE, 2016: 6), it was finally confirmed as 20 percent again(Sanders, 2017: 33). In accordance with the 2016 LoE, 24 political parties and coalitions were registered in the 2016 election. Of the 498 candidates, including 69 independents, 129(26 percent) were women. All political groups complied with the 20 percent quotas, with the DP and MPP nominating the lowest percentage of women; the two parties nominated 21 percent of female candidates(OSCE, 2016: 3). Smaller parties nominated significantly higher percentages. For example, the Civil Movement Party nominated 12 women, 44 percent of its candidates(OSCE, 2016: 11, note 43). There were, though, no female candidates in more than a third of the constituencies (Andrikiené, 2016: 14). After the election, the General Election Commission(GEC) of Mongolia announced the final turnout at 73 percent of registered voters, and the proportion of the elected female representatives at 17.1 percent; there were only 13 women out of 76 total elected members(IPU, 2019), that is, a minor increase in the female numbers of Parliament from 11 to 13.

Why did such a deprived result come out? The law, just as in the previous 2011 LoE, didn't provide a 'ranking order' pertaining to the placement of female candidates in parties' candidate lists.²³⁾ Few studies at that time were theoretical reviews of gender quotas regulation in terms of democratic principles or its procedures. In

23) "At least 20 percent of candidates nominated by a party or coalition shall be represented by one gender"(LoE, 2016: Art. 126.2).

contrast, most studies highlighted the ideal of affirmative action, that securing the descriptive representation of women is a “fast track” to securing their substantive representation—we are not completely denying the possibility – just as the “General Recommendation No 25” issued by the CEDAW Committee in 2004 emphasized.²⁴⁾ Gender quotas, in terms of a permanent policy of abiding by democratic principles or procedures, have not been cut off from women’s quotas, nor have the former replaced the latter. However it doesn’t mean we have to completely trust the hypothesis by which the special measures to achieve quantitatively women’s representation in terms of “equality of results” is a “fast track” to change the existing unequal social structure(NUM and KAS, 2020: 56), because it is a misunderstanding that women should have quantitatively equal opportunities with men to achieve their political representation, and that equal opportunities are not achieved until there is an equal quantitative outcome. Promoting the women’s descriptive representation seems to conflict in this sense with what has been the ideology of democracy, which is in principle away from special group’s representation, and towards an ideal of citizenship in which each individual counts equally. The members of society can suffer from the discrimination by sex, race, class, ethnicity, or other criteria named in laws, and it cannot be also said that the so-called “quotas

24) The General Recommendation No. 25 issued by the CEDAW Committee in 2004 is not for gender quotas as proposed in the BpFA, but for affirmative action as one of the ‘temporary special measures’ in Article 4 of the *CEDAW Convention*. Because a gender quotas system is a means to guarantee democratic principles and procedures to those who are alienated or excluded because of unequal social structure(UNDP, 2013: 10).

women” primarily represent the interests of women, as long as they are elected by voters that are made up of both women and men (Phillips, 1993: 133); if the political organizations that women participate do not advocate an explicitly woman-friendly policy, there is no guarantee that women will represent women’s interests. In this sense, the argument that gender quotas regulation, mostly focusing on the biologically female candidates, is insufficient as a means of realizing gender equality needs to be theoretically considered (Squires, 2004: 19-21). This would be another illustration of ‘over-determination of gender’ with sex, in the LoE of Mongolia.

4. Concluding Remarks

Policy measures to promote the numbers of women participating in public or political institutions, such as quotas of women candidates have returned a growing number of women to public space. The average has increased in Mongolia, though not dramatically, from less than 4 percent in 1990 to 17.1 percent in 2016. Yet, in Mongolian case, quotas regulation has turned out not to be as effective as expected; the gradual increasing of numbers of women does not necessarily produce major changes in what parties and governments actually do, and women in public sphere in which they participate as social and political actors, do not necessarily defend a gender perspective on policies. In this paper, we tried to define in theory these characteristics, explicitly inherent in the Mongolia’s quotas policy, as the ‘over-determination’ of gender by sex.

Then, what theoretical challenges stem from this over-determination of their quotas policy? Perhaps a number of attitudes could be expressed depending on the scholars or the positions. We put forward here an opinion that requires serious discussion, and to replace the conclusion with this: there seem to be misunderstandings and misinterpretations of the concept of 'women's representation' in Mongolian academia. In our opinion, the most serious absurdity derived from the over-determination of gender surrounds the concept of 'women's representation', and is commonly compiled in the Mongolia's quotas policy.

In fact, the Mongolia's quotas policy was built around the slogan of increasing women's representation since its democratization. The concept of women's representation is intensely advocated not only by the BpFA, but also by the General Recommendations of the CEDAW Committee, and is frequently asserted in academia as well. However, given that sex and gender are different concepts, it is also significant to emphasize that the assumption that women's representation is strengthened by adding women needs to be reconsidered. One of the blind spots of this assumption is to the public perceptions that female representatives *should* be, and *can* be representative of women's interests(regardless of their political intentions) and that quotas are necessarily seen as a successful means of remedying women's under-representation, are quite widespread even in recent times.

Undoubtedly, the target of the women's quotas policy should be biological women, but the target of the gender quotas policy would be "someone" considered in the special gender relationships of their

society, rather than biological ones. Since gender is not a concept that could be returned to 'Universal Woman'(sex), the gender quotas policy could not be aimed only at women(Cf. Krook, 2009). If gender is overdetermined, exclusively with sex, it is easy to remove the context of the power relationships between social groups inherent in gender relationships, and thus to victimize the many kinds of social subjects, because the qualifications of social actors are limited to only biological men and women. These troublesome could ultimately confuse not only the perception of gender gaps, but also of inequality inherent in the social structure. For these reasons, in the process of setting the goals of the gender quotas policy, it should be clearly stated whether the targets of the quotas policy are 'all' women as defined biologically, or 'some' women considered in certain gender relationships. In the latter case, it is necessary to identify what gender relationships the society concerned should consider in policy. That is why the gender quotas policy should be considered in terms of the procedures and principles of democracy, not in terms of the quantitative number of women.

In the sphere of political science, the concept of 'representation' has been also seriously discussed ever since representative democracy was established. H. Pitkin in her *The concept of representation*(1967) divides the concept of representation into formalistic, descriptive, substantive, and symbolic representation, and contemplates what the conditions of political representation are. Her insight is based on what the conditions are under which formalistic representation as a social contract can be transferred to true political representation(Pitkin, 1967: 209-240). In this process, the important

requirement is how the descriptive representation of women can strengthen their substantive representation; unfortunately, we can barely find such efforts in the Mongolian quotas policy. Regarding this issues, the over-determination of gender with sex, or of gender quotas with women's quotas, leads to a vague assumption that increasing descriptive representation of women is a basic condition for ensuring their substantive representation, and that the former is a "fast track" for the latter. It forces only modest logic, based on the assumption that women's participation rate is low, that the women's quotas, forcing women to participate, is the quickest and most effective alternative. Yet, the gender quotas policy is an institutional measure dealing with the problems of social structure that have caused the women's under-representation, given the gender relationships that behave like power relationships. In this sense, gender quotas should be a measure that addresses the problems of social structure, not merely increase the quantitative participation rate of women.

We do not intend this argument to criticize the women's quotas policy in Mongolia, but to criticize the tendency to replace gender quotas policy, which should consider gender relations, with women's quotas policy, which exclude such consideration. This argument calls for a paradigm shift, asking for a distinction between sex-oriented logic and gender-centered logic. That is why gender quotas should be discussed separately from women's quotas in the Mongolian academic world. It is necessary to deliberate how quotas system that can promote women's substantive or symbolic representative beyond their formalistic or descriptive representative will be possible;²⁵⁾ it is

essential to try to project the gender perspective into the quotas regulations in all representative systems and to ask consistently how controls the nomination process to eradicate all social, cultural and political barriers preventing equal representation of women.

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25) For example, empirical analysis on the *Parité* implemented in the majoritarian system of France or the *Zipper* system in the proportional representation system of South Korea - regardless of whether they are effective or not - will be the start point for this(Cf. Krook, 2009: 37-46; Krook and Mackay(eds.), 2011: 3-7; Jeon, 2013: 36-39).

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<국문초록>

몽골의 할당제 정책에 투영된 젠더의 중층결정
(over-determination of gender), 혹은 이론적 과제:
1990-2016년 민주 정부 시기의 할당제 변화 과정을
중심으로

버르쿠 설령거 · 최일성

이 글은 1990년 민주화 이후 실시된 몽골의 할당제 정책을 역사적인 관점에서 검토하고, 여성의 대표성 향상을 위한 이론적 과제가 무엇인지를 제안한다. 20세기 말 페미니즘의 문제의식은 생물학적 '섹스(Sex)'에서 사회문화적 '젠더(Gender)'로 이동 - 양자의 교차가능성을 부인하는 것은 아니지만 - 한다. 그러나 몽골에서 이러한 문제의식은 1990년대 민주화를 경험하면서 동시대적으로 논의·수용되며, 여성의 정치적 대표성 향상을 위한 할당제 역시 충분한 논의를 생략한 채 목적론적으로 채택된다. 그런 이유로 공공영역에서 여성의 정치적 대표성 여부는 생물학적 여성의 '참여비율로만' 환원되는 문제점이 발생하기도 한다. 필자들은 이러한 문제를 이론적인 차원에서 '젠더의 중층결정(over-determination of Gender)'으로 개념화하고, 이러한 현상에서 비롯되는 이론적 과제가 무엇인지를 분석한다.

주제어: 섹스(Sex), 젠더(Gender), 젠더할당제(Gender Quotas), 젠더주류화(Gender Mainstreaming), 젠더의 중층결정(Over-determination of Gender)

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